(2016) 06 BOM CK 0202

In the Bombay High Court

Case No : Writ Petition No. 1122 of 2016

Bank of Maharashtra APPELLANT

Vs

Additional District Magistrate RESPONDENT

Date of Decision : 17-06-2016

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 14, Section 31(i)

Citation : (2017) 171 AIC 417 : (2017) AIR(Bombay) 92 : (2017) 2 AIRBomR 729 : (2017) 1 MhLJ 480

Hon'ble Judges : Vasanti A. Naik and Mrs. Swapna Joshi, JJ.

Bench : Division Bench

Advocate : Served, for the Respondent Nos. 2 to 9; Mr. M.N. Phadke, Advocate, for the Petitioner; Mr. D.P. Thakre, Addl. Government, for the Respondent No. 1

Final Decision : Allowed

Judgement

Mrs. Swapna Joshi, J. - Rule. Rule made returnable forthwith. The petition is heard finally at the stage of admission, with the consent of the learned counsel for the parties.

2. By this Writ Petition, the petitioner-Bank has impugned the order dated 14th August, 2015 passed by the respondent no.1/ Additional District Magistrate in Revenue Case No.113/2014, thereby declaring that the property of which possession is to be taken, is an ''agricultural land'' and rejecting the claim of the petitioner-Bank to secure possession of the land mortgaged with the petitioner-Bank and closing the case, in view of the provisions of Section 31(i) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 (hereinafter referred to as the ''Securitisation Act'' for the purpose of brevity).

Some of the relevant facts for the purpose of deciding the instant petition, are as under :

3. On 4.10.2010, the respondent no.1 Company was granted the term loan of Rs. 70 crores and cash credit limit of Rs. 5 crores for doing the business of Dairy Farm. On 1.11.2010 the respondent no.2 Company, in consideration of the said term loan and cash credit limit, executed various documents. On 1.11.2010, the respondent nos. 3 to 6 in their individual capacity, along with respondent nos. 7 to 9 executed separate guarantee deeds and thereby agreed to guarantee the repayment of credit sum of Rs. 75 crores to the petitioner-Bank. On 30.8.2011, the respondent nos.4 and 5 created an equitable mortgage in respect of their seven immovable properties to secure the repayment of the said loan facilities aggregating to Rs. 75 crores. The respondent no.5 and one Shri Sushil Nair created an equitable mortgage in respect of their immovable property located at Kerala to secure the repayment of the said loan facility aggregating to Rs. 75 crores. The respondent no.3 as Director of the respondent no.8 created an equitable mortgage in respect of his immovable property to secure the repayment of the said loan facilities aggregating to Rs.75 crores. The respondent no.9 created an equitable mortgage in respect of his immovable property to secure the repayment of the said loan facility aggregating to Rs. 75 crores. On 17.7.2012 the respondent nos. 2 to 9 gave a letter to the petitioner-Bank and thereby acknowledged their liability to repay the amount due to the petitioner-Bank. On 2.5.2013 the petitioner-Bank classified the account of respondent no.2 company as nonperforming asset as per the Reserve Bank of India Guidelines. On 20.8.2013, the petitioner-Bank issued a demand notice under section 13 (2) of the Secursitation Act, calling upon the respondent nos. 2 to 9 to pay the amount of Rs. 70,85,86,832. 85 paise jointly and severally, to the petitioner-Bank. On 14.10.2013, the respondent nos. 2 to 9 raised the objection u/s 13(3) of the Securitisation Act to the said demand notice. On 22.10.2013, the petitioner-Bank filed the O.A. No.119/2013 against the recovery of Rs. 76,42,44,383.85 paise jointly and severally and for sale of the mortgage property. The petitioner-Bank u/s 13(3A) of the Securitisation Act replied to the said objection on 23.10.2013. The petitioner-Bank then issued a notice under subsection (4) of Section 13 of the Securitisation Act, in respect of seven mortgaged properties, located in Nagpur and took a symbolic possession thereof by affixing the notice on the said seven properties, on 22.11.2013. The petitioner-Bank then published the possession notice in the local newspapers. The petitioner-Bank approached the District Magistrate at Nagpur for seeking assistance u/s 14 of the Securitisation Act to take the physical possession of the secured assets i.e. five mortgaged properties at Nagpur with relevant information through an application and all the relevant documents in support thereof, on 26.11.2014. On 5.1.2015 the respondent no.1/ Additional District Magistrate issued notice to the respondent nos. 2 to 9 to file their reply, in response to the application filed by the petitioner-Bank. On 11.6.2015 the respondent no.2 filed objections by way of reply to the said application filed by the petitioner-Bank and that Shri Sadanand W. Laghate, the alleged tenant also filed the objection by way of reply to the said application filed by the petitioner-Bank. On 24/06/2015, the respondent no.1, after hearing the petitioner-Bank the respondent nos. 2 to

