(2018) 09 MP CK 0024

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 823, 1078 Of 2018

Reliance Home Finance Ltd., APPELLANT

Vs

State Of Madhya Pradesh & Ors RESPONDENT

Date of Decision : 05-09-2018

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 13(2), 13(4), 14, 17
Recovery of Debts Due to the Banks and Financial Institutions Act, 1993 — Section 19

Citation : (2018) 09 MP CK 0024

Hon'ble Judges : Hemant Gupta, CJ;Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : Atul Choudhary, Vishal Dhagat, Pranay Choubey

Judgement

The challenge in the present appeal is to an interim order passed by the learned Single Bench on 15.1.2018 in Writ Petition No.823/2018 (Shri Gagan Sharma Vs. State of M.P. & others), whereby no coercive action was ordered to be taken against the writ-petitioner in pursuance of an order dated 25.9.2017 passed by the District Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act").

2. Learned counsel for the appellant relies upon Division Bench judgments of this Court in Sunil Garg Vs. Bank of Baroda and others (Writ Petition No.19028/2017 decided on 16.4.2018) and Aditya Birla Finance Limited Vs. Shri Carnet Elias Fernandes Vemalayam and others (Writ Appeal No.784/2018 decided on 13.7.2018) to contend that the remedy of an aggrieved person against an order passed by the District Magistrate under the Act is before the Debts Recovery Tribunal under Section 17 of the Act.

3. On the other hand, learned counsel for the respondent No.3/writ petitioner submits that the housing loan was advanced on 31.1.2015 whereas the Act was extended to the non-banking financial institutions on 18.12.2015. Still further,

the present appellant has obtained an Arbitral Award against the writ-petitioner on 24.3.2017 passing an Award in the sum of Rs.89,34,365/- along with interest at the rate 15% per annum from 28.6.2016 till payment but factum of such Award has not been disclosed in a petition under Section 14 of the Act.

4. We have heard learned counsel for the parties and find that once an order has been passed by the District Magistrate under Section 14 of the Act, therefore, in terms of the judgment in Sunil Garg (supra), the remedy of an aggrieved person against such order is by way of an application under Section 17 of the Act.

5. The proceedings under Section 14 of the Act are independent proceedings which may be initiated by the secured creditor to recover its dues under Section 13 of the Act or under Section 19 of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993. Such issue has been examined by this Court in Aditya Birla Finance Limited Vs. Shri Carnet Elias Fernandes Vemalayam and others (Writ Appeal No.784/2018 decided on 13.7.2018), wherein it was held as under:

"11. In view of the aforesaid arguments advanced by the learned counsel for the parties, the first question which emerges for consideration is as to what is the relation between the Act and the Arbitration Act. Section 14 of the Act empowers the Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured assets while Section 35 of the Act gives overriding effect to the Act. The relevant provisions of the Act are reproduced as under:

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.--

(1) Where the possession of any secured assets 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:

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that-

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application:

Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,-

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or 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.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

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35. The provisions of this Act to override other laws.--The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

12. The object of enactment of the Act is that our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted into slow pace of recovery of defaulting loan and mounting level of non-performing assets (NPA) of Banks and Financial Institutions. Such Act was amended by the Central Act No.31 of 2016 known as the Insolvency and Bankruptcy Code, 2016 relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues etc."

6. In view of the said facts, the remedy of the writ-petitioner is only by way of an application before the Debts Recovery Tribunal under Section 17 of the Act.

7. Consequently, the present appeal is allowed and the order passed by the learned Single Bench is set aside. The writ petition filed by the writ-petitioner Gagan Sharma is dismissed with liberty to the writ-petitioner to avail the alternative remedy before the Debts Recovery Tribunal. It shall be open to the writ-petitioner to seek exclusion of time spent in the writ proceedings while availing remedy under Section 17 of the Act in accordance with law.