

Validity of District Magistrate's order under Section 14 of SARFAESI Act: DRAT KOLKATA

State Bank of India

...Appellant

Smt. Kamlesh Devi Agarwal Konlesh Devi Agarwal & Anr Milan Pally,

...Respondent

Case No: Appeal No. 29 of 2019

Date of Judgement: 7th August, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Rajat Chakrabarti, Advocate.

For Respondent: Mr. A.K. Mishra, Mr. Abhishek Dey, Advocates.

Facts:

The appeal arose against the order allowing the SARFAESI application and setting aside the District Magistrate's order under Section 14 of SARFAESI Act. Respondents 2 and 3 were the borrowers who had taken House Building Loan and Cash Credit Loan from the appellant bank. Initially, notice under Section 13(2) was issued which was replied by the borrowers. The borrowers approached the Calcutta High Court in Writ Petition no. 25140 of 2014 wherein it was ordered that if the loan amount is paid within a week, no action should be taken by the bank. The payment was made and possession was restored. Subsequently, fresh notice under Section 13(2) was issued on 28.10.2015 which included both loans. Representation under Section 13(3A) was made and replied. Bank applied to District Magistrate on 25.05.2016 for

assistance under Section 14. Order was passed on 14.06.2016 directing the SDO Siliguri to depute an executive magistrate for taking possession. Meanwhile, bank took possession under Section 13(4). The District Magistrate's order was challenged in DRT and was set aside vide the impugned order dated 07.03.2019.

Elaborate Opinions of the Court:

Referring to the Supreme Court decision in Standard Chartered Bank v. V Noble Kumar, the Court observed that the District Magistrate is empowered to depute its subordinate officer for taking possession under Section 14 but has to ensure compliance of Section 14. It noted that Section 14 stipulates filing of an affidavit with certain particulars and recording of satisfaction by the District Magistrate regarding compliance. On examining the impugned order, the Court found that it was a composite order in four matters with no satisfaction recorded regarding compliance. Hence, it was validly set aside by the DRT.

Arguments by Appellant Bank:

Impugned order suffers from illegality as possession was taken under Section 13(4). District Magistrate has power to depute subordinate magistrate for taking possession. Impugned order is liable to be quashed.

Arguments by Respondent Borrowers:

While District Magistrate can depute subordinate officer under Section 14, it has to record satisfaction about compliance which was not done.

Sections Referred:

*Section 13 and Section 14 of SARFAESI Act
Security Interest (Enforcement) Rules, 2002*

Case Law Relied Upon:

Standard Chartered Bank v. V. Noble Kumar & Ors., (2013) 9 SCC 620

The Court dismissed the appeal holding that the impugned order setting aside District Magistrate's order under Section 14 of SARFAESI Act did not suffer from any illegality or irregularity.

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Full Text of Judgment:

1. Instant appeal has arisen against an order dated 07.03.2019 in TSA No. 120 of 2017 Ratan Lal Agarwal Vs. State Bank of India and another whereby the SARFAESI application was allowed. Order of the District Magistrate passed under Section 14 of the SARFAESI Act was set aside and the auction purchaser was held to be entitled for refund of the amount deposited by him.

2. Feeling aggrieved, the instant Appeal has been filed.

3. As far as pleadings of the parties are concerned, the Respondent No. 2 and 3 are the borrowers of the Appellant who had taken some House Building Loan and Cash Credit Loan from the Appellant wherein initially notice under Section 13(2) of the SARFAESI Act was issued which was replied by the borrowers. The matter was taken up to the Hon'ble Calcutta High Court wherein in the Writ Petition No. 25140 of 2014 following order was passed.

"In the event the petitioner makes payment in respect of the loan which forms the subject matter of the notice issued under Section 13(2) and 13(4) of the 2002 act within a week from the date of receipt of this order, let no step be taken by the respondent Bank for sale of the secured assets in respect of the said loan amount. The said payment will not deprive the respondent Bank of the secured assets in respect of the other credit facilities which have been availed of by the petitioner and the said property given as secured asset. In view of the aforesaid, the notice dated 15.05.2013 issued under Section 13(2) and notice dated 25.08.2014 issued under Section 13(4) of the 2002 Act calls for no interference. In the event, payment as mentioned above is made the respondent Bank is directed to put the petitioner in possession of the said property."

