

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 2761/2024

Reserved on- 27.11.2024

CM 7536/2021

Pronounced on- 12.12.2024

M/SF. A. Construction Company

..Petitioner(s)/Appellant(s)

Through: Ms. Saima Mehboob, Advocate

Vs.

Jammu and Kashmir Bank Limited & Ors

..Respondent(s)

Through: Mr. Mouiz, Advocate vice

Mr. T. H. Khawaja, Advocate

CORAM:**HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE****HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE****JUDGMENT****Rajesh Sekhri-J**

01. As factual narration of the present case would unfurl, the petitioner Company approached the respondent bank for grant of various loan facilities and an aggregating amount of Rs. 1,70,00,000/- lacs (Rupees One Crore Seventy Lacs Only), came to be sanctioned and disbursed in its favour. In addition, it also availed a car loan facility of Rs. 2.94 lacs and a credit card facility of Rs. 5.00 lacs. They are secured by various security documents including duly registered Deeds of Mortgage as Collateral Security comprised of (1) Equitable Mortgage of 06 Marlas of land bearing Khasra No. 2173 min, Khata No. 494 & Khewat No. 68 at Mooza Nihalpora, Tehsil Pattan District Baramulla (2) Extension of Charge on equitable mortgage of three storied Residential House along with a land measuring 4 Marlas bearing Khasra No. 316 min, Khata No. 192 and

Khewat No. 173 situated at Mouza Umerheir Tehsil and District Srinagar (3) Registered mortgage of land measuring 10 Marlas bearing Khasra No. 37 min, Khata No. 550 min, Khewat No. 139 situated at Mouza Nunar Tehsil and District Bandipora (4) Equitable Mortgage of land measuring 3 Marlas bearing Khasra No. 7 min, Khata No. 871 min Khewat No. 138 min situated at Mouza Ausun, Tehsil Kangan, District Ganderbal and (5) Equitable mortgage of land measuring 06 Marlas bearing Khasra No. 103 (new) 322 (old), Khata No. 11 and Khewat No. 11 located at Shadab Colony, Ahmad Nagar Srinagar.

02. Since the petitioner failed to maintain the loan account as per the agreed terms and conditions, it was classified as a Non-Performing Asset with effect from 12.06.2023. As a result, notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [“the SARFAESI Act”] came to be issued on 26.06.2023, which according to the petitioner, was replied on 08.08.2023. The respondent bank preferred an application under Section 14 of the SARFAESI Act in the Court of learned Chief Judicial Magistrate, Srinagar and the said court vide order dated 26.04.2024 directed Tehsildar Eidgah, Srinagar to take possession of the secured assets and Tehsildar issued notice to the petitioner on 18.05.2024.

03. The aforesaid notice dated 26.06.2023 issued by the respondent under Section 13(2) of the SARFAESI Act, order dated 26.04.2024 passed by learned CJM, Srinagar and notice dated 18.05.2024 issued by Tehsildar, came to be questioned by the petitioner by way of writ petition; WP(C) 1124/2024 titled “*M/s F. A. Construction Company vs. J&K Bank Limited*”

& Others” and this Court vide order dated 29.05.2024 directed that subject to payment of Rs. 20.00 lacs by the petitioner within a period of 02 weeks to the respondent bank, no coercive action shall be taken against it. On 06.06.2024 this Court, in the said writ petition observed that if the aforesaid deposition was not made by the petitioner, the interim direction shall stand vacated and if made a similar amount be deposited again by the next date i.e., 12.07.2024 and if not done so, the interim protection shall stand vacated.

04. Case of the petitioner is that it deposited an amount of Rs. 17 lacs in compliance to order dated 29.05.2024 and the respondent bank refused to accept rest of the amount however, learned CJM, Srinagar vide order dated 26.04.2024 disposed of the application preferred by the respondent under Section 14 of the SARFAESI Act and a possession notice dated 13.11.2024 came to be issued by Tehsildar, Eidgah, Srinagar, whereby petitioner has been asked to remove the necessary belongings within 15 days from the date of issuance of notice and handover possession of the property to the respondent.

05. Having heard the rival contentions, we have perused and considered the record.

06. The petitioner Company has questioned the aforesaid order dated 26.04.2024 passed by learned CJM, Srinagar under Section 14 of the SARFAESI Act and the consequent possession notice dated 18.05.2024 of Tehsildar, primarily on the ground that it has not been afforded an opportunity of being heard and impugned orders have been passed despite receipt of an amount of Rs. 17.00 lacs by the respondent Bank.

