
(2018) 03 MP CK 0202

Madhya Pradesh High Court (Indore Bench)

Case No: Writ Petition No. 23367 Of 2017

Cholamandalam
Investment And
Finance Ltd.

APPELLANT

Vs

Additional District
Magistrate And Ors

RESPONDENT

Date of Decision: March 22, 2018

Acts Referred:

- Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 - Section 2(o), 2(zc), 2(zf), 12, 13, 13(2), 13(4), 14, 14(1), 14(1)(b), 17, 31
- Transfer Of Property Act, 1882 - Section 58(f)

Citation: (2018) 3 MPLJ 123 : (2019) 4 BC 475

Hon'ble Judges: S.C. Sharma, J

Bench: Single Bench

Advocate: Rishi Tiwari, H.Y Mehta, Sanjay Pathak

Final Decision: Allowed

Judgement

The petitioner before this Court Cholamandalam Investment and Finance Ltd, is a company incorporated under the Companies Act and is a

“financial institution” as defined under the provisions Securitization and Reconstrucion of Financial Assets and Enforcement of Security Interest

Act, 2002 (hereinafter referred as SARFAESI Act, 2002). The petitioner has filed the present petition being aggrieved by the order dated 06.11.2017

(Annexure-P/1).

The respondent Nos.2 to 8 are borrowers, who have approached the petitioner for grant of loan of Rs.3.35 crore and as the account was declared as

non-performing assets, the petitioner taking shelter of the provisions of SARFAESI Act, 2002, issued a demand notice on 30.09.2006 under Section

13(2) of the SARFAESI Act, 2002 calling the respondent Nos.2 to 8 to pay amount of Rs.3.93,52,355/-. Notices were published in the newspaper also

and respondent Nos.2 to 8. in spite of receipt of notice, did not repay the amount and in those circumstances on 28.01.2017, the authorized officer of

the petitioner took possession of the property mortgaged by the respondents keeping in view the statutory provisions as contained under Section 12 and

13 (4) of the SARFAESI Act, 2002.

The possession notice was also published in the newspaper i.e. in Times of India on 02.02.2017 and the total dues recoverable from respondent Nos.2

to 8 are to the tune of Rs.4,33,70,402/-. As the amount was not being paid and the account was declared as NPA, an application was preferred under

Section 14 of the SARFAESI Act, 2002 for taking actual physical possession of the secured assets and for handing over them to the petitioner as

required under the statutory provisions. An affidavit was also submitted by the authorized officer keeping in view Section 14(1)(b) of SARFAESI Act,

2002 Various objections were raised by respondent No.2 to 8 before the District Magistrate and the District Magistrate has passed the impugned

order.

The impugned order dated 06.11.2017 (Annexure-P/1) is on record and in the impugned order, the learned Magistrate has gone to the extent in

adjudicating the fact whether the account was rightly classified as a non-performing asset or not. The relevant paragraph of the impugned order reads

as under:-

“Wrongly NPA Declared ,

Therefore as per sub section (o) of section 2 of SARFAESI Act, 2002, it is not covered

under substandard or doubtful or loss assets, because loan outstanding is less than the valuation of the Property hence it is much more than the

outstanding, therefore, classification of said asset as doubtful or substandard is totally wrong and illegal. Security interest, within the

meaning of Section 2(zf) has not been created in respect of the above mentioned properties which are secured assets within the meaning of Section 2

(zc), in favour of the secured creditor (the bank) within the meaning of Section 2(zc) of the Securitisation Act to mean the property on which security

interest is created.

“

The aforesaid part of the order makes it very clear that the learned Magistrate has held that the account was wrongly classified as an NPA. Another

important aspect of the case is that the learned Magistrate has also held that the mortgaged deeds were not registered, and therefore, no action can be

initiated against respondent Nos.2 to 8. The relevant part of the order reads as under:-

“

27 that the Courts at

Chennai alone shall have exclusive jurisdiction over any matter arising out of or in connection with this agreement.

- 2013 (3) Arb.LR-161 (SC) Swastik Gases P. Ltd. v/s Indian Oil Corp. Ltd.

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- 15147/2017 ..

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Meaning thereby, the fact the mortgage was valid or not and the account was NPA or not, has been decided by the learned Magistrate.

Section 14 of the Securitization 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 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 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. (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.

The aforesaid statutory provisions of law nowhere empowers the District Magistrate to decide the dispute on merits. He doesn't have power to

decide whether the account was rightly declared as non-performing asset or not. Similarly, it does not empower the District Magistrate to decide

whether the mortgage deed was required to be registered or not and whether the mortgage deed was proper or not.

