

(2009) 11 GUJ CK 0079
In the Gujarat High Court

Case No : Special Civil Application No. 8480 of 2009 and Civil Application No. 10212 of 2009 in Special Civil Application No. 8480 of 2009 and Civil Application No. 11583 of 2009 in Special Civil Application No. 8480 of 2009 to Civil Application No. 11584 of 2009 i

Prime Co-operative Bank Ltd.

APPELLANT

Vs

District Magistrate/Chief Metropolitan Magistrate

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4), 14, 17

Citation : (2009) 11 GUJ CK 0079

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : Shirish Joshi in S.P.L. C.A. No. 8480 of 2009, D.D. Vyas, in Civil application No. 10212 of 2009, S.N. Thakkar, in Civil application No. 11583 of 2009 and A.M. Mehta, in Civil application No. 11584 of 2009, for the Appellant; Manisha Narsinghani, AGP. for Respondent No. 1 in S.P.L. C.A. No. 8480 of 2009, Shirish Joshi, for Respondent No. 1, Manisha Narsinghani, AGP. for Respondent No. 2 in Civil Application No. 10212 of 2009, Manisha Narsinghani, AGP. for Respondent No. 1, Shirish Joshi, in Civil Application No. 11583 of 2009 and Manisha Narsinghani, AGP. for Respondent No. 1, Shirish Joshi, in Civil Application No. 11584 of 2009, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—In light of the view that the Court is inclined to adopt, the petition along with cognate Civil Applications are taken up for final hearing and disposal today. Rule. Learned Advocates appearing for the respective parties are directed to waive service.

2. On 18.8.2009 following order came to be made by the Court in the main petition.

Heard learned Counsel for the parties.

Mr. Shirish Joshi, learned Counsel for the petitioner, submits that order dated 28.07.2009 passed by the District Magistrate u/s 14 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") directing the Police Inspector, Umra Police Station, Umra, Surat to take over possession of the subject property, but later on the District Magistrate, by another communication dated 30.07.2009 addressed to the Police Inspector directed to postpone the process of taking over possession till further information is given.

According to learned Counsel for the petitioner, the above communication dated 30.07.2009 is contrary to Section 14 of the Act and the District Magistrate concerned has exceeded his jurisdiction by entering into so-called disputes raised by the occupier. In view of the above, it is submitted that the impugned order deserves to be quashed and set aside or to be stayed and the District Magistrate be directed to take over possession of the property in question in exercise of powers u/s 14 of the Act. In support of his arguments, learned Counsel for the petitioner placed reliance on the decision of the Apex Court reported in Bank of India Vs. Pankaj Dilipbhai Hemnani and Others,

Mr. Upadhyaya, learned AGP appearing for the respondents, submits that when it was brought to the notice of the District Magistrate about pending proceedings in the Civil Court with regard to subject property and the order passed by the Executive Magistrate, Surat dated 20.06.2009 in exercise of powers u/s 145 of the Code of Criminal Procedure, 1973 it was decided to postpone taking over possession of the property. However, learned AGP is unable to dispute limited scope and jurisdiction of District Magistrate u/s 14 of the Act.

In view of the above, interim relief in terms of para 15(C) is granted and further the concerned District Magistrate is directed to take over possession of the subject property by exercising powers u/s 14 of the Act and report to this Court on 28th August, 2009.

S.O. to 28th August, 2009.

3. The Applicant of Civil Application No. 10212 of 2009 carried the matter during pendency of main petition before Division Bench by way of Letters Patent Appeal No. 1563 of 2009 accompanied by Civil Application No. 8945 of 2009. The Division Bench admitted the Appeal and issued Notice in the Civil Application while staying operation of the direction issued in paragraph No. 5 of the order made by learned Single Judge on 18.8.2009. Thereafter vide order dated 25.08.2009 following order came to be made by the Division Bench:

Having heard the learned advocates appearing for the parties, we are inclined to continue the interim order granted by this Court. Accordingly, the same is continued. It will be open for the parties to raise all available contentions before the learned single Judge and the learned single Judge will pass appropriate order

on merits. The parties may apply before the learned single Judge for impleadment. The appeal and civil applications are disposed of as above.

