(2004) 03 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No. 45356 of 2003

Citibank APPELLANT

Vs

Sudeep Singh and Another RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 14, 14 (2)

Citation : (2004) 4 BC 529 : (2006) 129 CompCas 478 : (2004) 4 KarLJ 405 : (2005) 57 SCL 1

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : N. Vishwanath, for Rao and Joshy Associates, for the Appellant; B. Shankariah, for the Respondent

Final Decision : Allowed

Judgement

H.L. Dattu, J.—Petitioner is a banking Company. It is before this Court aggrieved by the orders made by the learned I Additional Chief Metropolitan Magistrate, Bangalore, dated 23-9-2003. By the said order, the learned Magistrate has referred the petition filed by the petitioner-Bank to the Yeshwanthpur Police Station, with a direction to enquire the matter with the respondents by issuing notice to them and submit his report returnable by 12-11-2003.

2. Brief facts of the case are:

It is the case of the petitioner-Bank that they have sanctioned loan facilities to the respondents herein. According to them, the respondents herein have defaulted in paying the amounts due to the petitioner-Bank. To recover the amounts due from the respondents, petitioner-Bank has approached the learned Chief Metropolitan Magistrate, by filing a petition u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (''Act 2002'' for short), inter alia requesting him to take possession of secured assets of the respondents for realisation of the debts due to the petitioner-Bank.

3. The learned Chief Metropolitan Magistrate, on receipt of the petition filed by the petitioner-Bank u/s 14 of the Act, 2002, has assigned the petition to the I Additional Chief Metropolitan Magistrate Court, Bangalore, for disposal of the petition in accordance with law.

4. The learned I Additional Chief Metropolitan Magistrate, by his order dated 23-9-2003 has directed the Sub-Inspector of Police of Yeshwanthpur, to enquire into the matter after issuing notice to the respondents. The order made by the I Additional Chief Metropolitan Magistrate reads as under:

"Refer the Petition to P.S.T. Yeshwanthpur with a direction to enquire the matter with the respondents and by issuing notice to the respondents and submit his report. Returnable by 12-11-2003"

5. To appreciate the contentions canvassed by the learned Counsel appearing for the petitioner-Bank, the provisions of Section 14 of the Act, 2002, requires to be noticed. It is as under:

"14(1) Where the possession of any secured assets 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.

(2) For the purpose of securing compliance with the provisions of Sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No Act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any Court or before any authority".

6. An analysis of the aforesaid provision would indicate the following:

(a) If the secured creditor intends to take possession of any of the secured assets or if any of the secured assets is required to be sold or transferred to the secured creditor under the provisions of this Act, the secured creditor for taking possession and control of the secured assets may approach the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction the secured as set or other documents is situated to take possession thereof;

(b) When such a request is made, the Chief Metropolitan Magistrate or the District Magistrate may take such steps as in his opinion necessary for the purpose of taking possession of such assets and documents relating thereto and forward such assets and documents to the secured creditor.

7. In the instant case, a secured creditor has filed a petition before the learned I Additional Chief Metropolitan Magistrate, to take possession of the secured assets of a defaulter. Under Sub-section (2) of Section 14 of the Act, 2002, the learned I Additional Chief Metropolitan Magistrate is expected to take such steps as in his opinion necessary for the purpose of taking possession of such assets and documents. Instead, the learned I Additional Chief Metropolitan Magistrate has directed the police authorities to make enquiries after issuing notice to the respondents. In my opinion, that is not what is contemplated under Sub-section (2) of Section 14 of the Act, 2002. Since the order made by the learned I Additional Chief Metropolitan Magistrate, dated 23-9-2003 is contrary to the statutory provisions, the same cannot be sustained by this Court.

8. Accordingly, the following:

ORDER

I. Writ petition is allowed. Rule made absolute.

II. The impugned order made by the learned I Additional Chief Metropolitan Magistrate, dated 23-9-2003 is quashed.

III. The learned I Additional Chief Metropolitan Magistrate is directed to consider the petition filed by the secured creditor, namely, petitioner-Bank only in accordance with the provisions of Sub-section (2) of Section 14 of the Act, 2002. Ordered accordingly.