
(2014) 12 AHC CK 0124
In the Allahabad High Court
Case No : Misc. Bench No. 12453 of 2014

Reeta Srivastava

APPELLANT

Vs

District Magistrate, Lucknow

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012
— Section 6
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 13(2), 13(4), 14, 14(1)(A)

Citation : (2015) 1 ADJ 42 : AIR 2015 All 23 : (2015) 2 ALJ 551 : (2015) 109 ALR 132 : (2015) 2 BC 75 : (2015) 126 RD 380

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.;Manoj Misra, J

Bench : Division Bench

Advocate : Jitendra Saksena and Ashok Kumar Yadav, Advocates for the Appellant; Shakti Ojha, Advocates for the Respondent

Judgement

1. By these proceedings, the petitioner seeks to question the legality of an order passed by the District Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (Securitisation Act). In the application which was filed before the District Magistrate, the second respondent pleaded that it had extended financial assistance in the amount of Rs. 10 lacs to the borrowers who had executed a security agreement on 15 September 2005 against immovable property. The petitioner is a co-borrower. On a default committed by the borrowers, the second respondent stated that it had issued a demand notice on 24 June 2011 under Section 13(2) calling upon the borrowers to repay the entire dues in the amount of Rs. 10,69,589/- within 60 days. According to the petitioner, on 1 September 2011, the second respondent affixed a possession notice on the property. The petitioner challenged the possession notice by filing a securitisation application under Section 17 of the Securitisation Act before the Debt Recovery Tribunal. The application is pending. Admittedly, no interim order ensures to the benefit of the

petitioner.

2. The grievance of the petitioner is that in the reply which the second respondent filed to the securitisation application, it was stated that the second respondent had not adopted a measure under Section 13(4) until the institution of the securitisation application. The second respondent stated that its notice dated 1 September 2011 only demanded possession of the property. The second respondent filed an application under Section 14 of the Securitisation Act before the Collector and District Magistrate, Lucknow on 23 October 2011. The application has been allowed by the impugned order dated 10 March 2014 which is sought to be questioned in these proceedings under Article 226 of the Constitution.

3. The first submission which has been urged is that the second respondent in its reply which was filed before the Debt Recovery Tribunal had stated that no measure had been taken under Section 13(4) till the date of the institution of the securitisation application. Contrary to this, it has been alleged that in the application which the second respondent filed before the District Magistrate, it stated that on 1 September 2011, it had issued a notice for taking possession of the secured asset in realization of its dues. To meet this submission, it has been stated on behalf of the second respondent that there was in fact no measure taken by the second respondent at that stage. When it had filed its reply to the securitisation application, the second respondent had not taken a measure within the meaning of Section 13(4).

4. The reply before the Debt Recovery Tribunal appears to have been filed on 19 November 2011. When the second respondent moved the District Magistrate, it stated that it had issued a notice for taking possession of the secured asset on 1 September 2011.

5. The real issue before the Court is as to whether the second respondent can be faulted for having moved the District Magistrate under Section 14 and whether the District Magistrate was acting within jurisdiction in issuing an order for possession under that provision.

6. In this regard, it would be necessary to refer, at the present stage, to a decision of the Supreme Court in *Standard Chartered Bank Vs. V. Noble Kumar and Others*, . The Supreme Court in the following observations has laid down that there are three situations or methods by which the secured creditor can take possession of the secured assets:

"Thus, there will be three methods for the secured creditor to take possession of the secured assets:

(i) The first method would be where the secured creditor gives the requisite notice under rule 8(1) and where he does not meet with any resistance. In that case, the authorised officer will proceed to take steps as stipulated under rule 8(2) onwards to take possession and thereafter for sale of the secured assets to

realise the amounts that are claimed by the secured creditor.

(ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under rule 8(1) is given. In that case he will take recourse to the mechanism provided under Section 14 of the Act viz. making application to the Magistrate. The Magistrate will scrutinize the application as provided in Section 14, and then if satisfied, appoint an officer subordinate to him as provided under Section 14(1)(A) to take possession of the assets and documents. For that purpose the Magistrate may authorise the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.

(iii) The third situation will be one where the secured creditor approaches the Magistrate concerned directly under Section 14 of the Act. The Magistrate will thereafter scrutinize the application as provided in Section 14, and then if satisfied, authorise a subordinate officer to take possession of the assets and documents and forwards them to the secured creditor as under clause (ii) above."

7. In view of the above statement of the law, it is clear that as envisaged in (iii) above, it was open to the second respondent to approach the District Magistrate concerned directly under Section 14. The District Magistrate, upon scrutinizing the application as provided in Section 14 would be acting within jurisdiction and if he is satisfied that all the requirements are fulfilled, he could authorize a subordinate officer to take possession of the secured assets for benefit of the secured creditor. Thus, we find no merit in the submission.

8. The next submission which has been made is based on the amended provisions of Section 14 which were inserted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act 2012 (Act 1 of 2013). The amended provisions insofar as they are material to the present proceedings came into effect on 15 January 2013 upon publication in the official gazette. Section 6 of the amending Act introduced provisos (i) to (viii) in sub-section 1 of Section 14. The provisos require that any application by a secured creditor has to be accompanied by an affidavit affirmed by an authorized officer of the secured creditor declaring among other things in clause (viii) that the borrower has not made any repayment of the financial assistance in spite of a notice under Section 13(2) and is, therefore, entitled to take possession of the secured assets under the provisions of Section 13(4) read with Section 14 of the Principal Act. The amended provisions would however, on their plain terms, have no application to the facts of the present case. The third proviso provides that the requirement of filing an affidavit as stated in the first proviso shall not apply to a proceeding pending before the District Magistrate or the Chief Metropolitan Magistrate as the case may be, on the date of commencement of the Securitisation Act. The District Magistrate had already been moved much prior to the amending Act being brought into force with effect from 15 January 2013. The amended provision has no application.

9. The third submission which was urged on behalf of the petitioner is based on a decision of the Supreme Court in Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Ltd. and Others, . The issues which came up before the Supreme Court for decision were:

(i) Whether the provisions of the Act affect the right of a lessee to remain in possession of a secured asset during the period of a lease;

(ii) Whether the provisions of the Act have the effect of terminating a valid lease made by a borrower or mortgagor in accordance with the provisions of the Transfer of Property Act, 1882;

(iii) Whether Section 14 confers a power on the District Magistrate to assist a secured creditor in taking possession of the secured asset which is in lawful possession of a lessee under a valid lease; and

(iv) What are the remedies which are available to a lessee where he is threatened to be dispossessed by action taken by a secured creditor under Section 13.

10. All these questions related to the right of a lessee under a valid lease. The petitioner, admittedly, is not a lessee. The position of the petitioner is that of a co-borrower who has created a security interest in favour of the secured creditor.

11. For these reasons, we have come to the conclusion that there is no merit in the challenge which has been preferred by the petitioner to the order of the District Magistrate. No other submission has been urged. The petition is, accordingly, dismissed. There shall be no order as to costs.