(2010) 03 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 2548 of 2009

S.I.C.O.M. Ltd. APPELLANT

Vs

District Magistrate/Collector and Others RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 14
Transfer of Property Act, 1882 — Section 58

Citation : AIR 2011 Bom 32 : (2010) 6 BomCR 177

Hon'ble Judges : Kode P.D., J;Bobde S.A., J

Bench : Division Bench

Advocate : A.V. Khare, for the Appellant; A.D. Sonak, A.G.P and A.M. Rizwi, for the Respondent

Final Decision : Allowed

Judgement

Bobde S.A, J.—Heard.

2. Rule. Returnable forthwith. Heard finally by consent of parties.

3. The present petition is preferred by the S.I.C.O.M. for issue of writ of certiorari against the impugned order of the District Magistrate, Nagpur refusing to take action u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002 (hereinafter referred to as "SARFAESI Act").

4. The Petitioner has loaned an amount of Rs. 4 corers to the M/s. Sonaa Oil and Chemical Industries Ltd. Respondent No. 2 is one of the guarantors and Respondent No. 3 is said to have executed a mortgage in respect of the said loan by deposit of title deeds in respect of land bearing No. 132, Circle No. 20, Division No. 8, Ward No. 72, admeasuring 14400 sq. ft. situated at Ramdaspeth, Nagpur.

5. According to the Petitioner an amount of Rs. 80 lacs is outstanding against the

said loan. Therefore, the Petitioner took steps for enforcement of security interest under Chapter III of the SARFAESI Act by making a demand u/s 13(2) of the Act against the depositors including Respondent No. 3 mortgagor. Since Respondent No. 2 failed to comply with the notice, the Petitioner made an application to the District Magistrate u/s 14 of the Sarfaesi Act which reads as follows:

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 assets 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.

(2) For the purpose of securing compliance with the provisions of Sub-section (1), the Chief Metropolitan Magistrate of 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 done in pursuance of this section shall be called in question in any Court or before any authority.

6. The District Magistrate instead of taking action u/s 14 as required by law, entered upon an inquiry as to whether inter alia Respondent No. 3 has validly executed a mortgage in favour of the Petitioner. In the inquiry Respondent No. 1 came to the unusual conclusion that the property allegedly mortgaged is owned jointly by Respondent No. 2 Chandrakant Ratanlal Shah and Respondent No. 3 Smt. Chandan Chandrakant Shah and, therefore, the mortgage could have been executed only by obtaining joint signatures of both the parties and could not have been executed by executing the guarantee deed (sic). Mr. Khare, learned Counsel for the Petitioner submitted that Respondent No. 1 District Magistrate had no jurisdiction to enter into the question of the validity of the mortgage which was in fact effected by deposit of title deeds and refuse to act u/s 14 of the SARFAESI Act. In any case even otherwise according to the learned Counsel for the Petitioner the District Magistrate has come to a grossly erroneous conclusion by holding that the property is not validly mortgaged because Respondent No. 3 has not signed on the mortgage deed since the mortgage in

question was executed by deposit of title deeds vide Section 58(f) of the Transfer of Property Act. Mr. Khare, learned Counsel for the Petitioner submitted that even before this Court Respondent No. 3 has admitted the execution of a mortgage vide a paragraph No. 5 of the reply by stating that she is a mortgagor of the flat only. Mr. Rizwy, learned Counsel for Respondent No. 3 submitted that Respondent No. 3 is willing to make payment of an amount more than the value of the flat and, therefore, this petition may be dismissed. The learned Counsel further submitted that Respondent No. 3 has filed another writ petition questioning the recovery proceedings. We are, therefore, not inclined to go into the validity of the proceedings on the basis of the offer made by Respondent No. 3 in this proceeding.

7. Having considered the matter, we are of the view that the District Magistrate to whom the Petitioner had forwarded the request in writing for taking over possession of the mortgaged asset, had no power or authority in law to enter into the question of the validity of the mortgage in respect of secured asset and declare the mortgage to be invalid and thus refuse to perform the duty imposed upon him by the SARFAESI Act. Section 14 contains a clear mandate for the District Magistrate that he shall take possession of such asset and documents relating thereto and upon such request he shall forward such assets and documents to the secured creditor. The Act does not confer any power on the District Magistrate to transform himself into the Court of law with powers to adjudicate on the validity of the instrument by which the assets is secured. The learned Counsel for the Petitioner has rightly relied upon the decision of the Division Bench of this Court in (Trade Well and Anr. v. Indian Bank and Anr.) reported in 2007(1) Bom.C.R. 783 wherein this Court has held as follows:

90. Following conclusions emerge from the above discussion:

1. ...

2. ...

3. He has to only verify from the bank or financial institution whether notice u/s 13(2) of the Act is given or not and whether the secured assets fall within his jurisdiction There is no adjudication of any kind at that stage.

4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order u/s 14 of the Act by recording that the above conditions are not fulfilled If these two conditions are fulfilled, he cannot refuse to pass an order u/s 14.

8. Thus the impugned order is void for complete lack of jurisdiction and is accordingly set aside, The District Magistrate is directed to proceed in accordance with law and complete the necessary steps within a period of three months from today. Rule made absolute in the above terms.