Shri Rishi Tiwari has argued before this Court that the impugned order passed by the District Magistrate is bad in law, as he has rendered his

judgment on the issue that whether the account was rightly classified as NPA or not and also on the point whether the mortgage deed was properly

created mortgage or not.

On the other hand, learned counsel for respondent Nos.2 to 8 has argued before this Court that the learned Magistrate was well within his jurisdiction

to pass the impugned order and he has rightly arrived at a conclusion that the account was erroneously declared as non-performing asset. He has also

stated that the learned Magistrate was competent to decide whether the mortgage deeds are properly executed mortgage or not and whether

registration is required or not.

On the other hand, learned Government Advocate has also supported the impugned order passed by the learned Additional District Magistrate and

prays for dismissal of the writ petition.

This Court has carefully gone through the statutory provisions governing the field. It nowhere empowers the Collector to decide on merits whether an

account has rightly been declared as NPA or not by the financial institution. Not only this, it also does not empower the learned District Magistrate to

comment upon the mortgage deed, as has been done in the present case. In the case of State of Haryana & others v/s Narvir Singh & Another (2014)

1 SCC 105, the Apex Court was again dealing with the same issue and paragraphs 14.2 and 14.3 read as under:-

“14.2. But the question is whether mortgage by deposit of title-deeds is required to be done by an instrument at all. In our opinion, it may be

effected in specified town by the debtor delivering to his creditor documents of title to immoveable property with the intent to create a security

thereon. No instrument is required to be drawn for this purpose. However, the parties may choose to have a memorandum prepared only showing

deposit of the title-deeds. In such a case also registration is not required.

14.3. But in a case in which the memorandum recorded in writing creates right, liability or extinguishes those, same requires registration. In our

opinion, the letter of the Finance Commissioner would apply in cases where the instrument of deposit of title-deeds incorporates terms and conditions

in addition to what flow from the mortgage by deposit of title-deeds. But in that case there has to be an instrument which is an integral part of the

transaction regarding the mortgage by deposit of title-deeds. A document merely recording a transaction which is already concluded and which does

not create any rights and liabilities does not require registration.

In the aforesaid case, it has been held that the requirement of registration is not mandatory. A document merely recording a transaction, which is

already concluded and which does not create rights and liabilities, does not require registration. It was a case related to mortgage by deposit title

deeds.

In the case of Standard Chartered Bank v/s V. Noble Kumar & Others (2013) 9 SCC 620, the Apex Court in paragraph-25 has held as under:-

“The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the

factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction

the Magistrate can pass appropriate orders regarding taking of possession of the secured asset.

The Apex Court has held that the Magistrate is required to examine the factual correctness of assertions made in the affidavit but not the legal

niceties of the transaction.

In the case of S.I.C.O.M. Ltd, Nagpur v/s District Magistrate/Collector 2010 (4) Mh.L.. Jdecided by the Division Bench of Bombay High Court, has

held that the District Magistrate is required to assist a secured creditor and cannot adjudicate the validity of the instrument, by which, the asset is

secured. Paragraph-6 and 7 of the judgment reads as under:-

“6. The District Magistrate instead of taking action under section 14 as required by law, entered upon an inquiry as to whether inter alia respondent

No. 3 has validly executed a mortgage in favour of the petitioner. In the inquiry respondent No. 1 came to the unusual conclusion that the property

allegedly mortgaged is owned jointly by respondent No. 2 Chandrakant Ratanlal Shah and respondent No. 3 Smt. Chandan Chandrakant Shah and,

therefore, the mortgage could have been executed only by obtaining joint signatures of both the parties and could not have been executed by executing

the guarantee deed (sic). Mr. Khare, learned counsel for the petitioner submitted that respondent No. 1 District Magistrate had no jurisdiction to enter

into the question of the validity of the mortgage which was in fact effected by deposit of title deeds and refuse to act under section 14 of the

SARFAESI Act. In any case even otherwise according to the learned counsel for the petitioner the District Magistrate has come to a grossly

erroneous conclusion by holding that the property is not validly mortgaged because respondent No. 3 has not signed on the mortgage deed since the

mortgage in question was executed by deposit of title deeds vide section 58(f) of the Transfer of Property Act. Mr. Khare, learned counsel for the

petitioner submitted that even before this Court respondent No. 3 has admitted the execution of a mortgage vide a paragraph No. 5 of the reply by

stating that she is a mortgagor of the flat only. Mr. Rizwy, learned counsel for respondent No. 3 submitted that respondent No. 3 is willing to make

payment of an amount more than the value of the flat and, therefore, this petition may be dismissed. The learned counsel further submitted that

respondent No. 3 has filed another writ petition questioning the recovery proceedings. We are, therefore, not inclined to go into the validity of the

proceedings on the basis of the offer made by respondent No. 3 in this proceeding.