9 and the alleged objector/tenant, closed the case for order. On 14.8.2015 the respondent no.1/ Additional District Magistrate passed the impugned order and thereby closed and filed the Revenue Case No.113/2014, in view of the provisions of Section 31 sub-clause (i) of the Securitisation Act. Thus, being greatly aggrieved by the said impugned order dated 14.8.2015 passed by the respondent no.1/ Additional District Magistrate, Nagpur, the petitioner-Bank has filed the present petition.

4. Shri M.N. Phadke, the learned counsel for the petitioner vehemently argued that the respondent no.1 had no jurisdiction to decide whether the property was agricultural land or not. It is submitted that the District Magistrate has no powers to adjudicate upon the questions in regard to the nature of the property. According to the learned counsel for the petitioner, neither the respondent nos. 2 to 9 nor the objector/tenant had, at any point of time, raised the objection that the property of which the possession was to be taken is an agricultural land. According to the learned counsel for the petitioner, the respondent no.1 has no jurisdiction to go into the merits of the case and pass an order u/s 14 of the Act, declaring that the property of which possession is to be taken is an agricultural land. Learned counsel for the petitioner placed reliance upon the judgment of the Bombay High Court in the case of Union Bank of India v. State of Maharashtra and others, reported in AIR 2010 Bombay 150. He further placed reliance upon the judgment of the Gujarat High Court in the case of Kotak Mahindra Bank Limited v. District Magistrate and one reported in 2015 Law Suit (Guj) 1269.

5. Learned Additional Government Pleader, Shri D.P. Thakre, appearing on behalf of the respondent no. 1, fairly admitted that powers of the District Magistrate are limited and he had no jurisdiction to decide whether the property was agricultural property or not. The learned Additional Government Pleader submitted that because the judgments were not cited before him, there was some error in passing the impugned order. He stated that if the matter is remanded to the District Magistrate, he may pass an appropriate order.

6. After hearing both sides and perusal of the documents placed on record, it is necessary to go through the provisions of Section 14 of the Securitisation Act:

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset: (1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing,the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him :

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor,

1.(a) Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the bank of financial Institution is holding a valid and subsisting security interest over such properties and the claim of the bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause(ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a nonperforming asset;

(vi) affirming that the period of sixty days notice as required by the provisions of subsection (2)of Section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for nonacceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised officer is, therefore, entitled to take possession of the secured assets under the provisions of subsection (4) of Section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder has been complied with:

Provided further that on receipt of the affidavit from the Authorised officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act."

(b) after subsection

(1), the following subsection shall be inserted, namely:

"(1A) The District magistrate or the Chief Metropolitan magistrate may authorise any officer subordinate to him, (

i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor."

(c) in subsection (3), after the words "the District Magistrate", the words " any officer authorised by the Chief Metropolitan magistrate or District Magistrate " shall be inserted. "

The provisions quoted herein above clearly indicate that the District Magistrate has to simply verify that the contents in the affidavit tendered by the petitioner-Bank, are in accordance with the provisions of Section 14(1)(a) of the Act. A bare perusal of the order passed by the respondent no.1 would reveal that the observation of the Additional District Magistrate that the property of which possession is taken appears to be ''agricultural land'' and no evidence is filed on record that the property is non-agricultural land and that as per the provisions of Section 31 sub-clause (1) of Secrutisation Act does not apply to the agricultural land, appears to be without jurisdiction. Significantly, neither the respondent nos.2 to 9 nor the objector/ tenant raised such an objection. The District Magistrate has no power under section 14 of the Act to go into the merits of the case. In Kotak Mahindra Bank v. District Magistrate (supra) the Division Bench of Gujarat High Court, relying upon the judgment in the case of IDBI Bank Limited through Authorised signatory v. District Magistrate and another; reported in 2011 (2) GLH 12, in paragraph no.6 observed as under :

