
(2019) 03 UK CK 0117

In the Uttarakhand High Court

Case No : Writ Petition (M Of S) No. 795 Of 2018

Dena Bank

APPELLANT

Vs

District Magistrate Almora And Others

RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Securities Interest Act, 2002 — Section 13, 14, 14(1)(2)

Citation : (2019) 03 UK CK 0117

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : S.K. Jain, Siddhartha Jain, S.R. Joshi

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. The petitioner in the present writ petition has challenged the impugned order dated 16.09.2017 as passed by the District Magistrate. By virtue of the impugned order the District Magistrate has recalled his earlier order dated 01.09.2017, which is said to have been passed by him while exercising his powers under Section 14(1)(2) of the SARFAESI Act of 2002. The reasons which has been assigned by the District Magistrate for passing the impugned order was that it happens to be in contravention to the proceedings pending by way of Special Civil Application No. 128 of 2017 'Parth Parental Pvt. Ltd. vs. Dena Bank' before the Gujarat High Court, in which there happens to be an interim order passed on 28.04.2017, whereby, there has been a restraint order that the possession of the property in question which has been mortgaged would not be taken by the Bank, in the light of the order passed by the Gujarat High Court the District Magistrate contends to have passed the impugned order dated 16.09.2017 as his order dated 01.09.2017 would derogate the order of Gujarat High Court.

2. The learned Senior Advocate appearing on behalf of the petitioner has extended his argument from the view point that once the District Magistrate exercises his powers under Section 14 of the Act, he has got no power to review or recall his own order because the exercise of powers under Section 14 happens to be a quasi judicial powers of taking over the possession under the provisions of the Act of 2002.

3. Another argument which has been extended by the learned counsel for the petitioner is that even prior to recalling of the order no notice was ever served on the petitioner. Thirdly, he submits that the District Magistrate could not have suo moto exercised the powers of recalling the order dated 16.09.2017, without there being any application filed by any of the parties affected.

4. Lastly, the learned counsel for the petitioner submits that so far as the knowledge of the order passed by the Gujarat High Court is concerned, that was brought to the knowledge of the District Magistrate, by an application dated 09.05.2017, as filed by the borrower himself hence it would be taken that the order passed by the District Magistrate on 01.09.2017, it was a conscious decision after getting the knowledge of the order passed by the Gujarat High Court. Although it would be pertinent to refer at this stage itself that the order No. 7380 dated 01.09.2017 as passed by the District Magistrate under 14(1) of the Act of 2002, does not reflect that the District Magistrate was made aware or was conscious about the order dated 28.04.2017 passed by the Gujarat High Court nor it is reflected from the order passed by the District Magistrate on 01.09.2017, there could be a possibility that District Magistrate was not have been made conscious of the Gujarat High Court's order, i.e. why the order dated 1.09.2017 does not find any reference to it, or the order dated 1.09.2017 might have been passed in ignorance to the order of the Gujarat High Court.

5. The argument as extended by the learned counsel for the petitioner is that since he is only questioning the action of the District Magistrate taken by the order dated 16.09.2017, hence, there is no necessity to serve the notice on the private respondents as they are not required to be heard and no relief has been sought against them. Section 14 of the SARFAESI Act reads as under:

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.-

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets 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 assets, 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. By virtue of Section 14 the Chief Metropolitan Magistrate or the District Magistrate, as the case may be it is an agency which has been entrusted with the power "to assist the secured creditor in taking possession of the secured assets", as a matter of fact, the power which has been exercised by the District Magistrate under Section 14 of the Act is only for assisting the secured creditor it is a quasi judicial act performed by the District Magistrate because of lack of availability of machinery with the secured creditor to take over the possession of the property mortgaged in an event of drawing of proceedings under Section 13 of the Act. Hence, the authority, i.e. the District Magistrate, who has passed an order of taking over the possession since runs in contravention to the direction which has been issued by the Gujarat High Court on 28.04.2017 to the following effect:

"Heard learned senior advocate Mr. Mihir J. Thakore for the applicants and learned advocate Mr. Bharat Jani for the respondent-Bank. Perused the record. Considering the facts and circumstances, at this stage, as petitioner has agreed on his own that he shall deposit Rs. 30 Lacs every month before the bank, since his proposal to restructure the loan account is under consideration before the bank, it would be appropriate for the bank to consider such proposal at the earliest. Till then, the respondent-bank shall not take away the possession of the property. However, the petitioner has to continue depositing Rs. 30 Lacs per month as agreed by them. List the matters on 19.7.2017. Direct service is permitted."

7. Since there was a specific restraint by the Gujarat High Court's order dated 28.04.2017 in pursuance to the direction of the Gujarat High Court still passing or order dated 04.09.2017 by the District Magistrate for taking over of the possession of the property and as such the powers which were exercised by the District Magistrate under Section 14 of the Act could not have been permitted to override the directions issued by the constitutional superior court on 28.04.2017.

8. This court is of the view that once the authority under Section 14 of the Act is to assist the secured creditor in taking over of the possession ought to have visualized the legal embargo created by the orders passed by the Court of Law and rectification of the same by the subsequent impugned order dated

16.09.2017, would be nothing but the correction of an error which has been apparently committed by the District Magistrate, which runs in contravention to the directions of the Gujarat High Court.

9. In that view of the matter, the impugned order dated 16.09.2017, has to be taken only as to be a rectification of a mistake which has been committed by an authority, who was only supposed to assist the secured creditor's in taking over of the possession of the property under Section 14 of the Act. Furthermore, in view of the fact that the lis is already pending before the Gujarat High Court where there operates an interim order of the District Magistrate dated 1.09.2017 would be in contravention to the same, hence, the order dated 16.09.2017 was nothing but a rectification of an error which was committed by the District Magistrate. This Court does not find any error in the order dated 16.09.2017 because it was nothing but a correction of a mistake committed by the District Magistrate in the light of the interim order dated 28.04.2017 passed by the Gujarat High Court.

10. Consequently, the writ petition fails and is dismissed.