4. Heard learned Advocate appearing for petitioners as well as learned Advocates appearing for Applicants of all the three Civil Applications. The Civil Applications are granted and the main petition is taken up for final hearing on the footing that the cause title of the petition stands amended, without waiting for the formalities being carried out. It is also necessary to take note of the fact that learned Advocate appearing for Applicant in Civil Application No. 10212 of 2009 has been permitted to tender Affidavit-in-Reply.

5. On behalf of Akash Keshavdev Agrawal, the Applicant of Civil Application No. 10212 of 2009, it was submitted that the petitioner Company - a Cooperative Society, is not entitled to exercise powers under the provisions of the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the Securitisation Act); in the alternative, the provisions of Section 14 of the Securitisation Act are illegal and ultravires; an alternative submission was that in light of the order made by Debt Recovery Tribunal on 24.08.2009 the petition had been rendered infructuous.

6. In so far as the facts of the present case are concerned, it is not in dispute that on 28.07.2009 the respondent Authority viz., District Magistrate, Surat, made an order u/s 14 of the Securitisation Act directing taking over of possession of the subject property but subsequently by communication dated 30.7.2009 postponed the process of taking over possession till further orders. It is the aforesaid subsequent communication which is under challenge in the present petition.

7. It is an accepted position between the parties that the issue in question stands concluded by judgments rendered by this Court in the following matters:

[i] Gujarat Industrial Co-op. Bank Ltd. v. District Magistrate Special Civil Application No. 9710 of 2009.

[ii] Kotak Mahindra Bank Limited v. District Magistrate Special Civil Application No. 8239 of 2009.

It is laid down:

(6) In so far as the legal position is concerned, the judgment rendered by the learned Single Judge of the High Court has since been confirmed by the Division Bench and similar view has been expressed by the Apex Court in number of matters. In light of the judgment of this High Court, in the facts of the present case, the District Magistrate having made an order on 25.05.2009 in exercise of powers u/s 14 of the Securitisation Act had rendered himself functus officio and could not have issued communication dated 02.06.2009. Even if there was an apparent error, as contended by learned advocate for respondent Nos. 2 to 4, the same had to be dealt with by the Tribunal in appeal if and when an appeal was preferred by the aggrieved person. If the District Magistrate does not have

adjudicatory powers before passing an order u/s 14 of the Securitisation Act he cannot assume any such power after having already made an order u/s 14 of the Securitisation Act.

(7) The action u/s 14 of the Securitisation Act is relatable to taking of possession of any secured asset by a secured creditor and this is provided for u/s 13(4)(a) of the Securitisation Act. In the circumstances, once statutory remedy is provided District Magistrate is not entitled to reopen a concluded issue and hence, the impugned order/communication dated 02.06.2009 cannot be sustained. The same is hereby quashed and set aside.

8. In so far as the contentions raised by newly impleaded respondent, the Applicant of Civil Application No. 10212 of 2009, suffice it to state that once the Court has come to the conclusion that proceedings in question namely, proceedings u/s 14 of the Securitisation Act are ministerial in nature it is not necessary to adjudicate in relation to the contentions raised. In so far as challenge to vires of Section 14 of the Securitisation Act is concerned, suffice it to state that the said respondent is not the petitioner. Even otherwise Section 17 of the Securitisation Act is a complete answer as recorded in judgment of this Court in the case of Bank of India Vs. Pankaj Dilipbhai Hemnani and Others, as confirmed by Division Bench of this High Court vide judgment rendered on 20.2.2009 in case of Satyendra Singh Gupta (HUF) and Anr. v. Authorised Officer in Letters Patent Appeal No. 1472 of 2008.

9. In the circumstances, impugned communication dated 30.7.2009 issued by the respondent Authority is hereby quashed and set aside and order dated 28.7.2009 made by respondent Authority u/s 14 of the Securitisation Act shall become operative and be complied with by the Authority concerned namely, Police Inspector, Umra Police Station, Umra, Surat, within a period of one week from today without waiting for a certified copy of this judgment.

10. The petition is allowed accordingly. Rule made absolute with no order as to costs. All three Civil Applications stand disposed of as recorded hereinbefore. Direct service permitted.

11. At this stage, learned Advocate for respondent Applicant seeks stay of operation of this judgment for a period of two weeks. Request is rejected.