
(2018) 03 MP CK 0054
In the Madhya Pradesh High Court
Case No : W.P. NO.4488 OF 2016

Satish Kumar Rathore	Vs	APPELLANT
State Of M.P. And Others		RESPONDENT

Date of Decision : 07-03-2018

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227, 300A
Securitization And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 — Section 14

Citation : (2018) 03 MP CK 0054

Hon'ble Judges : S.C.SHARMA, J

Bench : Single Bench

Advocate : Dinesh Chandra Kasniya

Final Decision : Disposed Of

Judgement

The petitioner before this Court has filed this present petition being aggrieved by the order dated 02/06/2016 passed by Additional District Magistrate

in exercise of powers conferred under Section 14 of The Securitization And Reconstruction of Financial Assets And Enforcement of Security Interest

Act, 2002.

The ground has been raised that the Additional District Magistrate is not competent to pass such an order. Learned counsel for the bank has drawn

the attention of this Court to the judgment delivered in the case of M/s Agrawal Graphics Private Limited and others Vs. Bank of Baroda and others.

The judgment delivered by this Court in the aforesaid case reads as under:-

â??Learned counsel for the petitioners has vehemently argued before this Court that Section 14 of Securitization Act, 2002 does not empower the

Additional District Magistrate to pass an order as has been done in the present

case, and therefore, the impugned order passed by the learned

Additional District Magistrate is bad in law.

On the other hand, learned counsel for the respondent Bank of Baroda has argued before this Court that the controversy involved in the present case

has already been decided by this Bench on 15.03.2016, in W.P. No.1828/2016 in the case of *Â Sachin Patidar Vs. State of Madhya Pradesh* Y

Another and this Court has held that the Additional District Magistrate is also competent to pass an order under Section 14 of Securitization Act, 2002,

has prayed for dismissal of the writ petition.

In the present case, learned counsel for the petitioners has made a prayer for adjournment of the case on the ground that the matter is to be argued by

Shri Sanjay Agrawal, who hails from Jabalpur.

This Court on 08.08.2017 has granted an interim order in the matter only on the ground that the order has been passed by the Additional District

Magistrate.

The prayer for grant of adjournment has been opposed by the other side and it has been argued that the bank is not able to recover even a single

penny on account of interim order passed by this Court. Resultantly, the *Â* adjournment is declined.

This Court has already decided the controversy involved in the matter as already stated earlier in the case of *Sachin Patidar (supra)*. The Judgment

delivered in the case of *Sachin Patidar (supra)* reads as under:-

Learned counsel for the petitioner has raised a ground that the Additional District Magistrate is not competent to pass the aforesaid order and it is only

District Magistrate, who is competent to issue the aforesaid order and this court has passed the interim order on 11-03-2016.

Learned counsel appearing for the respondent No.2 Bank at the outset has drawn the attention of this court towards the judgment delivered in the

case of *Ram Singh Vs. State of M.P.* reported in 2013 (1) MP0LJ 117. This court in the aforesaid case has held that the Additional District

Magistrate is certainly competent to take action under the Act of 2002. The order passed by this court has been affirmed by the Division Bench and,

therefore, the ground raised by the learned counsel is of no help to the petitioner.

Not only this, in other judgment delivered by this court in the case of *M/s Srio*

No. 8229/2015(O) this court in paragraphs-3 to 19 held as under :-

3. The second submission of Shri Oswal is that a proviso is inserted in Section 14(1) of the SARFAESI Act w.e.f. 15th January, 2013. As per this

proviso, the application of secured creditor must be accompanied by an affidavit duly affirmed by authorized officer. The said affidavit should contain

certain specific declaration. In the present case, the affidavits are not in conformity with the requirement of said proviso. To elaborate, it is urged that

the application filed by the Bank under section 14 must be pregnant with an affidavit and such affidavit must contain specific information as per

proviso to section 14(1). The District Magistrate is required to be satisfied on the contents of affidavit and pass suitable order. It is urged that in the

present case this requirement is not fulfilled.

4. Per Contra, Shri Sinhal, learned counsel for the respondents contended that the petitioner has already filed Second Appeal No. 182/2013 before the

Debt Recovery Tribunal. In the said second appeal, the petitioner has assailed notice under section 13(2) and the action taken under section 13(4) of

the Act. The petitioner has also taken grounds relating to violation of section 13(3) (A) of the Act, which is also taken in the present case. It is urged

that the interim application of the petitioner is rejected by the Tribunal on 25.3.2015 (Annexure R/1/7). Shri Sinhal submits that the petitioner has not

challenged the order dated 25.3.2015 before appropriate forum. He has deliberately done it in order to save the money which is required to be

deposited in preferring appeal against the rejection order dated 25.3.2015. Since the petitioner did not challenge this order in any proceeding, hence, it

has attained finality. For the same set of grievance, this parallel petition under Article 226 is not maintainable. Shri Sinhal submits that the order

passed under section 14 of the SARFAESI Act is also appealable under section 17 of the SARFAESI Act. He placed reliance on the judgment of

Supreme Court in *Kanhaiyalal Lalchand Sachdev vs. State of Maharashtra*, (2011) 2 SCC 782, and recent judgment of Supreme Court in 2014 (1)

MPLJ 306 (*Standard Chartered Bank vs. V. Noble Kumar*). He also relied on a Single Bench judgment of this Court passed in Writ Petition No.

