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HIGH COURT OF JUDICATURE AT BOMBAY

Dipankar Datta, CJ & M. S. Karnik, J.

CA. MANISHA MEHTA and ors. – Petitioners,

versus

THE BOARD OF DIRECTORS OF REPRESENTED BY ITS MANAGING DIRECTOR OF ICICI BANK and ors. – Respondents.

Writ Petition (L) No. 8418 OF 2022

23.03.2022

(i) Sarfaesi Act, S. 14 – The SARFAESI Act is intended to facilitate quick recovery of secured debts without extending any opportunity of hearing to a borrower and without judicial/quasi-judicial intervention till such time possession of the secured asset is taken by the secured creditor after serving the requisite notices and responding to the objection/representation that may be lodged/preferred by the borrower under section 13(3A) – Decision by a quasi-judicial authority (see section 17) upon compliance with natural justice stands deferred till such time possession, either symbolic or physical, is taken – The SARFAESI Act does not remotely suggest compliance with natural justice at the stage when section 13(4) or 14 operates – If a borrower has no right of hearing when the secured creditor takes possession under section 13(4), a *fortiori*, no hearing can be demanded by a borrower when he succeeds in resisting possession being gained over by the authorized officer of the secured creditor or does not on his own surrender possession, and thus compels such officer to work out the remedy by seeking assistance of the District Magistrate/Chief Metropolitan Magistrate, as the case may be, under section 14 – Only a post-possession right to approach the tribunal is conferred on a borrower in terms of section 17, nothing more and nothing less. [Para 7]

(ii) Constitution of India, Art. 226 – Sarfaesi Act, S. 17 – Invocation of the writ jurisdiction during pendency of application/ appeal under section 17 amounts to pursuing the writ remedy as a parallel remedy – Such a course of action is ordinarily not permissible – Since the SARFAESI Act provides a remedy which is being pursued, this writ petition ought not to be entertained. [Para 12, 15]

Mr. Mathew Nedumpara a/w Maria Nedumpara and Hemali Merva for petitioners.

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P.C. : This writ petition is at the instance of multiple petitioners who are all debtors of

different banks/financial institutions (hereafter 'the secured creditors", for short). They are aggrieved by orders passed by District Magistrates/Chief Metropolitan Magistrate under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter "the SARFAESI Act", for short). Some of the petitioners have approached the jurisdictional Debts Recovery Tribunal under section 17 of the SARFAESI Act and proceedings are pending.

2. The writ petition contains diverse prayers, which are set out herein below: –

"a) Declare that the obligation to hear the Borrowers/parties affected is liable to be read into the Section 14 of the SARFAESI Act, and that without such an obligation the Section is liable to the violative of the fundamental rights/basic structure of Constitution;

- Declare that Exhibit "C" order in the case of Petitioner no. 1 and similar orders in the case of the other Petitioners are liable to be declared as null and void ab initio being violative of the fundamental rights.
    - Issue a writ in the nature of certiorari quashing and setting aside the **Exhibits C, C1, D1, E, F1** being rendered null and void ab initio.
    - Issue a writ in the nature of mandamus directing the Respondents Nos.7 to 11, Chief Metropolitan Magistrate, Mumbai/District Magistrate Pune/Thane/Palghar to hear the Petitioners in all pending cases before them so far as the respective Petitioners are concerned, and where orders are already passed without hearing them, to hear the Petitioners and pass orders afresh by quashing all such orders rendered in violation of the principles of natural justice by the Chief Metropolitan Magistrate, Mumbai/District Magistrate Pune/Thane;
    - Issue a writ in the nature of prohibition, restraining and prohibiting the Chief Metropolitan Magistrate, Mumbai/District Magistrate Pune/Thane/Palghar, from passing any further orders without affording an opportunity to be heard to the Borrowers/Petitioners and restraining the Respondents from executing the orders which have already passed;
    - Declare that in PILs which are in the realm of class action litigation, which is distinct from 'pro bono litigation', to avoid a scenario as in PIL (cr) no. 24/2011, where interested persons (Creditors) could obtain orders against their adversaries (Borrowers) entirely behind their back, without notice to the borrowers or the public at large, a procedure akin to Order 1 Rule 8(2) of the CPC is liable to be adopted,
    - In furtherance of prayer (f) above, a consequential direction to the Registry of this Court to make appropriate amendments to the rules of procedure concerning PILs;

3. We have no doubt that the writ petition, in its present form, is not maintainable. Each petitioner is a debtor of a different bank/financial institution and, therefore, has a distinct cause of action. All these petitioners could not have joined in one single writ petition. However, we do not propose to dismiss the writ petition on such technicality and proceed to consider whether it is otherwise maintainable or not considering the claims raised therein.

