(2015) 03 CAL CK 0104

In the Calcutta High Court

Case No : M.A.T. No. 433 of 2015 and C.A.N. No. 2854 of 2015

Syndicate Bank and Others APPELLANT

Vs

Kaliji Engineering Works and Others RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

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

Citation : (2015) 4 BC 473 : (2015) 2 CALLT 471 : (2015) 3 CHN 543 : (2016) 1 WBLR 600

Hon'ble Judges : Manjula Chellur, C.J;Joymalya Bagchi, J

Bench : Division Bench

Advocate : Aniruddha Roy, Alok Roy, Abhishek Dutta, Ankur Banerjee and Debabrata Basu Roy, for the Appellant; N. Mishra, G. Singh and Debjit Mukherjee, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. The writ petition came to be filed by the respondent/borrower challenging the order passed by the District Magistrate under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act. According to the writ petitioner, the order of the District Magistrate is bad for the following reasons;

1) District Magistrate did not record his satisfaction as postulated under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act;

2) The secured assets were not situated within the district of South, 24-Paraganas;

3) Authorising Police Commissioner to assist the security creditor in taking possession of the assets secured.

Learned Judge opined that the order of the District Magistrate is cryptic and further was of the opinion that the District Magistrate, South 24-Paraganas did not have authority to pass such an order pertaining to a property which is situated within the District of North 24-Paraganas.

Aggrieved by the same, the appellant Bank is before us. The appellant bank placed on record the application filed under section 14 of the Act along with the affidavit wherein they have sought that pleading contained in the application be treated as part and parcel of the affidavit sworn by the authorized officer of the Bank. On perusal of the contents of the additional document now placed on record, one has to see whether there is compliance of declaration as required to be filed by the authorized officer of the secured creditor as envisaged under first proviso to section 14 of the Act, i.e., condition Nos. (i) to (ix).

2. Upon being satisfied with these requirements, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall pass suitable orders so far as taking possession of the secured asset in question. If any of the details as envisaged under sub-section 1 of section 14 of the Act is lacking in the affidavit of the authorized officer, it is open to the District Magistrate or the Chief Metropolitan Magistrate to reject the application. If the contents of the application or in consonance with the requirements envisaged under the statute, he shall proceed to dispose of the matter by passing suitable orders. The question is whether the order of the District Magistrate should be like a regular judgment giving all the reasons or it should only reflect that the District Magistrate has applied its mind and to the contents of the affidavits and then proceeded to pass the order as required under the statute.

3. On reading of the contents of the application and the order of the District Magistrate, we are of the opinion that the District Magistrate definitely knew what he was doing with reference to section 14 of the Act. Therefore, in the absence of any format or mandate envisaged under the Act requiring the District Magistrate to pass an order how and in what format, as long as it reflects that he had applied mind to the contents of the affidavit and if the affidavit contained all the requirements envisaged under section 14 of the Act, we cannot find fault with the order of the District Magistrate so far as this aspect of the matter is concerned.

4. Then coming to the second argument, now the appellant has placed on record the details ascertained through the Right to Information Act that the property in question fell within the territorial jurisdiction of the District south 24-Paraganas. Therefore, the said deficit is also not found to be correct.

5. Finally, coming to the third argument of the writ petitioner/respondent, on perusal of sub-section (3) of section 14 of the Act along with sub-section (1A), we are of the opinion that the District Magistrate or the Chief Metropolitan Magistrate may authorize any officer subordinate to him to take possession of such assets etc. as contemplated under section 14 of the Act and the delegate of the Magistrate is at liberty to take assistance of any other authority like police to

complete the exercise he was directed to complete as per the directions of the District Magistrate. The only mistake we find from the order of the District Magistrate is that he authorized secured creditor taking possession of the secured assets with police assistance. We direct that police assistance shall be extended to any officer authorized by the District Magistrate who is subordinate to him as envisaged under section (1A) of the Act for the purpose of taking possession of the property in order to comply with the procedure contemplated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act. With this observation, we set aside the order of the learned Single Judge and allow both the appeal and the application.