3732/2014 dated 1.9.2014. To elaborate, it is urged that the action under section 14 constitutes an action taken after the stage of Section 13(4). Thus, it

would fall within the ambit of section 17(1) of the SARFAESI Act. He also relied on the judgment of Supreme Court in (2010) 8 SCC 110 (United

Bank of India vs. Satyawati Tondon and others). By placing reliance on a Division Bench judgment in M/s VolocityLtd. vs. State Bank of India (Writ

Appeal No. 296/2010) (Annexure R/1/4), it is urged that noncompliance of Section 13(3)(A) of the SARFAESI Act will not give any cause of action

to file a writ petition. Lastly, he relied on the judgment of Delhi High Court in Onil Sadh vs. Federal Bank Ltd. and others (WP (C) 7344/2015, decided

on 6.11.2015). On the strength of this judgment, it is urged that the petitioner has a statutory efficacious remedy to prefer appeal against the orders

passed by District Magistrates Damoh and Shajapur under Section 14 of the SARFAESI Act. 5.

Shri S.K.Sharma, learned counsel for the respondent No.2 has borrowed the arguments of Shri Sinhal, learned counsel for the respondent o.1.

5. Shri Arpit Oswal, learned counsel for the petitioner relied on (2014) 6 SCC 1 (Harshad Govardhan Sondagar vs. International Assets Reconstruction

Company Ltd.). It is urged that in view of this judgment, the petitioner does not have any remedy against the order passed under section 14 of the

SARFAESI Act by the District Magistrate. He placed reliance on sub-section (3) of section 14 of the SARFAESI Act.

6. Shri Oswal also relied on the judgments of Gujrat and WP 8229/2015 Madras High Court in Special Civil Application No. 10556/2012 (Manjudevi

R. Somani vs. Union of India) and W.P.No. 13091/2012 (Hemalatha Ranganathan vs. The Authorized Officer, Indian Bank), respectively, in support

of his contention that if section 13(3) (A) of the SARFAESI Act is violated, a writ petition at this stage would lie. Shri Oswal urged that even if a part

of relief claimed in this petition is subject matter of challenge in Second Appeal No.182/2013 before Debt Recovery Tribunal, this petition cannot be

said to be not maintainable. When statutory provisions are violated, fundamental rights flowing from Article 300-A of the Constitution are infringed and

orders are without jurisdiction, writ petition is very much maintainable. He submits that constitutional remedy is not bar and such public law remedy is

available to the petitioner even if his second appeal is pending before the Tribunal. He placed reliance on the judgment of Delhi High Court passed in

Jindal Steel Ltd. vs. Union of India (WP (C) 8531/2008, decided on 19.12.2011).

Learned counsel for the petitioner also relied on the judgment of Supreme Court in AIR 2004 SC 2371 (Mardia Chemicals Ltd. etc.etc. vs. Union of

India and others) and the judgment of Supreme Court reported in AIR 2007 SC 712 (M/s Transcore vs. Union of India). In support of his submission

that parallel proceedings are maintainable, he relied on (2014) 5 SCC 660 (Vasu P. Shetty vs. Hotel Vandana Palace and others), 7. No other point is

pressed by learned counsel for the parties.

8. I have heard learned counsel for the parties and perused the record.

9. On the strength of language of Section 13(3) (A) and judgments of Gujarat and Madras High Courts in Manjudevi R. Somani and Hemalatha

Ranganathan (supra), Shri Oswal contended that the cause of action has arisen and entire action of respondents therefrom has rendered illegal. The

core issue is whether any violation of section 13 (3)(A) will give any right to the petitioner to file this petition. Although during the course of argument

there was a dispute between the parties as to whether petitioner has actually preferred any representation/objection as mandated in section 13(3)

(A), I am not inclined to deal with that disputed fact in the present petition. I do not find any reason to interfere on this aspect because of the direct

Division Bench judgment of this Court in M/s. Velocity Ltd. (supra).

