

(2006) 11 KAR CK 0029
In the Karnataka High Court
Case No : Criminal Petition No. 4881 of 2006

Vijaya Bank

APPELLANT

Vs

Shameem Transport and Others

RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401 (2), 482
Securitization and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 13, 13 (4), 14, 14 (1), 14 (2)

Citation : (2007) 137 CompCas 428 : (2006) ILR (Kar) 4663 : (2007) 1 KarLJ
309 : (2007) 76 SCL 235

Hon'ble Judges : A.C. Kabbin, J

Bench : Single Bench

Advocate : K. Mallikarjuna Rao and J. Prakash, for the Appellant;

Final Decision : Allowed

Judgement

A.C. Kabbin, J.—The point of law that arises in this petition filed u/s 482 of the Cr.P.C is whether the revisional court is required to issue a notice to the respondents/ borrowers and any other person claiming right over a secured interest in the revision petition filed by a secured creditor challenging the order of the Chief Metropolitan Magistrate declining to proceed u/s 14(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to in this order as the Act, for the sake of convenience).

2. The petitioner is a bank. For taking possession of the secured interest (i.e. a property) of the respondents 1 and 2, the petitioner bank filed an application u/s 14 of the Act before the VI Addl.C.M.M., Bangalore. Subsequent purchasers of the secured property i.e. respondents 6 and 7 impleaded themselves in that petition and contended that the Bank cannot take possession of the property (secured interest), in view of the sale of that property by the borrower to them.

3. On the following three grounds, the learned Addl.C.M.M declined to act u/s

14(1) of the Act

i) that the respondents 6 and 7 had purchased the property in question on 4.12.2003, whereas notice u/s 13(1) had been issued by the Bank on 24.11.2004. Therefore, section 13(2) has no application to the matter in question.

ii) The respondents 6 and 7 have preferred an appeal u/s 17 of the Act before the Debts Recovery Tribunal even before the Bank filed petition u/s 14(1) of the Act and therefore the prayer of the petitioner Bank for taking possession of the property was premature.

iii) When the order of status quo passed by the Debts Recovery Tribunal shows that the property in question is "in possession of respondents 6 and 7, the question of taking possession of that property from the respondents 3 to 5 does not arise.

4. That order was challenged by the petitioner in Crl.RP.No. 14/06. When the revisional court felt that, before passing any order, notice of the revision petition was required to be given to the respondents, the petitioner contended that under the scheme of the Act, no such notice was required to be given to the respondents i.e. the borrower and purchaser. After considering that plea, the revisional court (XXXVI Addl. Sessions Judge, Bangalore) held that the respondents 6 and 7, who were the purchasers of the property, were entitled to a notice of the revision petition before any order was passed. The petitioner Bank relied upon the principles laid down on 11.4.2005 in an unreported decision of this Court in Crl.P.No. 1395/05, and the decision in City Bank, Bangalore v. Sundeep Singh and Anr. 2005(1) Banker's Journal 357 contending that in a proceeding u/s 14(1) of the act, the borrower or any person claiming through him need not be heard. That contention did not impress the learned Sessions Judge and he held that no order in a revision petition could be made to the prejudice of any person, unless such person was heard. In that view of the matter, the learned Sessions Judge directed that the petitioner should take steps for issuance of notices to the respondents. It is that order of the learned Sessions Judge that has been challenged in this petition.

5. Sri. K. Mallikarjuna Rao, learned Counsel for the petitioner submits that when the Act itself does not contemplate a notice to the borrower or other person while giving assistance to the secured creditor in taking possession of the secured interest, no such necessity of issuing notice to the borrower or other person arises in a revision petition relating to a prayer for possession of the security interest. He submits that the scheme of the Act is such that the provisions of Sections 13 and 14 are intended to enable the bank or financial institution to take possession of the secured interest without the, intervention of the court and that therefore the assistance to be given by the Chief Metropolitan Magistrate or the District Magistrate is only for taking possession of the property and not for deciding any issue. He submits that therefore the learned Sessions Judge was in

error in directing notices to the respondents.

6. On a perusal of the order of the learned Sessions Judge, I find that the learned Sessions Judge formed the opinion, on the basis of the provisions of Section 401(2) of the Cr.P.C and the principles laid down by Gauhati High Court in the case of *Santi Ram Sharma v. Smt. Kanakalata Devi* reported in 1993(3) Cri.L.J. 3317 that non giving of opportunity of hearing to the affected party violates Section 401(2) and principles of natural justice.

