
(2014) 02 MAD CK 0240

In the Madras High Court

Case No : W.P. No. 32778 of 2013 and M.P. Nos. 1 to 3 of 2013

T. John Bose

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

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

Citation : (2015) 1 BC 50 : (2014) 3 MLJ 750

Hon'ble Judges : M. Jaichandren, J;K. Kalyanasundaram, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K. Kalyanasundaram, J.—This writ petition is filed, praying for a writ of Certiorari, calling for the records, pertaining to the order dated 26.11.2013, passed by the second respondent, in R.C. No. B3/31396/2013, and quash the same. Brief facts of the case are that the petitioner had borrowed loan from the first respondent bank, by mortgaging his lands. Since the account was classified as non-performing asset, the first respondent bank, initiated proceedings, u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2001, (hereinafter referred to as the "SARFAESI Act" in short), for taking possession of the secured asset. The first respondent bank had approached the Chief Judicial Magistrate, Udthagamandalam, to take physical possession of the secured asset and on the basis of the order of the Chief Judicial Magistrate, the first respondent bank had taken possession of the secured asset, on 18.11.2013. Subsequently, the second respondent-the District Collector, Nilgiris, passed the impugned order, directing the third respondent-the Tahsildar/ Taluk Executive Magistrate, Coonoor Taluk, Coonoor, to take over the property and hand over possession of the same to the first respondent bank. The order of the District Collector is under challenge in the writ petition.

2. The petitioner challenges the impugned order on the main ground that the

order passed by the Chief Judicial Magistrate was questioned before this Court, in Crl. R.C. No. 1455 of 2013 and when the criminal revision case is pending before this Court, the first respondent bank had approached the second respondent and obtained the impugned order, suppressing the fact of the pendency of the criminal revision case.

3. The first respondent bank filed their counter stating that they brought the property for auction by issuing a notice, dated 3.7.2013, and subsequently also, but there was no proper response, due to the reason that the bidders were not willing to participate in the auction without getting physical possession of the secured asset. Therefore, the first respondent had filed a petition in Crl. M.P. No. 1025 of 2013, before the Chief Judicial Magistrate, Udhagamandalam, u/s 14 of the SARFAESI Act, to take physical possession of the secured asset, who was the then competent authority, to entertain the same, in the light of the decision of the Division Bench of this Court, reported in Indian Overseas Bank Vs. Sree Aravindh Steels Ltd., Sri S.B. Shankar and The Inspector of Police, When the criminal miscellaneous petition was pending, the authorized officer of the first respondent bank had made another application, u/s 14 of the SARFAESI Act, before the District Collector/the second respondent herein, for taking physical possession of the secured asset.

4. It is further averred in the counter that the learned Chief Judicial Magistrate, by order dated 12.11.2013, in M.P. No. 1025 of 2013, appointed an Advocate Commissioner, to take physical possession of the secured asset and in pursuance thereof, physical possession of the secured asset was taken, by the Advocate Commissioner and handed over to the authorized officer, on 18.11.2013, taking inventory of all immovable items. It is also stated that on the application made by the authorized officer of the first respondent bank, the second respondent/District Collector, by the impugned order, dated 26.11.2013, directed the Tahsildar, Coonoor/the third respondent herein, to take over the secured asset and hand over the same to the authorized officer of the first respondent bank. Accordingly, the Tahsildar, Coonoor, had gone to the property, on 28.11.2013, for taking possession of the secured asset and after taking inventory of all immovables lying there, had handed over the property to the authorized officer, in the presence of the Village Administrative Officer, Ketti-III and another witness Mr. Arumugham, s/o. Nanjan.

5. It is further stated that the Full Bench of this Court, in the judgment reported in K. Arockiyaraj Vs. The Chief Judicial Magistrate, Srivilliputhur and The Housing Development Finance Corporation Limited, held that in the non-Metropolitan areas, the Chief Judicial Magistrate, has no jurisdiction to pass orders u/s 14 of the SARFAESI Act and the Executive Magistrate/District Collector alone has jurisdiction to pass such orders. Hence, the authorized officer of the first respondent had moved an application, before the second respondent/the District Collector, on 27.9.2013, to take physical possession of the property.

6. On being satisfied that the statutory requirements have been duly complied

with, the second respondent passed the order. It is also stated that the non-mentioning of the pendency of the criminal revision case, viz., CrI. R.C. No. 1455 of 2013, before the second respondent, is not a material suppression of fact and at no stretch of imagination, it can be said to be a material fact, which would disentitle the first respondent bank from getting any further order before the second respondent. Accordingly, the first respondent prayed for the dismissal of the writ petition.

