(2021) 03 DEL CK 0155

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 210 Of 2021

Jammu And Kashmir Bank Limited APPELLANT

Vs

Trans Asian Industries Exposition Private Limited RESPONDENT

Date of Decision : 15-03-2021

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 14
Code Of Criminal Procedure, 1973 — Section 362

Citation : (2021) 03 DEL CK 0155

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : T.K. Ganju, Pallav Saxena, Syed Arsalan Abid, Prateek Khaitan, Nausheen Sawar

Judgement

Prathiba M. Singh, J

CM APPL. 9588/2021 (for exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 210/2021

2. The present petition has been filed challenging the impugned order dated 8th February, 2021 passed by the ld. Chief Metropolitan Magistrate, South

District, Saket Courts, New Delhi, vide which, the application of the Petitioner Bank, requesting for extension of time for taking over the physical

possession of the properties of the Respondent/debtor, has been dismissed.

3. The brief background is that vide order dated 22nd June 2019, the ld. Chief Metropolitan Magistrate, in proceedings under section 14 of

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter, â??SARFAESIâ?), which were initiated by the Petitioner Bank, against the Respondent- borrower, had appointed three Court Receivers and had directed them to take possession of

the mortgaged properties for securing the interests of the Bank. The ld. CMM had also directed the receivers to file a compliance report within 2

months. Thereafter, vide order dated 8th January, 2020, the Chief Metropolitan Magistrate had granted an extension of three months to the Petitioner

Bank, for taking over the physical possession of the properties of the Respondent, upon consent of the Receivers.

4. The said order dated 8th January, 2020 was challenged before this Court by the borrower in CM(M 275/2020 titled Trans Asian Industries

Exposition Pvt. Ltd. and ors. v. Jammu and Kashmir Bank Ltd and Anr. Vide order dated 28th February, 2020, the order granting the said extension

of three months, was upheld by this Court in the following terms.

â??6. A perusal of the provision clearly shows that the said provision has been enacted to safeguard the interest of the secured creditor.

The purpose for which the period has been stipulated is to ensure that upon an application being moved by the secured creditor, the ld.

CMM takes up the application within a period of 30 days extendable by further 30 days. The intention is not to render the ld. CMM functus

officio after the period of 60 days, but rather to ensure that the application is taken up with the utmost urgency and not in a delayed or

procrastinated manner. It cannot be interpreted to mean that after the period of 60 days, the ld. CMM loses the power to give effect to

orders extending the term of Receivers, or to substitute a Receiver already appointed.

7. The facts of the present case show that the initial application was filed on 30th April, 2019 and the Receivers were appointed on 22nd

June, 2019. As per the order dated 22nd June, 2019 three Receivers were appointed by the ld. CMM to take possession of three separate

assets and the Receivers were directed to submit their reports within two months. Thereafter, negotiations had taken place between the

parties and the order dated 22nd June, 2019 was not even implemented. It was after negotiations failed that the creditor approached the ld.

CMM once again for extension of the power of the Receivers to take possession. The order dated 8th January, 2020 is merely a renewal or extension of the earlier order passed within 60 days i.e. on 22nd June, 2019. The same cannot be construed as a fresh order. Be that as it

may, the ld. CMM would be entitled to any other order for example, substitution of Court Receivers and any other orders, so as to ensure

that the decree in favour of the secured creditor is not set at naught. The debtor cannot, by attempting to resolve the disputes by giving

settlement proposals, avoid the process of the possession being taken over.

8. The only issue remains as to whether the affidavit has been filed properly by the secured creditor in terms of the stipulations in Section

14. The said issue does not arise at this stage. The affidavit has to be filed by the secured creditor in terms of the stipulations in Section 14.

The said affidavit which would have been filed with the application, was considered by the ld. CMM while passing the order dated 22nd

June, 2019, which is not under challenge in this case. The strict compliance of Section 14 and the affidavit thereunder is required to be

followed, however, in the present case the question of the affidavit no longer arises as the same was considered only when the order dated

22nd June, 2019 was passed and not in the order dated 8th January, 2020. Mr. Ahluwalia, at this stage submits that Section 362 of the

Cr.P.C. ld. CMM has no power to review or modify his order. The said provision reads as under:

â??362. Court not to alter judgment.â?"Save as otherwise provided by this Code or by any other law for the time being in force, no Court,

when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical

error.â??

9. The order dated 8th January, 2020 is not a review or modification of the earlier order, it is merely an extension of the period for

implementing the order dated 22nd June, 2019 along with the enhancement of fee and nothing more. The same cannot be construed as

being a review by any stretch of imagination. The petition is dismissed along with all pending applications.

10. Since possession of the property, which is the residence where the family of the Petitionerâ??s Director/Promoter is stated to be

residing, has not yet been taken over, one weekâ??s time is granted to them to make alternate arrangements. Possession shall not be taken

over by the bank for a period of one week from today. â??

5. From a perusal of the above order, it is clear that the order granting an extension was upheld by this court, and since the Director/ Petitioner of the

Company was using one of the properties as his residence, one weekâ??s time was granted to him for making alternative arrangements. The said

order was thereafter challenged before the Supreme Court in SLP No. 6042/2020 titled Trans Asian Industries Exposition Pvt. Ltd. and ors. v. Jammu

and Kashmir Bank Ltd and Anr. The said SLP was dismissed by the Supreme Court, vide order dated 6th March, 2020.