The Division Bench after considering relevant Supreme Court judgments has opined as under in para 14 :

14. On a close scrutiny of the provisions of the Act Court in the case of Mardia Chemicals, in the case of Punjab National Bank and in the case

of United Bank of India vs. Satyawati Tondon and others, we find that it is not justifiable to entertain a writ petition against the notice under Section

13(2) of the Act of 2002 and also against the communication of reason by the secured creditor to the borrower about non-acceptability or untenability

of the representation or objection. Such communication is not an order/action causing harm to the borrower but is a step before taking recourse to one

or more of the measures provided under Section 13(4). It is only when such measure under Section 13(4) is taken it can be said that the borrower is

aggrieved and only on taking of such measure the borrower can take recourse to the provision of appeal provided under Section 17 of the Act of 2002.

Keeping in view the scheme of the Act of 2002 the object behind making amendment by way of introducing Section 13 (3A) and the observations

made by the Supreme Court in the case of Mardia Chemicals Limited in our considered view the communication of reasons is only for the purpose of information/ knowledge of the borrower, and the same being not an action to cause harm to the borrower, at that stage it cannot be assailed. Having regard to the scope of provisions of Section 17 of the Act of 2002, the reasons so communicated can be well assailed in case measures referred to in subSection (4) of Section 13 are taken by the secured creditor. This being the scheme of the Act of 2002, any interference by this Court in a writ petition under Article 226 of the Constitution of India at the stage of notice under Section 13 (2) and at the stage of communication of rejection of representation/ objection under Section 13 (3A) of the Act of 2002 would hamper the process of recovery, defeating the very purpose of enactment of the Act of 2002 and the purpose of introducing Section 13 (3A) in the Act of 2002.â?? (Emphasis Supplied).â??

10. I am bound by the Division Bench judgment of this Court in M/s Velocity Ltd. (supra). As per the said judgment, violation of section 13(3) (A) will

not give any right to the borrower to file a petition. He can take recourse of Section 17 of the SARFAESI Act only when measures under section

13(4) are taken. Admittedly, in the present case, the petitioner has already filed Second Appeal No.182/2013 after such steps were taken by the bank.

A plain reading of rejection order by the Debt Recovery Tribunal dated 25.3.2015 shows that the contentions of the petitioner based on Sections 13(3)

(A) are not accepted by the Tribunal. In my view, if two remedies are available and petitioner has already chosen one forum, i.e., Debt Recovery

Tribunal, the parallel petition under Article 226 of the Constitution for the same cause is not maintainable. Shri Oswal has relied on the judgment of

Supreme Court in Vasu P. Shetty (supra). However, the opening para of said judgment shows that the borrower earlier approached the Debt

Recovery Tribunal. His application was dismissed. The borrower filed a writ petition before the High Court against the order of the Tribunal. Thus, the

said judgment does not help the petitioner in any manner. In the present case, the petitioner's second appeal is already pending. He did not challenge

the rejection order dated 25.3.2015 any further. The Apex Court in (2000) 3 SCC 640 (Bank of India vs. Lekhimoni Das and others) opined that

â??as a general principle where two remedies are available under law, one of them should not be taken as operating in derogation of the other. It is

further held that if a party has elected to pursue one remedy, he is bound by it and cannot on his failing therein proceed under another provision. In

(2005) 8 SCC 242 (Sanjana M. Wig (Ms.) vs. Hindustan Petroleum Corpn. Ltd.), it was held that "however, access to justice by way of public law

remedy would not be denied when a lis involves public law character and when the forum chosen by the parties would not be in a position to grant

appropriate relief." The judgment of Delhi High Court in Jindal Steel (supra) is based on a different factual scenario. I am unable to hold that the

petitioner can parallelly pursue two legal remedies, one before the Debt Recovery Tribunal and another before this Court under Article 226 of the

Constitution. If this argument is accepted, this will lead to uncertainty and possibility of issuance of conflicting/contradictory orders. Since the petitioner

has already chosen to assail the action of the Bank for alleged violation of section 13(2) and 13(3)(A) of the SARFAESI Act and his second appeal

is pending before the Tribunal, I am not inclined to entertain this petition so far allegations relating to violation of section 13(3)(A) are concerned.

11. Thus, first contention of the petitioner is rejected.

12. Before dealing with the second contention raised by the parties, I deem it apposite to quote Section 14(3) of the SARFAESI Act, which reads as

under:

"(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."

