

(2020) 02 DEL CK 0311

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 275 Of 2020, CAV No. 192 Of 2020,
Civil Miscellaneous Application No. 8163, 8164 Of 2020

Trans Asian Industries Exposition Pvt Ltd & Ors

APPELLANT

Vs

Jammu & Kashmir Bank Ltd & Anr

RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 14
Code Of Criminal Procedure, 1973 — Section 362

Citation : (2020) 267 DLT 584

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Manjit Singh Ahluwalia, Jaspriet Singh, T.K. Ganju, Syed Arsalan
Abid, Prateek Khaitan, Kamal Goswami

Final Decision : Dismissed

Judgement

Prathiba M. Singh, J

1. The present petition has been filed challenging the impugned order dated 8th January, 2020 by which the Id. Chief Metropolitan Magistrate

(hereinafter â??CMMâ?) has directed that the order dated 22nd June, 2019 appointing Receivers shall stand extended for another three months. The

submission of Mr. Manjit Singh Ahluwalia, Id. counsel for the Petitioner is that under Section 14 of the SARFAESI Act, 2002, the Id. CMM has to

appoint the Receiver within a maximum period of 60 days from the date of the filing of the application and beyond the said period, no orders for

appointing Receivers or extending their power can be passed. He further urges that a detailed affidavit is also mandatory in terms of Section 14, failing

which, no application could have been entertained by the Id. CMM.

2. Mr. T.K. Ganju, Id. Senior counsel for the Respondents on the other hand submits that the application for appointment of Receivers was moved on

30th April, 2019 and the first order appointing Receivers was passed on 22nd June, 2019. Though Receivers were appointed to take possession of the

properties which were secured with the Respondents, since various proposals were initiated by the Petitioner and there was some discussion for

settlement between the parties, the order appointing the Receivers was not given effect to. Accordingly, when the settlement negotiations failed

between the parties, the Respondents moved the Id. CMM once again and vide order dated 8th January, 2020, the directions contained in the order

dated 22nd June, 2019 have been extended for another three months and the Receivers have to file a report within the said period.

3. Insofar as the interpretation of Section 14 is concerned, Mr. Ganju submits that the said period mentioned in second and the third proviso of Section

14 have to be read as being directory and not mandatory, as no consequence has been provided, if the order is not passed within a period of 30 days.

4. Section 14 of SARFAESI Act reads as under:

â??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 himâ?

(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 further 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 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 1[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??.

5. A perusal of the said provision shows that an application can be filed by the secured creditor before the Id. CMM to take possession of the assets

and documents. Along with the said application a detailed affidavit has to be filed as contained in (i) to (ix). The third proviso specifically stipulates that

upon perusing the affidavit and recording the satisfaction thereof, the Id. CMM ought to pass orders for taking possession of the secured assets within

a period of 30 days from the application. This period of 30 days has been extended by a further period of 30 days in the third proviso. The question

that arises is whether after the period of 30 days + 30 days, the Id. CMM is not empowered to pass orders extending the term of the Receiver or

appointing a Receiver, upon an application by the secured creditor.

6. A perusal of the provision clearly shows that the said provision has been enacted to safeguard the interest of the secured creditor. The purpose for

which the period has been stipulated is to ensure that upon an application being moved by the secured creditor, the Id. CMM takes up the application

within a period of 30 days extendable by further 30 days. The intention is not to render the Id. CMM functus officio after the period of 60 days, but

rather to ensure that the application is taken up with the utmost urgency and not

in a delayed or procrastinated manner. It cannot be interpreted to mean that after the period of 60 days, the Id. CMM loses the power to give effect to orders extending the term of Receivers, or to substitute a Receiver already appointed.

7. The facts of the present case show that the initial application was filed on 30th April, 2019 and the Receivers were appointed on 22nd June, 2019.

As per the order dated 22nd June, 2019 three Receivers were appointed by the Id. CMM to take possession of three separate assets and the

Receivers were directed to submit their reports within two months. Thereafter, negotiations had taken place between the parties and the order dated

22nd June, 2019 was not even implemented. It was after negotiations failed that the creditor approached the Id. CMM once again for extension of the

power of the Receivers to take possession. The order dated 8th January, 2020 is merely a renewal or extension of the earlier order passed within 60

days i.e. on 22nd June, 2019. The same cannot be construed as a fresh order. Be that as it may, the Id. CMM would be entitled to any other order for

example, substitution of Court Receivers and any other orders, so as to ensure that the decree in favour of the secured creditor is not set at naught.

The debtor cannot, by attempting to resolve the disputes by giving settlement proposals, avoid the process of the possession being taken over.

8. The only issue remains as to whether the affidavit has been filed properly by the secured creditor in terms of the stipulations in Section 14. The said

issue does not arise at this stage. The affidavit has to be filed by the secured creditor in terms of the stipulations in Section 14. The said affidavit

which would have been filed with the application, was considered by the Id. CMM while passing the order dated 22nd June, 2019, which is not under

challenge in this case. The strict compliance of Section 14 and the affidavit thereunder is required to be followed, however, in the present case the

question of the affidavit no longer arises as the same was considered only when the order dated 22nd June, 2019 was passed and not in the order

dated 8th January, 2020. Mr. Ahluwalia, at this stage submits that Section 362 of the Cr.P.C. Id. CMM has no power to review or modify his order.

The said provision reads as under:

â??362. Court not to alter judgment.â?" Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it

has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.â??

9. The order dated 8th January, 2020 is not a review or modification of the earlier order, it is merely an extension of the period for implementing the order dated 22nd June, 2019 along with the enhancement of fee and nothing more. The same cannot be construed as being a review by any stretch of imagination. The petition is dismissed along with all pending applications.

10. Since possession of the property, which is the residence where the family of the Petitionerâ??s Director/Promoter is stated to be residing, has not yet been taken over, one weekâ??s time is granted to them to make alternate arrangements. Possession shall not be taken over by the bank for a period of one week from today.

11. A copy of this order be given dasti under signatures of the Court Master.