4. The main prayer of the petitioners is for a declaration that natural justice should be read into section 14 of the SARFAESI Act.

5. Mr. Nedumpara, learned advocate appearing for the petitioners refers to the well-known principle of law that if a statute does not exclude compliance with natural justice principles either expressly or by necessary implication, compliance with natural justice has to be read into the statute. He argues that the SARFAESI Act has neither expressly excluded nor excluded by implication the requirement to comply with natural justice while the District Magistrate/Chief Metropolitan Magistrate considers an application of a secured creditor under section 14 and passes an order thereon; therefore, natural justice has to be read into section 14 for ends of justice. It has also been contended that since an order of the CMM/DM under section 14 for taking possession would visit a borrower with civil consequence, no such order can be made without complying with natural justice. Reliance has been placed by him on the decisions in **State of Orissa v. Binapani Dei,**AIR 1967 SC 1269 **A.K. Kraipak v. Union of India**, (1969) 2 SCC 262 and **Maneka Gandhi v. Union of India**, (1978) 1 SCC 248 in support of his contention.

6. We do not find any reason either to doubt such established principle of law, as canvassed, or not to be bound by the *ratio decidendi* of the decisions cited at the Bar.

7. However, the contention of Mr. Nedumpara has no substance having regard to the scheme of the SARFAESI Act, as explained in **Mardia Chemicals v. Union of India**, (2004) 4 SCC 311, **Transcore v. Union of India**, AIR 2007 SC 712 and **V. Noble Kumar v. Standard Chartered Bank**, (2013) 9 SCC 620 and other decisions. The SARFAESI Act is intended to facilitate quick recovery of secured debts without extending any opportunity of hearing to a borrower and without judicial/quasi-judicial intervention till such time possession of the secured asset is taken by the secured creditor after serving the requisite notices and responding to the objection/representation that may be lodged/preferred by the borrower under section 13(3A). That **Mardia Chemicals** (supra) and **Transcore** (supra) are pre- section 14 amendment decisions, make no difference. There is no fundamental change in the object and purposes of the SARFAESI Act even after the amendments. Since the need for a borrower to draw legal assistance arises only after a demand notice under sub-section (2) is issued, it has been experienced in very many cases that sub-section (1) of section 13, which is the harbinger of misfortune of recalcitrant borrowers, is completely overlooked by those representing them. It permits enforcement of security interest without the intervention of a court/tribunal but in accordance with the statutory provisions. The present case is not too different. Decision by a quasi-judicial authority (see section 17) upon compliance with natural justice stands deferred till such time possession, either symbolic or physical, is taken. The SARFAESI Act does not remotely suggest compliance with natural justice at the stage when section 13(4) or 14 operates. Paragraph 36 of **V. Noble Kumar** (supra) explains that there are 3 (three) methods for taking possession of a secured asset. In view thereof, section 14 cannot stand independent of section 13(4). If a borrower has no right of hearing when the secured creditor takes possession under section 13(4), a *fortiori*, no hearing can be demanded by a borrower when he succeeds in resisting possession being gained over by the authorized officer of the secured creditor or does not on his own surrender possession, and thus compels such officer to work out the remedy by seeking

assistance of the District Magistrate/Chief Metropolitan Magistrate, as the case may be, under section 14. Only a post-possession right to approach the tribunal is conferred on a borrower in terms of section 17, nothing more and nothing less.