7. Having considered the matter, we are of the view that the District Magistrate to whom the petitioner had forwarded the request in writing for taking

over possession of the mortgaged asset, had no power or authority in law to enter into the question of the validity of the mortgage in respect of

secured asset and declare the mortgage to be invalid and thus refuse to perform the duty imposed upon him by the SARFAESI Act. Section 14

contains a clear mandate for the District Magistrate that he shall take possession of such asset and documents relating thereto and upon such request

he shall forward such assets and documents to the secured creditor. The Act does not confer any power on the District Magistrate to transform

himself into the Court of law with powers to adjudicate on the validity of the instrument by which the assets is secured. The learned counsel for the

petitioner has rightly relied upon the decision of the Division Bench of this Court in Trade Well v . Indian Bank reported in 2007 (2) Mh.L.J (Cri.) 412 :

2007 (1) BCR (Cri) 783 wherein this Court has held as follows:

“90. Following conclusions emerge from the above discussion:

1. The

2. The

3. He has to only verify from the bank or financial institution whether notice under section 13(2) of the NPA Act is given or not and whether the

secured assets fall within his jurisdiction. There is no adjudication of any kind at that stage.

4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under section 14 of the NPA Act by recording that

the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under section 14. “

In light of the aforesaid judgment, the Metropolitan Magistrate or District Magistrate was required to verify from the financial institution whether

notice under Section 13(2) is given or not and whether the secured assets falls within his jurisdiction or not. He was certainly not required to do any

kind of adjudication, which has been done in the present case.

Lastly, in the case of Asset Recovery Corporation India Limited v/s State of Maharashtra 2011 (6) Mh.L.J, , again the Bombay High Court has dealt

with the similar issue. Paragraph-5 of the same judgment reads as under:-

5. The parameters of the jurisdiction that is exercised by the District magistrate under section 14 has been explained in a judgment of the Division

Bench of this Court in Trade Well (supra). The Division Bench has observed that while passing an order under section 14, the District Magistrate has

to consider only two aspects. He has to first determine whether the secured asset falls within his territorial Jurisdiction. Secondly, the District

Magistrate has to determine whether the notice under section 13(2) has been furnished. The Division Bench held that no adjudication is contemplated

at that stage. This principles which have been enunciated in the judgment of the Division Bench are inter alia as follows :

1. The bank or financial institution shall, before making an application under Section 14 of the NPA Act, verify and confirm that notice under Section

13(2) of the NPA Act is given and that the secured asset falls within the jurisdiction of CMM/DM before whom application under Section 14 is made.

The bank and financial institution shall also consider before approaching CMM/DM for an order under Section 14 of the NPA Act, whether Section

31 of the NPA Act excludes the application of Sections 13 and 14 thereof to the case on hand.

2. CMM/DM acting under Section 14 of the NPA Act is not required to give notice either to the borrower or to the 3rd party.

3. He has to only verify from the bank or financial institution whether notice under Section 13(2) of the NPA Act is given or not and whether the

secured assets fall within his jurisdiction. There is no adjudication of

4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under Section 14 of the NPA Act by recording that

the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under Section 14.

5. Remedy provided under Section 17 of the NPA Act is available to the borrower as well as the third party.

6. Remedy provided under Section 17 is an efficacious alternative remedy available to the third party as well as to the borrower where all grievances

can be raised.

It has been held that the District Magistrate has to consider only two aspects. He has to first determine whether the secured asset falls within his

territorial jurisdiction and secondly whether the notice under Section 13(2) has been furnished or not and no adjudication has been contemplated at that

stage.

In the considered opinion of this Court, the learned Additional District Magistrate has transgressed his jurisdiction by deciding the matter on merits, and

therefore, the impugned order dated 06.11.2017 (Annexure-P/1) deserves to be quashed and is accordingly quashed and learned Magistrate shall be free

to pass appropriate order in accordance with law keeping in view the statutory provisions as contained in Section 14 of the SARFAESI Act, 2002.

With the aforesaid, the petition stands allowed. The parties shall appear before the learned Additional District Magistrate on 26th March 2018 and the

learned Additional District Magistrate, as both the parties are present and as the reply has already been filed by respondent Nos.2 to 8, shall pass an

appropriate order in accordance with law positively within a period of thirty days from 26th March 2018.

No order as to costs.

Certified copy as per rules.