(2011) 11 MAD CK 0052

In the Madras High Court

Case No : Criminal R.C (MD) No. 876 of 2010

F. Celestine Mary and R. Amaranath — APPELLANT

Vs

M/s. State Bank of Travancore — RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 14, 14(3), 3, 397, 401
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 11, 13, 13(2), 13(3), 14

Citation : (2011) 11 MAD CK 0052

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : R. Anand, for the Appellant; P. Pandivel, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondent.

2. The petitioners herein have challenged the order, dated 17.09.2010 made in Cr.M.P. No. 1637 of 2010 on the file of the Chief Judicial Magistrate, Tirunelveli u/s 397 r/w 401 of the Code of Criminal Procedure.

3. It is seen that the aforesaid Cr.M.P. No. 1637 of 2010 was filed by the respondent herein against the petitioners before the Court below u/s 14 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred to as SARFAESI Act)

4. It is an admitted fact that the revision petitioners herein have availed loan from the respondent bank to the tune of Rs. 3,00,000/- and executed a loan agreement, dated 15.05.2003 in loan No. MTL.173, agreeing to repay the amount in equal monthly instalments, however, the instalments were not properly paid, as per the agreement between the parties. In the aforesaid circumstances, the respondent filed a petition, seeking an order u/s 14 (1) of the

SARFAESI Act.

5. It is seen that the respondent herein had issued statutory notice u/s 13 (2) of the SARFAESI Act on 16.12.2008 calling upon the petitioners to discharge their liability within 60 days from the date of the said notice.

6. According to the learned counsel appearing for the respondent, the said notice issued u/s 13 (2) of the SARFAESI Act was received by the petitioners herein on 20.12.2008, however, the petitioners herein neither replied nor made any payment, hence, the petition u/s 14 (1) of the SARFAESI Act was filed before the learned Chief Judicial Magistrate, Tirunelveli.

7. Learned Chief Judicial Magistrate, Tirunelveli has passed the order to appoint an Advocate-Commissioner, to prepare a list of assets covered under the SARFAESI Act and to take possession of mortgaged property. Learned Advocate-Commissioner was also directed by the Court below to file a report before the Court below within a period of one week and the Court below has directed to provide police assistance to the Advocate-Commissioner to execute the warrant issued on him. Challenging the said order, this criminal revision has been preferred.

8. Learned counsel appearing for the revision petitioners submit that there was no notice prior to the order being passed by the Court below and therefore, the impugned order is liable to be set aside.

9. Per contra, learned counsel appearing for the respondent submits that u/s 14(1) of the SARFAESI Act, no further notice is required. It is not in dispute that the respondent herein is the secured creditor, being the State Bank of Travancore, the provisions of SARFAESI Act are available to the respondent, to bring the property for sale to realise the amount u/s 13(3) of the said Act. Learned counsel further contended that the petition filed by the respondent herein before the Court below was only to seek the legal assistance from the Court, as contemplated u/s 14 (1) of the Act and not for any adjudication. In support of his contention, the learned counsel appearing for the respondent, relied on the following decisions:

1. Indian Overseas Bank vs. Sree Aravindh Steels Ltd 2009 (1) MLJ (Crl) 416

2. Ayishumma vs. Hassan, 2009 (2) D.R.T.C 466 (Ker)

10. In Indian Overseas Bank vs. Sree Aravindh Stee Ltd., reported in 2009 (1) MLJ (Crl) 416, a Hon''ble Division Ben of this Court has held as follows :

9. It is also pertinent to refer to Section 14 of the Code of Criminal Procedure, at this juncture, which reads as follows:

14. Local jurisdiction of Judicial Magistrates-(1) Subject to the control of the High Court the Chief Judicial Magistrate may, from time-to-time, define the local limits of the areas within which the Magistrates appointed u/s 11 or u/s 13 may exercise all or any of the powers with which they may respectively be invested

under this Code: Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

(3) Where the local jurisdiction of a Magistrate, appointed u/s 11 or Section or Section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.

10. A conjoint reading of the above Sections 3 and 14(3) of the Code of Criminal Procedure would make it crystal clear, leaving no ambiguity, that the term "Chief Metropolitan Magistrate" will have reference to a metropolitan area and) the term ''Chief Judicial Magistrate'' will have reference to an area outside a metropolitan area. Therefore, it follows that the term ''Chief Metropolitan Magistrate'' embodied in Section 14 of the SARFAESI Act will include reference to the term ''Chief Judicial Magistrate'' also.

As per the said provision, the Chief Judicial Magistrate, shall on a request being made to him under SARFAESI Act, took possession of such assets and documents relating thereto and forward that assets and documents to the secured creditors.

11. In the instant case, admittedly the revision petitioners have not cleared the loan, pursuant to the loan agreement entered into with the respondent herein and the petitioners have to repay the amount with interest, however, they failed to pay the instalment, as per the agreement, hence, being a secured creditor, the respondent is at liberty to take appropriate action under SARFAESI Act to bring the property for sale and realise the amount payable to the Bank.

12. As contended by the learned counsel appearing for the respondent, it is seen that notice was sent to the petitioners herein, u/s 13 (2) of SARFAESI Act and subsequently, a petition u/s 14 (1) of the said Act was also filed before the Chief Judicial Magistrate. As contended by the learned counsel appearing for the respondent, while passing the order, the Court below has not adjudicated anything but gave direction pursuant to the provisions u/s 14(1) of the said Act. Therefore, the defence raised by the petitioners that there was no notice to the petitioners cannot be a legal ground available to challenge the impugned order.

13. In Ayishumma vs. Hassan, reported in 2009 (2) D.R.T.C 466 (Ker), the learned single Judge of the Kerala High Court has held that the power of the Magistrate acting u/s 14 of SARFAESI Act is not adjudication of the Court below, as the court has no jurisdiction to decide claim regarding nature of property under dispute and the power vested with the Magistrate is for a limited

jurisdiction to provide assistance to take over the physical possession of the secured property.

14. It is seen from the grounds raised by the revision petitioners and made clear that the petitioners have not disputed that the first respondent is a secured creditor and the SARFAESI Act is applicable to the transaction, since the respondent is a subsidiary of the State Bank of India. The provisions of the SARFAESI Act is applicable for bringing the property for sale is not disputed by the learned counsel appearing for the revision petitioners.

15. In the light of various decisions cited by the learned counsel appearing for the respondent, it has been made clear that no notice is required, since the action is taken pursuant to the provisions initiated u/s 13 (2) of the aforesaid Act, whereby notice was already served on the petitioners and the learned Chief Judicial Magistrate is providing assistance to take over the physical possession of the secured assets for the purpose of realising the amount due and payable to the Bank under the SARFAESI Act and not adjudicating the matter.

16. In the aforesaid circumstances, I could fine no error or infirmity in the impugned order passed by the Court below, so as to warrant any interference by this Court.

17. In the result, this Criminal Revision Petition is dismissed.