7. Heard Mr. K. Rajasekaran, the learned counsel appearing on behalf of the petitioner, Mr. RD. Audikesavalu, the learned counsel appearing on behalf of the first respondent and Mr. S. Pasupathy Easwaran, the learned Additional Government Pleader, appearing on behalf of second and third respondent.

8. The learned counsel for the petitioner contended that the first respondent bank, suppressing the material fact of taking over of possession of the secured asset, by them, on the basis of the order of the Chief Judicial Magistrate, Udhagamandalam, dated 12.11.2013; the pendency of the criminal revision case, before this Court, challenging the order of the Chief Judicial Magistrate and the receipt of the private notice, in the said criminal revision case, on 23.11.2013, obtained the order, dated 26.11.2013, from the second respondent, which is illegal and unsustainable and the same is liable to be set aside, by this Court.

9. Per contra, the learned counsel for the first respondent bank submitted that there was no material suppression of fact in this case. When the first respondent bank filed a petition before the Chief Judicial Magistrate, to take physical possession of the secured asset, the Chief Judicial Magistrate was the then competent authority to entertain the application, in view of the judgment of the Division Bench of this Court reported in *Indian Overseas Bank v. Sree Aravindh Steels Ltd.* (supra). However, in view of the subsequent Full Bench judgment of this Court, reported in *K. Arockiyaraj v. Chief Judicial Magistrate, Srivilliputhur, Virudhunagar District* (supra), the authorized officer of the first respondent bank had made application before the second respondent-the District Collector, u/s 14 of the SARFAESI Act, seeking to take over the secured asset and hand over possession of the same to them.

10. The learned counsel further submitted that the second respondent, on being satisfied with the compliance of requirements of law, had passed order, on the said application, and the mere pendency of the criminal revision case will not disentitle the secured creditor, from obtaining the order and non disclosure of the information is not material suppression. The learned counsel also submitted that physical possession of the secured asset was taken only in strict compliance of Section 14 of the SARFAESI Act and therefore, the impugned order need not be set aside. The learned counsel relied on the judgment of the Honourable Apex Court reported in *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others*, for the proposition that a mere non disclosure of pendency of the criminal revision case, before this Court, will not amount to material suppression

of fact.

11. Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, is usefully extracted here under:

Sec. 14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.-(1) Where the possession of any secured asset 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 asset 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 done in pursuance of this Section shall be called in question in any Court or before any authority.

12. Paragraph Nos. 12 and 13 of the judgment of the Honourable Apex Court, reported in *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Others* (supra), would run thus:

12. The principal basis on which the Single Judge and the only ground on which the Division Bench of the High Court refused relief to the appellant was because they found that the appellant was guilty of suppression of a material fact viz., the filing of the suit prior to approaching the Court under Article 226.

13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken.

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13. As per Section 14 of the SARFAESI Act, when the possession of any secured

asset is required to be taken by the secured creditor, 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 is situated, and the Chief Judicial Magistrate, or the District Magistrate, on such request being made to him, take possession of the asset.

14. In the case on hand, the first respondent bank has approached the second respondent/District Collector, pursuant to the pronouncement of the Full Bench of this Court, in *K. Arockiyaraj v. Chief Judicial Magistrate, Srivilliputhur, Virudhunagar District* (supra), declaring that in the non-metropolitan areas, the Chief Judicial Magistrate has no power to pass order u/s 14 of the SARFAESI Act. As per the provisions of the SARFAESI Act, the District Collector, the second respondent herein, is the competent authority to pass orders to take over possession of the secured asset and hand over the same to the first respondent bank.

15. The only contention of the petitioner that non-disclosure of the pendency of the criminal revision case, before this Court, would dis-entitle the first respondent bank, from getting order from the second respondent/the District Collector, cannot be accepted, in the light of the judgment of the Honourable Apex Court reported, in *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Others* (supra). The suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. Therefore, mere non-mentioning of the pendency of the criminal revision case, before this Court, cannot be said to be a material suppression of fact, and the same in no way dis-entitle the first respondent bank from obtaining orders from the second respondent/the District Collector, u/s 14 of the SARFAESI Act. In view of our discussion supra, we find no merit in the writ petition and accordingly, the writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.