6. The case of the Petitioner Bank is that during the period of extension that was granted, it continuously followed up with the court receivers for the

purpose of executing the order of taking over physical possession of the properties. However, despite repeated reminders and emails in the period

between 28th January 2020 till 11th march 2020, the court receivers did not cooperate with the Bank qua the same.

7. The Petitioner- Bank then moved an application for extension for taking physical possession on 6th October 2020. The said application has been

rejected vide the impugned order dated 8th February 2021, in the following terms.

â??From the application, it is clear that the non-compliance of order dated 08.01.2020 was not merely owing to the non-responding of the

receivers but also a neglect by the applicant/ bank in approaching this court within the stipulated time i.e. before expiry of three months

from order dated 08.01.2020, in seeking such directions or enforcing compliance by receivers. Declaration of lock-down on 23.03.2020

cannot be considered in the present circumstances as the stipulated period of three months already stood expired on 08.04.2020 while the

present application has been moved on 14.10.2020 despite resumption of functioning of courts through virtual mode in May 2020 and

partial resumption of physical hearings since 15.07.2020. The application in fact shows the irresponsible and lackadaisical approach of

the applicant bank in getting order dated 08.01.2020 executed. At no point of time prior to October 2020, has the applicant bank

approached the court informing that the court receivers are not complying with the order. The delay in approaching the court since May

2020 till October 202 has not been reasonably explained. Applicant bank thus, cannot be allowed to take advantage of its own default. This

court is of the opinion that the circumstances in which order dated 08.01.2020 remains un-complied was not beyond control of the

applicant bank. Therefore, no further extension can be granted to the applicant bank in terms of order dated 08.01.2020.â??

8. Mr. Ganju, ld. Senior Counsel appearing for the Petitioner, firstly submits that under Section 14 of the SARFAESI Act, the duty of taking physical

possession of the properties is with the Chief Metropolitan Magistrate or the District Magistrate concerned, or with anyone authorised by them. In the

present case, despite the entire fee of the court receivers having been paid, and the Bank continuously following up with the court receivers, the

physical possession has not been taken by them in terms of the order dated 22nd June 2019. He submits that the findings of the ld. Chief Metropolitan

Magistrate, in the impugned order, that the Bank had adopted an irresponsible or a lackadaisical approach, is incorrect as is visible from the record

itself, which shows that repeated reminders have been written and emailed to the court receivers concerned. He, therefore, submits that after the

expiry of time period of three months that was granted vide the order dated 8th January 2020, due to nationwide lockdown in lieu of the COVID-19

pandemic, the Bank could not approach the Court. It, thereafter, on 6th October 2020 itself, had filed its application for extension of orders passed by

the Chief Metropolitan Magistrate on 22nd June, 2019 and 8th January, 2020, which has been rejected in the impugned order.

9. Mr. Ganju, ld. senior counsel also submits that the orders that have been passed in favour of the Petitioner Bank, cannot be rendered into a nullity in

this manner, as the initial appointment of the court receivers itself, who were completely uncooperative, has led to the delay in taking over physical

possession of the concerned properties.

10. This Court has considered the matter. There is no doubt that the time period of 30 days, extendable to 60 days, fixed under section 14 of the

SARFAESI Act, are for executing the order of the Chief Metropolitan Magistrate, concerning the taking over of physical possession of the properties

by the Bank. However, if the court receivers did not cooperate with the Bank, in lieu of taking over the possession of the said properties, it cannot be

held that the Court would be rendered powerless and the order directing the taking over of physical possession would be set at naught.

11. In order to secure the asset of the Bank, it is in the interest of justice that the physical possession of the concerned properties, ought to be taken so

as to ensure that the asset is not frittered away by the debtor.

12. This petition also raises questions on the mode and method of appointment of court receivers in SARFAESI proceedings, and as to the mechanism

to be adopted by Judicial Officers, while appointing court receivers in SARFAESI proceedings.

13. Accordingly, issue notice. Let notice be served upon the Respondent. In the meantime, this Court appoints Mr. Shameem Ahmad (M:9910390854),

Joint Registrar, Delhi High Court, as a Court Receiver to implement the order dated 22nd June, 2019, passed by the ld. Chief Metropolitan Magistrate,

and submit a report qua the same. The court receiver shall take over the possession of the following properties:

1) First Floor commercial office at M-1, Hauz Khas, New Delhi, comprising of I500 sq. ft.

2) House at Villa No. 8, Block-D, Ansal Villas, Village Satbari, Tehsil Mehrauli, New Delhi along with land underneath & appurtenant thereto located

in Khasra No. 812 MIN (4-3) and Khasra No. 813 MIN (3-10) admeasuring 7 Bighas and 13 Biswas (1.607 acres).

The Court Receiver shall also inform the Respondent before executing the said order. An authorized representative of the bank shall accompany the

Court Receiver at the time of execution of orders of attachment/possession for identification of the properties. The concerned SHOs of the areas are

directed to provide police assistance for smooth execution of the said order.

14. The fee of the Court Receiver appointed today, is fixed at Rs.50,000/-. The report of the Court Receiver shall be filed within four weeks from

today.

15. List on 18th May, 2021. The digitally signed copy of this order shall be treated as certified copy for the purpose of execution of the directions in

the order.