
(2015) 06 MAD CK 0238

In the Madras High Court

Case No : Writ Petition No. 13451 of 2015 and M.P. Nos. 1 and 2 of 2015

Deccan Chronical Holdings Limited

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 12-06-2015

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(4), 13(4)(a), 14
Transfer of Property Act, 1882 — Section 65-A

Citation : AIR 2015 Mad 190 : (2015) 4 BC 157 : (2015) 127 CLA 361 : (2015) 4 CTC 18 : (2015) 3 LW 401 : (2015) 5 MLJ 358 : (2015) WritLR 654

Hon'ble Judges : Satish K. Agnihotri, J;M. Venugopal, J

Bench : Division Bench

Advocate : Krishna Srinivasan for Ramasubramaniam Associates, for the Appellant; P. Raghunathan for T.S. Gopalan and Co., Advocates for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—Assailing the legality and validity of the order dated 27.04.2015 passed by the Presiding Officer, Debts Recovery Tribunal-II, Chennai in SA SR No. 2806 of 2015, whereunder the application of the writ petitioner under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") was rejected on the ground that the application is not maintainable for the Tribunal has no jurisdiction to entertain an appeal against the order under Section 14 of the SARFAESI Act passed by the Chief Metropolitan Magistrate, this writ petition has been filed.

2. The brief facts relevant for adjudication in this case are as under:

"The petitioner became a defaulter on account of non payment of loan amount. Accordingly, a demand notice under provisions of Section 13(2) of the SARFAESI Act for a sum of Rs. 347,40,52,551.29 was served on him. Thereafter, possession

notices dated 11.3.2013, 13.3.2013 and 14.3.2013 were issued under Section 13(4) of the SARFAESI Act in respect of the different properties. It is stated that the sale notice was also issued. Consequently, the respondent Bank preferred an application before the Chief Metropolitan Magistrate, Egmore, Chennai in Crl.M.P. No. 815 of 2015, seeking physical possession of the properties in dispute. The Chief Metropolitan Magistrate, Egmore, by order dated 20.4.2015, ordered recovery of possession with the assistance of the Station House Officer, J3 Guindy Police Station, Chennai."

3. Feeling aggrieved, the petitioner preferred the aforesaid application under Section 17(1) of the SARFAESI Act, assailing the validity of the order passed by the Chief Metropolitan Magistrate. The learned Presiding Officer, after considering the case and also referring to the decision of the Supreme Court in *Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Ltd. and Others*, (2014) 5 JT 75 : (2014) 3 RCR(Civil) 501 : (2014) 4 SCALE 484 : (2014) 6 SCC 1, held that no appeal is maintainable against the order of possession passed under Section 14 of the SARFAESI Act.

4. The learned counsel appearing for the respondent Bank would submit that the Supreme Court in the matter of *Standard Chartered Bank Vs. V. Noble Kumar and Others*, (2013) 117 CLA 18 : (2013) 180 CompCas 137 : (2013) 4 CompLJ 417 : (2013) 6 CTC 683 : (2013) 10 SCALE 540 : (2013) 9 SCC 620, had categorically held that no appeal against the order of Chief Metropolitan Magistrate or District Magistrate, is maintainable before possession of the secured assets is taken over by the secured creditor. Thus, without handing over the possession, the petitioner borrower ought not to have approached the Tribunal under Section 17(1) of the SARFAESI Act. The Tribunal was justified in dismissing the appeal as not maintainable.

5. The learned counsel appearing for the petitioner would submit that there is no pre-condition to comply with the order of possession passed under Section 14 of the SARFAESI Act. In the light of the law laid down by the Supreme Court in *Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others*, (2010) 1 BC 698 : (2011) 101 CLA 146 : (2011) 162 CompCas 337 : (2011) 2 CompLJ 1 : (2011) 3 JT 159 : (2011) 2 RCR(Civil) 676 : (2011) 2 SCALE 233 : (2011) 2 SCC 782 : (2011) 106 SCL 1 : (2011) 2 SCR 602 : (2011) AIRSCW 1194 : (2011) AIRSCW 5913 : (2011) 1 Supreme 655 and also the subsequent decision in *Harshad Govardhan Sondagar (supra)*, an appeal is maintainable against the order passed under Section 14 of the SARFAESI Act before the Tribunal under the provisions of Section 17(1) of the Act.

6. The question that arises for consideration in this petition is as to whether an appeal, assailing the legality and validity of the order of possession passed by the CMM or District Magistrate, as the case may be, in exercise of jurisdiction under Section 14 of the SARFAESI Act, is maintainable before the Debts Recovery Tribunal under the provisions of Section 17(1) of the SARFAESI Act.

7. The identical issue came up for consideration before the Supreme Court in *United Bank of India Vs. Satyawati Tondon and Others*, AIR 2010 SC 3413 : (2010) 3 BC 495 : (2010) 3 CompLJ 585 : (2010) 7 SCALE 696 : (2010) 8 SCC 110 : (2010) 9 SCR 1 : (2010) 9 UJ 4395 : (2010) AIRSCW 7049 : (2010) AIRSCW 5267 , wherein it was held that the remedy of filing of an application under Section 17(1) against the action taken under Section 14 is available. It is profitable to refer to relevant para as under :

"42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective."

8. Subsequently, in *Kanaiyalal Lalchand Sachdev and others (supra)*, the Supreme Court had an occasion to consider the issue again and held as under :

"22. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT."