7. The decision on the necessity of issuing a notice in a revision petition like the one under consideration is dependent on the question whether by the order of the revisional court, the right of the borrower or any person claiming through him is affected. The decision on this point is dependent on the question whether in a proceeding u/s 14 of the Act, or in a revision petition filed by the secured creditor challenging an order of the Chief Metropolitan Magistrate or District Magistrate declining to act u/s 14 of the Act, right of the borrower or any person claiming right over the secured asset is being determined. A higher court in a revision is only deciding whether the learned Chief Metropolitan Magistrate was right in declining to act u/s 14(1) of the Act. It therefore becomes necessary to know under what circumstances a Chief Metropolitan Magistrate or District Magistrate may decline to act u/s 14(1) of the Act.

8. As rightly pointed out by the learned Counsel for the petitioner, the scope of Section 14 has to be kept in mind while deciding such matter. It is necessary to see the object of the Act and the provision under which the order is sought to be passed by the Chief Metropolitan Magistrate. Unlike international banks, the banks and financial institutions in India did not have power to take possession of securities directly and sell them. That had resulted in slow pace of recovery of defaulting loans and therefore a provision was made in this regard in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, to take possession of the securities without the intervention of the court and sell them. The enforcement of security interest u/s 13 of the Act is without the intervention of the court or Tribunal. The Chief Metropolitan Magistrate in a metropolitan area or District Magistrate in other places does not decide the rights of the parties. He only acts on the request of the secured creditor in taking possession or control of such secured asset or document and making over the same to the secured creditor. In effect, he only provides assistance and necessary protection to the secured creditor in taking possession of the assets and documents referred to in Sub-section (4) of Section 13 of the Act. That is why, though refusal of the Chief Metropolitan Magistrate or District Magistrate to act under Sub-section (1) may be amenable to revisional jurisdiction, Sub-section (3) of Section 14 provides that his act under Sub-section (1) to take possession of the assets and documents cannot be called in question in any court or before any authority. Therefore, where the Chief Metropolitan Magistrate or District Magistrate directs for taking possession of secured interest u/s 14 of the Act, that cannot be challenged in any higher Court.

The remedy of the person aggrieved by such order including borrower is only by challenging the act of secured creditor or authorised officer under Sub-section (4) of Section 13, by preferring an appeal to the Debts Recovery Tribunal against that act of the secured creditor or the authorised officer.

9. It is, therefore, clear that when the Chief Metropolitan Magistrate in metropolitan area or District Magistrate in other places is requested to act under Sub-section (1) of Section 14 of the Act, he is required to hear neither the borrower or any other person claiming through him. Before passing an order u/s 14(1) and (2) of the Act on the basis of the averments in the application of the secured creditor or any materials placed by him, the Chief Metropolitan Magistrate or District Magistrate is required to consider the following:

i. Before proceeding u/s 13 of the Act to enforce the security interest, whether the secured creditor had given requisite notice and the borrower or the person claiming right in the secured interest had failed to discharge his liability in full within the period specified.

ii. Whether the prayer falls under any of the clauses of Section 31 of the Act to exclude the application of Section 13 and 14 of the Act to the case in hand.

iii. In case, the order u/s 13 of the Act has already been challenged by any person u/s 17 of the Act before the Debts Recovery Tribunal and an interim order has been passed in that Tribunal, whether that interim order comes in the way of enforcement of security interest.

10. In exceptional cases, in the interest of justice or in order to prevent the abuse of the process of the court, the Chief Metropolitan Magistrate or the District Magistrate may decline to act u/s 14(1) of the Act, but that is for valid and sufficient reasons to be recorded in writing. Therefore, when the order of the C.M.M declining to act u/s 14(1) of the Act is challenged in a revision petition, notice of the revision petition need not be given either to the borrower of the loan or to the purchaser of the secured interest. That analogy applies also to a petition u/s 482 of the Cr.P.C. Therefore, there is no need to issue notices of this petition to the respondents.

11. In the present case, the learned Sessions Judge did not notice the scheme of the Act and object behind the provision, and directed issuance of notices under the presumption that the respondents may be affected by his order and therefore were required to be heard before the order was passed. As clarified above, the right of a borrower or a transferee of secured interest to challenge the measures taken by the secured creditor u/s 13(4) of the Act is only by way of filing an appeal to the Debts Recovery Tribunal and the borrower or any person claiming interest in the property has no right of agitating the same in a proceeding before the Chief Metropolitan Magistrate or District Magistrate u/s 14 of the Act or in a revision petition challenging the order of the Chief Metropolitan Magistrate. Consequently neither the borrower nor any person claiming in the property has to be notified either by the Chief Metropolitan Magistrate or the District

Magistrate or in a revision petition by the revisional Court.

12. For the above said reasons, the petition is allowed and quashing the order dated 8.9.2006 passed by the learned XXXVI Addl. Sessions Judge, Bangalore in CrI.R.P.No. 14/06, it. is held that there was no need to issue notice of the revision petition to the respondents in that revision petition. The learned Sessions Judge is directed to consider the revision petition on merits in the light of the observations made above.