(2012) 09 AHC CK 0214

In the Allahabad High Court

Case No : Writ Case No. 52512 of 2011

Punjab National Bank — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(4), 14, 17

Citation : (2013) 2 BC 431

Hon'ble Judges : Sunita Agarwal, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Sanjai Singh, for the Appellant; Satyendra Singh, for the Respondent

Judgement

1. Heard learned Counsel for the petitioner. Notices were issued to respondent Nos. 3 and 4 by registered post. The office report dated 11.11.2012 states that notices were issued fixing 14.11.2011, but neither undelivered cover nor acknowledgement have been received back. Notice to respondent Nos. 3 and 4 deemed sufficient. When the case was taken up today no one appears for the respondent Nos. 3 and 4.

2. By this petition, petitioner has prayed for quashing the order dated 14.6.2011 passed by the District Magistrate, Mau in exercise of its power u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act, ''2002''). By the said order the District Magistrate, Mau allowed one month''s time to the respondent Nos. 3 and 4 to deposit the entire dues against the mortgage house failing which mortgage house shall be given to the Bank. Bank has challenged the said order.

3. Brief facts emerging from the writ petition are: the respondent No. 3 took loan of Rs. 2,00,000/- on 29.8.2003 and failed to repay the same. Bank initiated proceedings by issuing notice u/s 13(2) of the Act demanding amount of Rs. 2,03,447/- plus interest. When respondent Nos. 3 and 4 failed to deposit the

amount, Bank issued notice for taking possession over the property and subsequently, a sale notice was issued by the Bank and property was ultimately auctioned on 3.9.2009 and auction was confirmed in favour of Rajendra Prasad S/o of Sambhu Narain for amount of Rs. 3,71,000/-. Sale certificate dated 12.10.2009 has been filed as Annexure 5 to the writ petition. It appears that Bank has moved application before the District Magistrate, Mau u/s 14 of the Act for handing over possession of the house in question. The District Magistrate on the said application after considering the affidavits submitted by respondent Nos. 3 and 4 granted them one month''s time to deposit the entire amount to the Bank.

4. Learned Counsel for the petitioner submits that District Magistrate has no jurisdiction to grant time on the said application submitted by the Bank. The house in question has already been sold and sale certificate has been produced before the District Magistrate, therefore, order dated 14.6.2011 passed by the District Magistrate is without jurisdiction and same be set aside.

5. Section 14 of the Act is quoted below:

Section 14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset--(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset 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 asset, 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 assets and documents to the secured creditor.

6. Section 14 of the Act empowers the Bank to make an application to the District Magistrate for taking possession of secured asset. Sub-section (2) of Section 14 of the Act provides that for securing compliance with the provisions of Sub-section (1) 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.

7. Section 14 of the Act contains heading "Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset."

Sub-section (1) of Section 14 of the Act provides that where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provision of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing to Chief Metropolitan Magistrate or the District Magistrate to take possession thereof. Sub-section (1) further provides that Chief Metropolitan Magistrate or the District Magistrate shall, on such request being made to him, to take possession of such assets and documents..

Sub-section (2) of Section 14 of the Act empowers the Chief Metropolitan Magistrate or District Magistrate to take such steps and use such force as may in his opinion be necessary for accomplishing the act of taking possession. Sub-section (3) of Section 14 of the Act contents that act of the Chief Metropolitan Magistrate or the District Magistrate for taking possession shall not be called in question in any Court or before any authority.

Purpose and object of Sub-section (3) is that finality has been attracted to the action taken by the District Magistrate. SARFAESI Act, 2002 does not disclose that District Magistrate can grant time to the borrower to pay due, specifically when, in pursuance of the proceedings taken by the Bank u/s 13 of the Act, the mortgage property has already been sold. In the present case auction of the mortgage property has taken place on 3.9.2009 and sale certificate was already issued on 12.10.2009. The District Magistrate had passed the order on 14.6.2011 permitting the borrower to deposit the entire amount in the Bank along with the interest.

8. We are of the view that District Magistrate is not clothed with any jurisdiction to grant time to the borrower to make payment specifically when mortgage property has already been sold. Section 17 of the Act clearly provides right of appeal to the borrower against any action taken by the Bank u/s 13(4) of the Act. The action taken by the Bank in auctioning the mortgage assets could have been challenged by the Bank by filing an appeal u/s 17 of the Act where the entire action taken by the borrower could have been examined. The act of the District Magistrate in granting time to the borrower to deposit the amount, after the sale having been taken place, runs contrary to the Act and shall give power to him, which neither contemplates under the Act, nor has been impliedly rendered under the Act. We are satisfied that the order of the District Magistrate dated 14.6.2012 is without jurisdiction and deserves to be set aside.

9. Learned Counsel for the Bank submits that in pursuance of the order of the District Magistrate the Bank had accepted the amount from the respondent Nos. 3 and 4, which shall be returned to them.

10. In view of the forgoing discussions, the order dated 14.6.2011 passed by the District Magistrate, Mau is set aside and the application filed by the Bank u/s 14 of the Act stands revived, which is to be decided by the District Magistrate afresh. The writ petition is disposed of accordingly.