9. In *Standard Chartered Bank (supra)*, though the afore-referred judicial pronouncements were not placed before the Hon"ble Bench, the Supreme Court held as under :

"27. The "appeal" under Section 17 is available to the borrower against any measure taken under Section 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under Section 13(4). Alienating the asset either by lease or sale, etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower (sic the secured creditor). Therefore, the borrower is always entitled to prefer an "appeal" under Section 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4)(a) declares that the secured creditor may take possession of the

secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under Section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available."

10. In yet another decision in *Harshad Govardhan Sondagar (supra)*, the Supreme Court held as under :

"32. When we read sub-section (1) of Section 17 of the SARFAESI Act, we find that under the said sub-section "any person (including borrower)", aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under the chapter, may apply to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which such measures had been taken. We agree with Mr. Vikas Singh that the words "any person" are wide enough to include a lessee also. It is also possible to take a view that within 45 days from the date on which a possession notice is delivered or affixed or published under sub-rules (1) and (2) of Rule 8 of the Security Interest (Enforcement) Rules, 2002, a lessee may file an application before the Debts Recovery Tribunal having jurisdiction in the matter for restoration of possession in case he is dispossessed of the secured asset. But when we read sub-section (3) of Section 17 of the SARFAESI Act, we find that the Debts Recovery Tribunal has powers to restore possession of the secured asset to the borrower only and not to any person such as a lessee. Hence, even if the Debts Recovery Tribunal comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor are not in accordance with the provisions of the Act, it cannot restore possession of the secured asset to the lessee. Where, therefore, the Debts Recovery Tribunal considers the application of the lessee and comes to the conclusion that the lease in favour of the lessee was made prior to the creation of mortgage or the lease though made after the creation of mortgage is in accordance with the requirements of Section 65-A of the Transfer of Property Act and the lease was valid and binding on the mortgagee and the lease is yet to be determined, the Debts Recovery Tribunal will not have the power to restore possession of the secured asset to the lessee. In our considered opinion, therefore, there is no remedy available under Section 17 of the SARFAESI Act to the lessee to protect his lawful possession under a valid lease."

11. On careful perusal of the aforesaid judicial pronouncements rendered by the Supreme Court, it is manifest that an appeal under Section 17 of the SARFAESI Act is maintainable by any person, including borrower against any of the measure referred to in sub-section (4) of Section 13 of the SARFAESI Act. It was clearly held that passing of the order under Section 14 of the SARFAESI Act is in continuation of the measure taken under Section 13(4). Thus, an appeal against the order for obtaining possession under Section 14 of the SARFAESI Act

is maintainable before the Tribunal.

12. In *Standard Chartered Bank (supra)*, the Supreme Court, while considering as to whether it is mandatory for the secured creditor to make an attempt to obtain possession on his own before approaching the Magistrate under Section 14, held that it is not mandatory. In that context, it was held that even after possession of the secured asset is handed over to the secured creditor under the order passed by the CMM or District Magistrate, as the case may be, in exercise of power under Section 14 of the SARFAESI Act, an appeal under Section 17 is preferable. Under such circumstance, it cannot be presumed that if the possession has not been handed over even after passing of the order under Section 14, an appeal under Section 17 is not maintainable. If the aforesaid contention of the respondent Bank to the extent that without handing over the possession of the secured asset pursuant to the order passed under Section 14 of the SARFAESI Act, an appeal under Section 17 is not maintainable, is accepted, the statutory right conferred on the borrower to prefer an appeal under Section 17 of the SARFAESI Act against the measure taken under Section 13(4) of the SARFAESI Act would become redundant.

13. Section 13(4) stipulates taking over symbolic possession of the secured assets. Section 14 contemplates taking physical possession of the secured assets with the assistance of the order of the CMM or District Magistrate, as the case may be. Both actions come within the definition of measure/action under sub-section (4) of Section 13, and as such, the appeal under Section 17 SARFAESI Act against the order passed under Section 14 of the SARFAESI Act is maintainable. The handing over of possession by the borrower or taking over possession of the secured asset by the secured creditor pursuant to the order passed under Section 14 is not mandatory or pre-condition for the purpose of preferring an appeal under Section 17 of the SARFAESI Act.

14. The ratio deducible from the case of *Harshad Govardhan Sondagar (supra)* is that no remedy of appeal under Section 17 of the SARFAESI Act is available to the lessee/tenant, who is in lawful possession, to the Debts Recovery Tribunal against the decision of the CMM or the District Magistrate for the reason that the Tribunal is not competent and has no power to restore the possession of the said property to any other person, including lessees, except borrower. However, an appeal at the instance of the borrower or guarantor against the order passed under Section 14 of the SARFAESI Act by the CMM or District Magistrate is maintainable under Section 17 of the SARFAESI Act. In the instant case, an appeal under Section 17 of the SARFAESI Act against the order passed under Section 14 is maintainable. The learned Presiding Officer, Debts Recovery Tribunal erred in coming to the conclusion that no appeal against the order passed by the CMM under Section 14 of the SARFAESI Act is maintainable.

15. Accordingly, the order dated 27.04.2015 impugned in the writ petition is set aside and the application is held as maintainable. The matter is remitted back to the Debts Recovery Tribunal-II, Chennai for a decision in accordance with law

and on its own merit. It is stated at the Bar that recovery proceedings is pending for the last three years. As such, the Tribunal is directed to conclude the proceedings at the earliest not later than three months from the date of receipt of copy of this order. The parties are further directed not to seek adjournment unnecessarily to delay the proceedings pending before the Tribunal.

16. Resultantly, the writ petition is allowed. No costs. Consequently connected miscellaneous petitions are closed.