MHGO030048422022

M.C.A. No. 783/2022
The Yavatmal Urban Vs. Rajiv Funde +2

ORDER BELOW EXH. 01
(Passed on 20.12.2022)

This is an application under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short **SARFAESI Act**).

2. It is the contention of the applicant that the notice under section 13(2) of the SARFAESI Act has already been served to the non applicant, however he failed to comply it. In the background prayed for allotting the possession of the secured asset.

3. The application is supported by an affidavit on record. Heard learned advocate for the applicant, according to which all the necessary compliance has been made. Hence, it is prayed to direct to the Tahsildar to do the needful for taking possession of the secured asset and to hand over it to the applicant.

4. The Hon'ble Supreme Court in **Authorized Officer, Indian Bank Vs. Visa Lakshireported in 2019 (20) SCC 47,** observed that the application under section 14 of the SARFAESI Act, can be filed even before the Chief Judicial Magistrate. Therefore this court is well within its jurisdiction to entertain the present application.

5. It is necessary to see that the application has been accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor. The affidavit shall declare the aggregate amount of financial assistance and the total claim of the Bank as on the date of filing of the application. The affidavit shall contain the following :

i] The borrower created security interest over properties and the Bank or financial institution is holding a valid and subsisting security interest over such property,

ii] there must be a declaration in the affidavit that the claim of the Bank or Financial Institution is within the limitation period,

iii] details of the properties over which security interest is created must be supplied,

iv] there must be default by the borrower in repayment of the financial assistance and the account of the borrower must be classified as a non performing asset,

v] notice under section l3(2) of the SARFAESI Act must have or representation has been communicated to the borrower,

vi] the affidavit must further declare that objection or representation in reply if any to the notice has been duly considered and reasons for non acceptance of such objection,

vii] the borrower must have failed to make repayment of the financial assistance inspite of the notice under section 13(2) of the SARFAESI Act and therefore, the bank or financial institution must be entitled to take possession of the secured assets.

6. The Hon'ble Supreme Court further in **<u>C. Bright Vs. District Magistrate (2021)2 SCC 392,</u>** has held that “The provision of the SARFAESI Act empowering District Magistrates/CMM to take possession of secured assets of defaulting borrowers within 60 days period for handing them over to the lending financial institutions is ‘directory’ and not “mandatory”in nature as banks cannot be made to suffer for the delay on the part of the government officers. It is held that inability to take possession within time limit does not render the District Magistrate/CMM ‘Functus Officio’. Therefore, irrespective of there being some delay caused due to unavoidable situations, this authority is not powerless to provide assistance as required under section 14 of the SARFAESI Act.”

7. Scrutinized and perused the contents of the application, affidavit as required by the proviso to section 14 and the entire record produced with the application. As such the above referred requirements vide section 14 of the SARFAESI ACT, are found duly complied. I am satisfied that the respondents are the borrower of the applicant and have created security interest in the property mentioned in the application in favour of the applicant. I am further satisfied that the applicant is holding a valid and subsisting security interest over the property. The claim of the applicant is within the limitation period. The borrower is seen to have committed default in repayment of the financial assistance and the account of the borrower has been classified as a non performing asset.

8. Now the question is whether it is necessary to hear the respondent by issuing notice ? The said question is answered by the **Hon'ble Parent High Court**, vide recent **Writ Petition bearing no. 9749 of 2021** on 03 August, 2022. As such the Hon'ble Parent High Court vide Para 18 observed :

18. *Section 14 does not contemplate the following :-*

(i) Any notice to be given to either Borrower or a Third Party,

(ii) Borrower or a Third Party to file any reply to the application,

(iii) Borrower/Third Party to be heard,

(iv) Adjudication as to the legality or validity of the mortgage,

(v) Adjudication as to the quantum of the debt claimed by the secured creditor,

(vi) Adjudication of any issues such as limitation, etc.

9. In the background the applicant is entitled to take possession of the secured assets. As per the provisions of section 14 of the SARFAESI Act, 2002 any subordinate officer or Court Commissioner can be appointed for the purpose of assisting the applicant for delivery of possession of the secured asset. The property is secured asset and is situated within the local limits of Municipal Council of Salekasa. Hence, considering the submissions of the learned advocate for the applicant, the following order.

ORDER

1) The application is allowed.

2) The Tahsildar, Salekasa is hereby directed to do the needful for taking possession of the secured asset i.e. the property as mentioned in the application or schedule, by taking such steps and force as required, including breaking the lock if any, or taking assistance of the police, if required at the expenses of the applicant and hand over the possession of it alongwith documents or articles, if any, to the applicant after preparing the panchanama and making inventory of the secured asset.

ABHIJEET VIJAY KULKARNI

Digitally signed by ABHIJEET VIJAY KULKARNI
Date: 2022.12.20 15:05:05 +0530

(Abhijeet V. Kulkarni)

Dt-20.12.2022

Chief Judicial Magistrate,
Gondia.

मी प्रमाणीत करतो की, या पीडीएफ फाईलमधील मजकुर व मुळ न्यायनिर्णय मधील मजकुर हा एकसारखाच आहे.

लघुलेखकाचे नाव : वि. न. दमाहे
कोर्टाचे नाव : अभिजीत व्ही. कुलकर्णी,
मुख्य न्यायदंडाधिकारी, गोंदिया.

न्यायनिर्णय/आदेश दिनांक : २०.१२.२०२२
पिठासीन अधिकारी यांनी सही केलेली तारीख : २०.१२.२०२२
न्यायनिर्णय/आदेश अपलोड केलेली तारीख : २०.१२.२०२२