13. No doubt, in *Kanhaiyalal Lalchand and Standard Chartered Bank* (supra), the Apex Court opined that in certain cases, the appeal would lie against

orders/actions taken under section 13(2), 13(4) and 17 of the SARFAESI Act. However, in aforesaid two judgments, the Apex Court has not

specifically dealt with Section 14(3) of the SARFAESI Act. This section is specifically dealt with by Supreme Court in *Harshad Govardhan Sondagar*

(supra). In para 29, the Apex Court opined as under:

"29. Sub-section (3) of Section 14 of the SARFAESI Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate or

any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of Section 14 shall be called in question in any

court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the Chief Metropolitan Magistrate or the District

Magistrate and this decision cannot be challenged before any court or any authority. But this Court has repeatedly held that statutory provisions

attaching finality to the decision of an authority excluding the power of any other authority or Court to examine such a decision will not be a bar for the

High Court or this Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away a power vested by the

Constitution. To quote, the observations of this Court in *Columbia Sportswear Company v. Director of Income Tax, Bangalore* [(2012) 11 SCC 224]:

“17. Considering the settled position of law that the powers of this Court under Article 136 of the Constitution and the powers of the High Court

under Articles 226 and 227 of the Constitution could not be affected by the provisions made in a statute by the Legislature making the decision of the

tribunal final or conclusive, we hold that sub-section (1) of Section 245S of the Act, insofar as, it makes the advance ruling of the Authority binding on

the applicant, in respect of the transaction and on the Commissioner and income-tax authorities subordinate to him, does not bar the jurisdiction of this

Court under Article 136 of the Constitution or the jurisdiction of the High Court under Articles 226 and 227 of the Constitution to entertain a challenge

to the advance ruling of the Authority.”

In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under

Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the Chief

Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled principles of law.”

14. A plain reading of this para makes it clear that the Apex Court opined that statutory finality attached to a decision of an authority does not exclude

the power of this Court under Article 226 of the Constitution. In *M/s Transcore* (supra), the Apex Court in para 12 opined that when the word

“court” is referred, it includes Debt Recovery Tribunal. Thus, as per sub-section (3) of section 14 read with the judgment of *Harshad Govardhan*

Sondagar (supra), in my view, the order of District Magistrate passed under section 14 of the SARFAESI Act cannot be challenged by the petitioner

before the Tribunal.

15. In view of the aforesaid analysis, in myview, this petition is entertainable against the order passed under Section 14 of the SARFAESI Act by the

District Magistrate.

16. Now the pivotal question is whether theorders passed by the District Magistrate are liable to be interfered with by this Court ?

17. As noticed, these orders are called in question on the singular ground that the Bank has not followed the proviso to Section 14(1) of the

SARFAESI Act.

18. I have perused the record. It is seen that the Bank before both the District Magistrates (Damoh and Shajapur) have filed the affidavits in which

they have furnished necessary information as per said proviso. The said affidavits are already placed on record. The petitioner has nowhere pleaded in

his petition as to what is the infirmity in the application/affidavit filed by the Bank under section 14 of the SARFAESI Act. A bald statement is made

that the necessary informations as required in the proviso have not been furnished. The petitioner isÂ unable to establish that said proviso is violated.

If there was any such violation, it should have been pleaded with accuracy and precision. The petitioner has also not shown as to what prejudice is

caused to him if any such violation has taken place. Thus, I am unable to hold that the Bank have failed to file proper affidavit in consonance with the

provisions of Section 14(1) of the SARFAESI Act. The orders of District Magistrates further show that despite giving ample opportunity to the

petitioner, he did not cooperate and participate in the proceedings. Only when adverse orders are passed, he filed this petition after a considerable long

time. Thus, no fault can be found in the impugned orders of District Magistrate passed under Section 14 of the SARFAESI Act. 19. On the basis of

foregoing analysis, I find no reason to interfere in this petition. Petition sans substance and is hereby dismissed. No cost.â??

In light of the aforesaid judgment, in the considered opinion of this court, the petitioner does have an alternative efficacious remedy. Learned counsel

for the petitioner has also placed reliance upon a judgment delivered in the case of M/s Transcore Vs. Union of India reported in AIR 2007 Â SC 712

as well as judgment delivered in the case of Â M/s Volocity Ltd., Vs. State Bank of India (Writ Appeal No. 296/2010). There is an alternative

efficacious remedy available to the petitioner to prefer an appeal and this court does not find any reason to interfere with the matter.

The Writ petition is dismissed with a liberty to prefer an appeal, in accordance with law.

No order as to costs??.

Not only this, the Division Bench in case of M/ s Lakshya Concosts Private Limited & Another Vs. Bank of Baroda & OthersÂ in Civil

Miscellaneous Writ Petition No.15167/2016 decided on 08.02.2017 by the Allahabad High Court has taken a similar view, wherein it has been held

that the Additional District Magistrate is competent to pass an order under Section 14 of the Securitization Act, 2002. The Allahabad Court has also

taken a similar view in the case of Irshad Hussain Vs. District Magistrate MoradabadÂ reportedÂ in Laws(All) 2009 Volume 2 page 134.â??

In light of the aforesaid, this Court does not find any reason to allow the petition. Accordingly, this writ petition stands disposed of with a liberty to

prefer an appeal and to take appropriate action in accordance with law.

Certified copy as per rules.