Misc. Case No.24/2023

Aadhar Housing Finance Ltd. -vs.- Barun Bouri and Ors.

Order dated 30.09.2023

Today is fixed for passing order on the petition dated 01.03.2023 u/s. 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as "SARFAESI Act") filed by the petitioner praying for a direction to provide the physical possession of the secured assets as described in the schedule of the petition.

The written objection thereto has been filed on behalf of the respondent. Today Lawyer's hazirahs are filed on behalf of both sides. The Ld. Lawyers for both the sides were heard on the matter on 16.09.2023.

Now, the case record is taken up for passing order.

The Lawyer for the respondent has firstly submitted that this Court has no jurisdiction to entertain the prayer of the petitioner u/s. 14 of the SARFAESI Act. Therefore, it is to be ascertained at first whether this Court has any jurisdiction to entertain the prayer of the petitioner or not.

Section 14 of the SARFAESI Act contemplates that -
"*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 r quired 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."

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Therefore, it appears from the above referred statutory provision contemplated u/s. 14 of the SARFAESI Act that only the Chief Metropolitan Magistrate and District Magistrate are the competent authorities to exercise the power u/s. 14 of the Act. But by virtue of the several judicial pronouncements, Addl. Chief Metropolitan Magistrate and Addl. District Magistrate can also exercise the power conferred u/s. 14 of the SARFAESI Act.

The Ld. Lawyer for the petitioner has submitted that since the posts of Chief Judicial Magistrate and Chief Metropolitan Magistrate are equivalent and the posts of Addl. Chief Judicial Magistrate and Addl. Chief Metropolitan Magistrate are also equivalent, this Court being the Court of Addl. Chief Judicial Magistrate, Raghunathpur would have jurisdiction to pass order u/s. 14 of the SARFAESI Act.

However, I do not agree with such contention of the Ld. Lawyer for the petitioner. The measures prescribed u/s. 14 of the SARFAESI Act in favour of the secured creditors is purely administrative in nature and since there is no post of District Magistrate in metropolitan areas, the power u/s. 14 of the SARFAESI Act is conferred on the Chief Metropolitan Magistrates. However, in the non-metropolitan areas, the District Magistrates are the competent authority to exercise the power contemplated under section 14 of the SARFAESI Act. In this context, I opine that the Indian Legislature has intentionally ousted the Chief Judicial Magistrates from exercising the powers under section 14 of the SARFAESI Act by considering the measures enacted in favour of the secured creditors u/s. 14 of the SARFAESI Act as purely administrative in nature. Therefore, it is irrelevant to consider, whether the post of Chief Metropolitan Magistrate is equivalent to the post of Chief Judicial Magistrate within the meaning of the provision of section 14 of the SARFAESI Act.

However, Ld. Lawyer for the petitioner has referred several rulings viz, the decision of the Hon'ble Supreme Court in M/s. R.D. Jain & Co. -vs.- Capital First Ltd. in c/w. Civil Appeal No. 175 of 2022, wherein the Hon'ble Apex Court held that Addl. District Magistrate and Addl. Chief Metropolitan Magistrate can exercise the power conferred u/s. 14 of the SARFAESI Act and the decision of the Hon'ble Supreme Court in Balkrishna Rama Tarle Dead Thr. LRS. -vs.- Phoenix ARC Pvt. Ltd. in c/w. S.L.P. No. 16013 of 2022, wherein the Hon'ble Apex Court ruled that secured creditor is obliged to approach District Magistrate or Chief Metropolitan Magistrate by way of written application requesting for taking possession of secured assets. But the Ld. Lawyer for the petitioner has failed to cite any case law for showing that the Court of Addl. Chief Judicial Magistrate would also have the jurisdiction to exercise powers u/s. 14 of the SARFAESI Act.

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This is established by the several judicial pronouncements that the order passed by any Court or any Authority without jurisdiction is a nullity. In such circumstances, I find that this Court being the Court of Addl. Chief Judicial Magistrate, Raghunathpur would have no jurisdiction to entertain the petition dated 01.03.2023 u/s. 14 of the SARFAESI Act filed by the petitioner and therefore, the same is liable to be rejected.

Hence, it is,

Ordered

that the petition dated 01.03.2023 u/s. 14 of the SARFAESI Act filed by the petitioner is hereby rejected on contest, but without any order as to the costs.

D/C.

Sd./-

A.C.J.M. (R)

Sd./-

A.C.J.M. (1st Court)
Raghunathpur.