4. Subsequent thereto, the amount was deposited by the borrowers and the possession was restored. Thereafter again on 28.10.2015 notice under Section 13(2) was issued which includes the House Building loan

as well as Cash Credit Loan. Representation was made under Section 13(3A) on 16.02.2015 which was replied by the Bank on 13.12.2015. Thereafter, Appellant Bank applied to the District Magistrate Darjeeling on 25.05.2016 for an order dated 24.05.2016 wherein the District Magistrate passed an order on 14.06.2016 asking the SDO Siliguri to depute some executive Magistrate for taking the possession. In the meantime, it is also on record that as per the Appellant possession under Section 13(4) was taken by the Bank. This order of the District Magistrate was challenged before the Ld DRT which was held to be bad in law. Consequently, impugned order was passed.

5. I have heard the Learned Counsel for the parties i.e. the Appellant as well as the auction purchaser Respondent No. 3 and perused the record.

6. Learned Counsel for the Appellant submits that the DRT erred in passing the impugned order. Hence, possession was taken under Section 13(4) of the SARFAESI Act. The District Magistrate was well within its powers to depute subordinate Magistrate for taking possession. Hence, he prays for quashing of the order.

7. Learned Counsel for the Respondent submits that as far as powers of the District Magistrate to depute a subordinate officer under Section 14 of the SARFAESI Act is concerned, there cannot be any dispute but at the same time the District Magistrate has to record its satisfaction about the compliance of Section 14 of the SARFAESI Act which was not recorded.

8. It was held by the Hon'ble Apex court in the case of Standard Chartered Bank Vs. V Noble Kumar & ors (2013) 9, SCC 620.

“(36) Thus there will be three methods for the secured creditor to take possession of the secured assets:

36.1(i) The first method would be where the secured creditor gives the requisite notice under Rule 8(1) and where he does not meet with any resistance. In that case, authorized officer will proceed to take steps as stipulated under Rule 8(2) onwards to take possession and thereafter for sale of the secured assets to realize the amounts that

are claimed by the secured creditor.

36.2. (ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under Rule 8(1) is given. In that case he will take recourse to the mechanism provided under Section 14 of the Act. Viz making application to the Magistrate. The Magistrate will scrutinize the application as provided in Section 14 and then if satisfied appoint an officer subordinate to him as provide under Sect 14(1-a) to take possession of the assets and documents. For that purpose the Magistrate may authorize the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.

36.3(iii) The third situation will be one where the secured creditor approaches the Magistrate concerned directly under Sec. 14 of the Act. The Magistrate will thereafter scrutinize the application as provided in Section 14 and the if satisfied, authorize a subordinate officer to take possession of the assets and documents and forward them to the secured creditor as under clause 36.2(ii) above.

36.4 In any of the three situations above, after the possession is handed over to the secured creditor, the subsequent specified provisions of Rule 8 concerning the preservation , valuation and sale of the secured assets and other subsequent rules from the Security Interest (Enforcement) Rule 2002, shall apply.”

9. As far as the question of issuance of order under Section 14 of the SARFAESI Act is concerned, there cannot be two opinion that the District Magistrate is empowered to depute its subordinate officer for taking possession on the request of the financial institution/ Bank, but at the same time, compliance of Section 14 of the SARFAESI Act is to be ensured by the District Magistrate. Section 14 of The Securitisation And Reconstruction Of Financial Assets And enforcement Of Security Interest Act, 2002 reads as under:

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 r quired 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 assets, 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.

[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 the

Financial is within the limitation period;

iii. The borrower has created security interest over various properties giving the details of properties referred to in the 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 and representation in reply to the notice received from the borrower has been considered by the secured creditor and the 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 154 of the principal Act;

ix. That the provisions of this Act and the rules made there under had been complied with

(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.

10. All the nine points as mentioned have to be mentioned in the affidavit as well as the District Magistrate is also required to record its satisfaction about the compliance. Further, in the impugned order dated 14.06.2016 it is simply composite order in four matters. No satisfaction is recorded by the District Magistrate. Accordingly, I am of the view that the impugned order does not suffer from any illegality and irregularity. Appeal lacks merit and is liable to be dismissed.

Appeal is dismissed. Impugned order dated 07.03.2019 passed by Ld. DRT Siliguri is confirmed.

No order as to costs.

File be consigned to Record Room.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

Copy of the Judgment/ Final Order be uploaded in the Tribunal's Website.

Order signed and pronounced by me in the open Court on this the 7th day of August, 2023.