(2015) 3 BC 588 : (2014) 5 LW 620 : (2015) 1 MLJ 289

Madras High Court

Case No: Writ Petition No. 29366 of 2014, M.P. Nos. 1 and 2 of 2014

S. Chandramohan		APPELLANT
	Vs	
The Chief Metropolitan Magistrate		RESPONDENT

Date of Decision: Nov. 19, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13(2), 13(4), 14, 14(1A)

Citation: (2015) 3 BC 588 : (2014) 5 LW 620 : (2015) 1 MLJ 289

Hon'ble Judges: P.R. Shivakumar, J; N. Paul Vasantha Kumar, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

N. Paul Vasanthakumar, J.

1. This writ petition is filed by the petitioners challenging the order passed by the Chief Metropolitan Magistrate, Chennai, in Crl.M.P.No. 979 of 2014 dated 19.3.2014 under Section 14 of the SARFAESI Act, 2002.

2. The Bank of Baroda, second respondent herein, filed Crl.M.P.No. 979 of 2014 before the Chief Metropolitan Magistrate, Chennai, contending that at the request of the petitioners and third respondent, the Bank sanctioned cash credit limit of Rs. 250 lakhs on 31.12.2008, which was subsequently increased as Cash Credit Hype Review of Rs. 250 lakhs and Working Capital Demand Loan of Rs. 50 lakhs. For availing the said loan, the petitioners and the third respondent have executed various documents in favour of the bank and also agreed to repay the loan amount together with interest.

3. The third respondent herein was the Principal Debtor of the loan. Petitioners herein are mortgagors/absolute owners of the properties mentioned in the schedule and the title deeds of the properties were also mortgaged. Petitioners and third respondent committed wilful default in spite of various demands and requests, and hence the loan account became NPA on 31.3.2011. Demand Notice under Section 13(2) of the Act was issued on 23.5.2011 for an outstanding amount of Rs. 2,86,60,940/- plus interest, which was received by the parties. Even after expiry of statutory period of 60 days, petitioners and third respondents failed to repay the dues. Hence action was initiated under section 13(4) of the Act and symbolic possession of the properties was taken on 1.10.2011 and notice was issued to the petitioners and third respondent. The said notice was also published in two newspapers on 2.10.2011, and in spite of taking best efforts, the Bank was unable to take physical possession of the secured assets and bring the said properties for auction sale. Hence the said petition was filed before the learned Chief Metropolitan Magistrate.

4. The said petition was ordered by the Chief Metropolitan Magistrate, Chennai on 19.3.2014 by appointing two advocates to take possession of the properties, A and B schedule, after taking inventory, if necessary with the assistance of the Station House Officers of K2 Ayanavaram Police Station and K5 Peravallur Police Station, Chennai respectively. The said order is challenged by the petitioners contending that the learned Chief Metropolitan Magistrate was not justified in appointing Advocate Commissioners to take possession of the Schedule mentioned assets in the light of the statutory provision viz., Section 14 of the Act, as amended by Act 1 of 2013, in particular Section 14(1-A), which states that the Chief Metropolitan Magistrate may authorise any Officers subordinate to him to take possession of such assets and documents relating thereto.

5. The learned counsel appearing for the petitioner was asked a specific question as to whether the petitioners are in a position to repay the loan amount at least in installments to avoid taking of possession of the properties. The learned counsel submitted that the petitioners are not having any means to repay the dues and he has only argued that in view of the procedural violation while passing orders by the Chief Metropolitan Magistrate, the petitioners have filed this writ petition.

6. It is relevant to note at this juncture that petitioners have challenged the order of the Chief Metropolitan Magistrate before the DRT-III, Chennai in SARFAESI Application - S.A.No. 168 of 2014 and challenged the possession notice dated 1.10.2011 as well as the order of the Chief Metropolitan Magistrate dated 19.3.2014. The DRT-III, Chennai, relying upon sub-Section (3) of Section 14 of SARFAESI Act, which states that "no act of the Chief Metropolitan Magistrate or the District Magistrate or any officer authorised by the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of Section 14 shall be called in question in any Court or before any authority" and opined that the remedy open to the petitioners, if any, is to challenge the order of the Chief Metropolitan Magistrate before the High Court under Article 226 and 227 of the Constitution of India and High Court alone can examine the decision of the Chief Metropolitan Magistrate in accordance with the settled principles in terms of the judgment of the Supreme Court

reported in Columbia Sportswear Company Vs. Director of Income Tax, Bangalore, . Pursuant to the said liberty granted in the order of the DRT dated 31.10.2014, petitioners have filed this writ petition.