07. Section 14 of the SARFAESI Act reads as below:-

“Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset. (1)

Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required 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 asset, 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 assets 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.”

08. It is axiomatic from a plain reading of Section 14 of the SARFAESI Act that it merely empowers the Chief Metropolitan Magistrate or District Magistrate to facilitate the secured creditor to take possession of the secured assets and documents. The role of the Magistrate in such cases is that of a facilitator only. The object of SARFAESI Act is to facilitate and ensure quick recovery of the secured assets without judicial or quasi judicial intervention and it is by far a trite and a crystallized position of law that principles of natural justice cannot be read into Section 14 of the SARFAESI Act. The Scheme of the SARFAESI Act does not remotely

suggest compliance with natural justice at the stage of Section 14 and the intervention of a judicial or quasi judicial body is deferred till the possession of secured assets is taken.

09. If an application is made by the secured creditor for possession of secured assets under Section 14, the Magistrate is only vested with the power to embark upon an inquiry to verify the information provided in the application and facilitate the possession of secured assets. The inquiry envisaged under Section 14 is not intended to adjudicate on the rights of the parties or the legality or otherwise of the transaction. It is purely ministerial in nature and Magistrate is not obliged to give the borrower an opportunity of being heard, even if he appears of his own. Section 14 only contemplates examination of factual correctness of the assertions made in the affidavit and does not empower the Magistrate to delve into legal niceties of the dispute involved. Be it also noted that as and when an application is preferred by the secured creditor before the concerned Magistrate, he is obliged to act swiftly and verify the compliance of formalities by the secured creditor. He cannot procrastinate the appropriate order to help the secured creditor to take possession of secured assets and relevant documents. Reference in this respect may be made to “**NKGSB Cooperative Bank Ltd. Vs. Subir Chakarvarty and Ors. [Civil Appeal No. 1637/2022; decided on 25.02.2022]** and **M/S R D Jain & Co. vs. Capital First Limited & Ors. [Civil Appeal No. 175/2022; decided on 27.07.2022]**, whereby it was held by Hon’ble Supreme Court that Section 14 of the SARFAESI Act requires the Magistrate to act and pass appropriate orders within stipulated period of time in order to facilitate the

secured creditor to take possession of the secured assets. Therefore, the primary ground urged by the petitioner Company that it has not been provided an opportunity of being heard by the Magistrate and the Tehsildar is found misconceived.

10. Back to the case, a perusal of the record reveals that total balance outstanding against the petitioner as on 31.10.2023 was Rs. 1,73,69,787.53/- (Rupees One Crore Seventy Three Lacs Seven Hundred Eighty Seven and Fifty Three Paise). This Court vide order dated 29.05.2024, in WP(C) 1124/2024, filed by the petitioner to assail notice under Section 13(2) of the SARFAESI Act, restrained the respondent from initiating any coercive action against the petitioner, subject however, to the payment of Rs. 20.00 lacs. When the said petition came up for hearing on 06.06.2024, it was directed that in case the aforesaid deposition was not made by the petitioner, the interim direction shall stand vacated and in case the deposition was made, a similar amount shall be deposited by the petitioner by next date i.e., 22.07.2024 and if not done so, the interim protection shall be deemed vacated. The petitioner in terms of aforesaid orders dated 29.05.2024 and 06.06.2024 was supposed to deposit an amount of Rs. 40.00 lacs only, out of the total outstanding amount of more than Rs. 1.73 crores as on 31.10.2023, which must have swelled to more than Rs. 2 crores by now. However, the petitioner Company by its own showing has only deposited Rs. 17.00 lacs and that too after the expiry of the stipulated period of time and since the concerned Tehsildar failed to submit any report, learned CJM was left with no option but to dispose of the application, preferred by the respondent under Section 14 of the

SARFAESI Act vide impugned order dated 26.04.2024 and Tehsildar, Srinagar issued the impugned possession notice against the petitioner.

11. For the foregoing reasons, we do not find any illegality or impropriety in the impugned orders. Hence, the present petition is dismissed.

(Rajesh Sekhri)
Judge

(Atul Sreedharan)
Judge

SRINAGAR:
12.12.2024
Abinash