8. Pertinently, section 14 of the SARFAESI Act was amended twice, once in 2013 and then again in 2016. If it were the intention of the legislature to extend opportunity of hearing to a borrower before the District Magistrate/Chief Metropolitan Magistrate, as the case may be, it was free to do so. Advisedly, the legislature did not do so, for, it would have militated against the scheme of the SARFAESI Act and more particularly section 13 thereof. It is implicit in the scheme of the SARFAESI Act that natural justice, only to a limited extent, is available and not beyond what is expressly provided. There seems to be little merit in the argument advanced by Mr. Nedumpara and we hold that the language of section 14 is too clear and unambiguous, and does not admit of any requirement of complying with natural justice by putting the borrower on notice while an application thereunder is under consideration.

9. Our view as aforesaid finds support from the coordinate bench decision of this Court in the case of **M/s. Trade Well v. Indian Bank.**2007 Cri.L.J. 2544 Although an off-the-cuff response of Mr. Nedumpara is heard that **M/s. Trade Well** (supra) does not lay down correct law, we find no reason to accept such response. In our opinion, the coordinate Bench in **M/s. Trade Well** (supra) has laid down a proposition of law which is correct and we share the view expressed therein.

10. The decisions in **Binapani Dei** (supra), **A.K. Kraipak** (supra) and **Maneka Gandhi** (supra) were rendered in entirely different fact situations. The law laid down therein would, however, not be applicable in view of our own reading and understanding of the decisions in **Mardia Chemicals** (supra), **Transcore** (supra) and **V. Noble Kumar** (supra), rendered on consideration of the SARFAESI Act. We reiterate that natural justice for a borrower within the meaning of section 2(f) of the SARFAESI Act has very limited application in actions taken for enforcement of security interest [only consideration of objection/representation under section 13(3-A) of the SARFAESI Act is mandated] and stands excluded till such time recourse is taken to section 17.

11. Prayers (a) and (d) to (g) are, accordingly, rejected.

12. What remains is consideration of the other prayers, viz. (b) and (c). We have noted above that some of the petitioners have approached the jurisdictional Debts Recovery Tribunal under section 17 of the SARFAESI Act. The application(s) is/are pending. Invocation of the writ jurisdiction during such pendency amounts to pursuing the writ remedy as a parallel remedy. Such a course of action is ordinarily not permissible. If any authority is required, we may refer to the decisions of the Supreme Court in **Delhi Gate Auto Service Station v. B.P.C.K. Agra Th. Sr. Div. Manager & Ors.,** (2009) 16 SCC 766 and **Orissa Power Transmission Corporation Ltd. v. Asian School of Business Management Trust** (2013) 8 SCC 738, as well as decisions of this Court in **Digambar & Anr. v. Union of India & Anr**. 2020 SCC OnLine Bom 8295, **John Sebastian Zezito Lobo v. Assistant Commissioner of Income Tax, Circle-2(1), Panaji & Ors.,** Writ Petition No.1066 of

2019 (Goa Bench), decided on 17th August 2021 (Bom.)., **Rambo Fashion Limited v. Board of Directors State Bank of India & Ors.,** Writ Petition No.2641 of 2018, decided on 9th September 2021(Bom.)

13. Additionally, in **K. S. Rashid And Son v. Income-tax Investigation Commission,**AIR 1954 SC 207 the Constitution Bench of the Supreme Court noticed that the appellants having already availed of the remedy provided for in section 8(5) of the Investigation Commission Act and that a reference had been made to the Allahabad High Court in terms of that provision which was awaiting decision, held that it would not be proper to allow the appellants to invoke the discretionary jurisdiction under Article 226 of the Constitution of India at that stage.

14. Since some of the petitioners have taken recourse to the proceedings under section 17 of the SARFAESI Act, which are pending, we would not be unjustified in drawing guidance from the decision in **K. S. Rashid** (supra) and hold that the remedy provided for in Article 226 of the Constitution of India, being a discretionary remedy, it would be just and proper to refuse to grant any writ in this particular case based on our satisfaction that the petitioners do have an adequate or suitable relief elsewhere.

15. Since the SARFAESI Act provides a remedy which is being pursued, this writ petition ought not to be entertained for considering prayers (b) and (c). These prayers are also rejected.

16. For the reasons as above, this writ petition stands dismissed. There shall be no order as to costs.

17. All contentions on the merits of the application(s) pending before the jurisdictional Debts Recovery Tribunal under section 17 of the SARFAESI Act are left open.

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