7. The sole contention of the learned counsel for the petitioner is that the action of the Chief Metropolitan Magistrate in appointing Advocate Commissioners to take possession of the properties mentioned in A and B schedules respectively, is in violation of Section 14(1-A), which empowers the Chief Metropolitan Magistrate to authorise any officer subordinate to him to take possession of such assets and documents relating thereto and forward such assets and documents to the secured creditors.

8. We have considered the said submission in the light of statutory provision. Section 14(1-A), which was inserted by Amendment Act 1 of 2013 reads as follows:

"14(1-A) 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."

The same is an enabling provision conferring power on the Chief Metropolitan Magistrate or District Magistrate to authorise any officer subordinate to him to take possession of the assets and documents relating thereto and forward the assets and documents to the secured creditors.

9. The Advocate Commissioners appointed by the learned Chief Metropolitan Magistrate is in tune with Section 14(1-A) of the SARFAESI Act, 2002. As per Section 14 of the Act, the secured creditors can approach the Chief Metropolitan Magistrate/District Magistrate to take possession of the assets and documents of the secured creditor. The Chief Metropolitan Magistrate, instead of personally visiting the spot to take possession of assets and documents, can very well appoint the Advocate Commissioner to visit on his behalf, as in the case of issuing of commissions under the Civil Procedure Code, as it is not possible for the Chief Metropolitan Magistrate/District Magistrate to visit personally to take possession.

10. The amendment inserted by Act 1 of 2013 viz., Section 14(1-A) is permitting the Subordinate Officers to do the above said acts and nowhere prohibits the Chief Metropolitan Magistrate from authorising an Advocate Commissioner to go on his behalf for taking possession of assets and documents and forwarding the same to the secured creditor. The amendment gives discretion to the Chief Metropolitan Magistrate/District Magistrate either to authorise or take possession of such assets and document and the word used being "may", it is not always necessary on the part of the Chief Metropolitan Magistrate to authorise any officer subordinate to him. It is a well settled proposition of law that the observance of the word "may" used in the statute is only directory, in the

sense, non-compliance with those provisions will not render the proceedings invalid. Sometimes, the word "shall" may also be directory and not mandatory. The Honourable Supreme Court in the decision reported in Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, held thus,

"Generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done."

In the decision reported in Mahadev Govind Gharge and Others Vs. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka, the Hon"ble Supreme Court considered similar provision contained in CPC and in paragraph 37 held thus,

"37. Procedural laws, like the Code, are intended to control and regulate the procedure of judicial proceedings to achieve the objects of justice and expeditious disposal of cases. The provisions of procedural law which do not provide for penal consequences in default of their compliance should normally be construed as directory in nature and should receive liberal construction. The court should always keep in mind the object of the statute and adopt an interpretation which would further such cause in light of attendant circumstances. ....."

In the said judgment, the earlier decision of the Supreme Court reported in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, was considered and followed.

11. The object of the amendment introduced in Act 1 of 2013 being to give assistance to the Chief Metropolitan Magistrate/District Magistrate, the Chief Metropolitan Magistrate is justified in appointing Advocate Commissioner, instead of authorising Subordinate Officers to take possession. It is well settled in law that Advocates are also Officers of the Court, though not subordinate to Chief Metropolitan Magistrate. As Officers of the Court, the Advocates can perform their duty more effectively than the Officers, subordinate to the Chief Metropolitan Magistrate in taking possession of assets and documents and in delivering the same to the Secured Creditor. Thus, in any event, the contention raised by the learned counsel appearing for the petitioner is devoid of merits.

12. In fine, the writ petition is liable to be dismissed in limine and accordingly dismissed.