

(2014) 08 CAL CK 0102

Calcutta High Court

Case No: G.A. 3184 of 2013 and W.P. 1061 of 2013

United Bank of India

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Aug. 14, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 340
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 14

Citation: (2015) 1 BC 537 : (2014) 4 CALLT 31

Hon'ble Judges: Debangsu Basak, J

Bench: Single Bench

Advocate: Sandip Kumar Bhattacharyya, Abdul Masood and Suman Basu, Advocate for the Appellant; Ajay Krishna Chatterjee, Sr. Adv., Aniruddha Roy, U. Chakraborti and N. Dasgupta, Advocate for the Respondent

Judgement

Debangsu Basak, J.

The writ petitioner, a bank seeks directions on the respondent No. 6 to render the bank assistance with regard to its secured assets in terms of section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002). The writ petitioner approached the Chief Metropolitan Magistrate under section 14 of SARFAESI ACT, 2002. The Chief Metropolitan Magistrate directed the Police Authorities to render help to the petitioner for taking possession by an order dated January 28, 2013. The writ petitioner made several representations to the Police Authorities for police assistance in terms of the said order. In spite of such representations, no police assistance was rendered. The writ petitioner thereafter made an application before the Chief Metropolitan Magistrate for executing the order dated January 28, 2013. By an order dated September 16, 2013, the Chief Metropolitan Magistrate rejected such application on the ground that it has become functus officio. The private

respondent appears and opposes the prayer in the writ petition. According to the private respondent, the writ petitioner before me is guilty of suppression of material facts. The writ petitioner has suppressed material facts before the Chief Metropolitan Magistrate. According to the private respondent an order dated July 30, 2012 passed by this Court as also orders of the Debts Recovery Tribunal were suppressed before the Chief Metropolitan Magistrate by the writ petitioner. The private respondent claims that, the writ petitioners and the officials of the writ petitioner No. 1 are guilty of forgery and that they ought to be proceeded against under section 340 of the Code of Criminal Procedure. The private respondent has made an application being GA No. 3184 of 2013 to such effect.

2. In course of submissions I enquired of the private respondent as to any order in place passed by any Forum preventing the writ petitioner No. 1 from invoking the provisions of section 14 of the SARFAESI ACT, 2002. After much submissions, it was ultimately conceded that there was no such order in place. Reference was made to various orders passed by the Writ Court as also by the Debts Recovery Tribunal on behalf of the private respondent. However, ultimately no order was placed and it was conceded that there was no such order restraining the writ petitioner from proceeding under Section 14 in respect of the property that the writ petitioner was seeking to proceed.

3. In course of submission on behalf of the private respondent it is submitted that, there are two accounts; one in the name of Mohan General Trading Company and the other in the name of Silpa Creation Private Limited. Reference was made to a sanction letter dated September 20, 2011 in respect of Silpa Creation Private Limited. Orders passed by the Debts Recovery Tribunal in diverse proceedings as also an order of this Court were relied upon.

4. The writ petitioner No. 1 has approached the respondent No. 6 who is the authority under section 14 to consider an application for police help in terms of section 14 of the SARFAESI ACT, 2002. The respondent No. 6 considered such application and allowed the same by an order dated January 28, 2013.

5. It was the duty of the respondent No. 6 to ensure that its order dated January 28, 2013 was implemented. The writ petitioner No. 1 made several representations to the police authorities for police assistance which was not granted. The writ petitioner thereafter approached the Chief Metropolitan Magistrate on September 15, 2013 for implementing the order dated January 21, 2013. The Chief Metropolitan Magistrate by its order dated September 16, 2013 refused such application on the ground that it become functus officio.

6. There is no order in place which prevents the writ petitioner from proceeding under section 14 in respect of the property that it seeks to proceed against. The writ petitioner No. 1 is seeking to proceed against flat No. 7, Nilambari Apartment, 28B, Shakespeare Sarani, Kolkata -700 017 with car parking spaces standing in the name

of Smt. Puspa Ktyal.

7. Section 14 of the SARFAESI ACT, 2002 requires the Chief Metropolitan Magistrate within whose jurisdiction any secured asset is situate to take possession thereof on such request being made to him by a secured creditor and forward such asset to the secured creditor.

8. In the instant case, the writ petitioner No. 1 is the secured creditor. The property described at Sl. No. 3 of page No. 36 of the writ petition is a secured asset. There is no order subsisting as on date preventing the writ petitioner No. 1 from proceeding against such property under the SARFAESI ACT, 2002.

9. In such circumstances, the respondent No. 6 will authorise any officer subordinate to him to take possession of Sl. No. 3 of the sale notice dated August 2, 2012 and after taking possession thereof make over the possession of such secured asset to the writ petitioner No. 1 as the secured creditor. The respondent No. 6 will complete the entire exercise, if necessary, by adequate police assistance within seven working days of communication of this order upon the respondent No. 6.

10. GA No. 3184 of 2013 is an application at the instance of the private respondent claiming that the writ petitioner No. 1 is guilty of forgery and that the officials of the petitioner No. 1 should be proceeded against under section 340 of the Code of Criminal Procedure.

11. It is submitted that the writ petitioner No. 1 has obtained orders from the Chief Metropolitan Magistrate by suppressing material facts before him.

12. According to me, the only material fact before the learned Chief Metropolitan Magistrate is whether or not the writ petitioner No. 1 is a secured creditor entitled to proceed against its secured asset. Such question in the facts of the case has to be answered in the affirmative. The other allegation of the private respondent is that there is a subsisting order of the Debts Recovery Tribunal directing status quo upon payment of Rs. 50 lakhs.

13. It is pointed out on behalf of the writ petitioners that:

(a) The entirety of the order of the Debts Recovery Tribunal directing maintenance of the status quo upon payment of Rs. 50 lakhs has not been annexed in the application being GA No. 3184 of 2013,

(b) The conditional order of status quo of deposit of Rs. 50 lakhs has not been complied with,

(c) The order of the Debts Recovery Tribunal granted liberty to the writ petitioner No. 1 to proceed in absence of deposit of the sum of Rs. 50 lakhs.

14. It is submitted on behalf of the writ petitioner that, the sum of Rs. 50 lakhs as directed by the order of Debts Recovery Tribunal has not been deposited by the

private respondent. Therefore, the writ petitioners are entitled to proceed under SARFAESI ACT, 2002.

15. No material is on record to show that the condition of deposit of Rs. 50 lakhs imposed by the Debts Recovery Tribunal was complied with by the private respondent. Consequently, there is no order of status quo.

16. I take it that the omission to annex the entirety of the order of the Debts Recovery Tribunal in the application being GA No. 3184 of 2013 is a bone fide omission and on such basis, I do not take any action against the private respondent.

17. With the aforesaid observation and directions WP No. 1061 of 2013 and GA No. 3184 of 2013 are disposed of. There will be no order as to costs. Stay of operation of the order is prayed for by the private respondent and the same is refused.