

Panjab Nation Bank Acting Vs Additional District Magistrate And Others

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Jan. 29, 2025

Acts Referred: Constitution of India 1950 " Article 226

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 " Section 13, 13(2), 14

Transfer of Property Act, 1882 " section 69, 69-A

Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 " Section 8

the Banking Regulation Act, 1949 " section 9

Insolvency and Bankruptcy Code, 2016 " Section 251

Companies Act, 1956 " section 529, 529-A

Hon'ble Judges: Vivek Rusia, J Gajendra Singh, J

Bench: Division Bench

Advocate: Rohit Dubey, Sudeep Bhargava

Final Decision: Dismissed

Judgement

JUDGMENTTAG-JUDGMENT

Vivek Rusia, J

With the consent of parties, heard finally.

The petitioner / Punjab National Bank has filed the present petition under Article 226 of the Constitution of India seeking direction to respondent No.1

to execute the order dated 11.11.2022 passed by the Additional District Magistrate, Agar Malwa in exercise of power conferred under Section 14 of

the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act').

2. The petitioner extended the credit facility to M/s Ruchi Agri Fresh Private Limited vide sanction letter dated 24.07.2015. On 31.03.2021, the

account was declared non-performing asset due to default in repayment of loan.

3. A notice under Section 13(2) of the SARFAESI Act was issued for recovery of the outstanding balance of Rs.1,01,98,107.68/-. Thereafter,

possession notice under 13(4) of the SARFAESI Act was issued on 02.09.2021 and symbolic possession of the mortgaged property was taken by the

Bank.

4. In order to take the possession of the mortgaged property, the Bank filed an application before the Additional District Magistrate. Vide order dated

11.11.2022, the Tehsildar was directed to provide assistance to the petitioner in order to take possession of the property.

5. After the aforesaid order, in order to recover the loan amount, the petitioner / Bank proceeded with the sale of mortgaged property. After the

auction sale, two sale certificates dated 17.01.2023 have been issued in favour of the auction purchaser. The details are given in para - 5.8 of the

petition and the certificates are filed as Annexure-P/5 along with this writ petition. According to the petitioner, the borrower has not handed over the

possession of the aforesaid property to them, therefore, the present petition is filed seeking direction to respondent No.2 to execute the order dated

11.11.2022.

6. Section 13 of the SARFAESI Act provides that any security interest created in favour of any secured creditor may be enforced, without the

intervention of the Court or Tribunal, by such creditor in accordance with the provision of this Act. In case, the borrower fails to discharge his liability in

full within the period specified in sub-section (2), the secured creditor may take recourse either to take possession of the secured assets of the

borrower including the right to transfer by way of lease, assignment or sale or to take over the management of business of the borrower including the

right to transfer. If the measures are taken under Section 13(4)(a), the secured creditor may approach the Chief Metropolitan Magistrate or District

Magistrate to seek assistance in taking possession of the secured assets for the purpose of sale or transfer under the provisions of this Act.

7. For ready reference, Section 13 of the SARFAESI Act is reproduced below:

"13. Enforcement of security interest - (1) Notwithstanding anything contained in section 69 or section 69-A of the Transfer of Property

Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the Court

or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of

secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing

asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor

within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-

section (4).

Provided that

(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has

raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this

section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in

favour of the debenture trustee;

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be

enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(3-A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor

shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is

not acceptable or tenable, he shall communicate [within fifteen days] [Inserted by the Enforcement of Security Interest and Recovery of

Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 8 (w.e.f. 11.11.2004).] of receipt of such representation or objection the reasons

for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not

confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge

under section 17-A.] [Inserted by Act No. 44 of 2016.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take

recourse to one or more of the following measures to recover his secured debt, namely:

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the

secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for

realising the secured asset: [Substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004,

Section 8 (30 of 2004), for Cl.(b) (w.e.f. 11.11.2004).

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of

the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take

over the management of such business of the borrower which is relatable to the security for the debt.

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by

the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any

money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid

discharge as if he has made payment to the borrower.

(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an

amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in

this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.(5B) Where the secured creditor,

referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the

purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security

interest is taken by the secured creditor, Under sub-section (4) of section 13.(5C)The provisions of section 9 of the Banking Regulation Act,

1949 shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).]
[Inserted by Act No. 1

of 2013]

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor

or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred

as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in

the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the

borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in

trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor

and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the

secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or

private treaty for transfer by way of lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering

of such amount under this subsection, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or

sale of such secured assets.

(9) Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of] [Substituted 'In the case of' by Insolvency and

Bankruptcy Code, 2016, Section 251.] financing of a financial asset by more than one secured creditors or joint financing of a financial

asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to

sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than [sixty per cent.] [Substituted

for the words ""three-fourth"" by Act No. 1 OF 2013] in value of the amount outstanding as on a record date and such action shall be

binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance

with the provisions of section 529-A of the Companies Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such

company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of

section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmens dues

with the liquidator in accordance with the provisions of section 529-A of that Act:

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance

with the provisions of section 529-A of the Companies Act, 1956 (1 of 1956) and in case such workmen dues cannot be ascertained, the

liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured

creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmens dues, if any.

Explanation. For the purposes of this sub-section. "record date" means the date agreed upon by the secured creditors representing not less than three-fourth in value of the amount

outstanding on such date;

(b) amount outstanding shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of

secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an

application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent Court, as the

case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to

proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of sub-

section (4) in relation to the secured assets under this Act.

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner

as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the

ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor."

8. It is clear from the language of the aforesaid section that the secured creditor is entitled to take possession of the secured assets with the assistance

of Government Machinery in order to sale or transfer the secured assets. But in the present case, the secured assets have already been sold by way

of auction and the sale certificates have been issued on the basis of the symbolic possession, therefore, now the petitioner / Bank is no more secured

creditor or the property in question is not a secured asset. The auction purchaser has become the owner of the property which was mortgaged with

the petitioner / Bank. The auction purchaser may take recourse available under the law to get the possession of the property. Now the petitioner /

Bank cannot seek assistance from the respondents to evict the borrower from the possession. The auction purchaser purchased the property on 'as it

where it' basis, therefore, the Bank cannot be expected to invoke the provisions of the SARFAESI Act.

9. In view of the foregoing discussion, Writ Petition stands dismissed.