"6. The Authority who is called upon to act under Section 14 of the Securitisation Act can only assist, nay, is bound to assist the secured creditor in taking possession of the secured asset. As the Chief Metropolitan Magistrate and District Magistrate under section 14 is not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor under Section 13 (4), which may be assailed under section 17 of the Act by the aggrieved person, under subsection (3) of Section 14 of the Securitisation Act, the act of the Chief Metropolitan Magistrate or District Magistrate done in pursuance of said Section cannot be called in question in any court or before any authority. It is evident from the provisions of law that the District Magistrate while bound to assist the secured creditor in taking possession of the secured assets and to take the possession of the documents to be secured creditor, he is not empowered to decide the question of genuinity or propriety of such documents, including the document signed or agreed between the borrower and the secured creditor. "

It is further held that:

"If such measures taken u/s 14 which amount to measures taken u/s 13 (4) is not in accordance with Securitisation Act or the Rules framed thereunder, including the objection, if any, raised that the asset is not a secured asset to be taken under Section 13 (4), the aggrieved person has a remedy u/s 17 before the Debts Recovery Tribunal to show that the measures taken are against the Act. Such a determination is to be made by the D.R.T. including the question whether the assets is a secured asset or not and the Chief Metropolitan Magistrate or the District Magistrate has not been empowered to adjudicate such a dispute, but is directed only to secure asset in taking possession of the secured assets".

It is evident from the above discussion that the Additional District Magistrate has no powers to adjudicate the dispute, but has to verify whether the declarations are made in the affidavit tendered by the petitioner as per Section 14(1)(a) and then pass an order for taking actual possession of the secured assets.

In AIR 2010 BOM 150 (supra), in paragraph 23, the Division Bench of this Court, has observed thus :

"23. Similarly, in the case of Bank of India (AIR 2007 Guj 201) (cited supra), the learned Judge in paragraph 8 has observed thus:

8. Hence the authority who is called upon to act under Section 14 of the Securitisation Act can only assist, nay, bound to assist the secured creditor in taking possession of the secured asset. Any dispute between the parties regarding the secured asset raised before the authority cannot be gone into by authority, the authority has to relegate aggrieved person to seek statutory remedy under the Securitisation Act after taking possession and handing over the secured creditor. The authority cannot be permitted to read anything beyond this is Section 14 of the Securitisation Act. It is further held that:

It is evident that Section 14 of the SARFAESI Act is an enabling section which empowers Magistrate only to assist secured creditor in taking possession of the secured assets and, therefore, the power vested in the District Magistrate is limited and specific. Plain reading of Section 14 of the SARFAESI Act demonstrates that it does not clothe the District magistrate with power to undertake any adjudication in respect of any dispute between the parties regarding the secured assets. Hence, any dispute raised regarding the secured assets of any kind, cannot be gone into by the District Magistrate while exercising power under Section 14 and the aggrieved person is required to approach the competent forum for redressal of his grievance in respect of the secured assets."

In that case, this Court held that the District Magistrate cannot adjudicate any dispute between the parties regarding the secured assets. It is held that the District Magistrate cannot decide about the nature of the secured asset and hence he cannot hold that a particular secured asset is an agricultural land.

Likewise, in the case in hand, the learned District Magistrate has exceeded his limits and has passed the impugned order without jurisdiction and contrary to the provisions of Section 14.

In the case of Standard Chartered Bank v. Noble Kumar and others, reported in (2013) 9 SCC 620, the Hon''ble Apex Court has observed in paragraph 25, as under :

"25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset."

7. Thus, the respondent no.1/Addl. District Magistrate has erred in passing the impugned order in as much as, he was only required to examine whether assertions were made in the affidavit by the petitioner-Bank as per Section 14(1) (a) and only after recording of the satisfaction, he should have passed appropriate order regarding taking of possession of the secured assets. The Addl. District Magistrate has thus passed an illegal order, without jurisdiction and therefore it is liable to be quashed. The respondent no.1 erred in observing that the property of which possession was to be taken is an agricultural land when neither the respondent no.2 to 9 nor the objector/ tenant raised the objection about the same and when he had no jurisdiction to embark upon the said question. Thus, the order passed by the Addl. District Magistrate is unsustainable in law, being illegal and without jurisdiction. Hence the following order:

ORDER:

(i) Writ Petition is allowed.

(ii) The impugned order dated 14.08.2015 passed by respondent no.1/Addl. District Magistrate, Nagpur, is hereby quashed and set aside.

(iii) The matter is remanded to the District Magistrate, Nagpur for fresh decision by affording an opportunity of being heard, to the parties, in accordance with law, within a period of one month from the date of receipt of copy of this order.

Rule is made absolute in the aforesaid terms, with no order as to costs.