

HIGH COURT OF DELHI**Bench: HON'BLE MR. JUSTICE VIBHU BAKHRU and HON'BLE MR. JUSTICE AMIT MAHAJAN****Date of Decision: 11 December 2023**

W.P.(C) 13782/2022 and CM No. 42126/2022

REKHA VERMA**..... Petitioner****Versus****PUNJAB NATIONAL BANK (ERSTWHILE ORIENTAL BANK OF COMMERCE)****..... Respondents****Legislation:**

Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act)

Rule 8 of the Security Interest (Enforcement) Rules, 2002

Subject: Challenging the order of the Debts Recovery Appellate Tribunal (DRAT) and the Securitisation Application (SA No.144/2014) related to a property in Lajpat Nagar, New Delhi, under the SARFAESI Act.**Headnotes:**

Writ Petition - Challenging the order of the Debts Recovery Appellate Tribunal (DRAT) - Petitioner filed the petition to challenge the DRAT's order rejecting her appeal against the Debts Recovery Tribunal's (DRT) decision - The appeal pertains to a Securitisation Application (SA No.144/2014) related to the property in Lajpat Nagar, New Delhi - DRAT's order based on the applicability of the SARFAESI Act questioned - Reference to the Supreme Court's decisions in Standard Chartered Bank v. Noble Kumar and Hindon Forge Private Limited v. State of Uttar Pradesh regarding the possession of mortgaged property - Petition allowed, and the appeal is restored for reconsideration. [Para 1-6]

Referred Cases:

Standard Chartered Bank v. Noble Kumar and Ors.: (2013) 9 SCC 620

Hindon Forge Private Limited and Anr. v. State of Uttar Pradesh: (2019) 2 SCC 198

Representing Advocates:

Petitioner: Mr. Akshay Ringe and Mr. Ajay Khanna, Advocates

Respondent (Punjab National Bank, erstwhile Oriental Bank of Commerce):
Mr. Girish Verma, Advocate**VIBHU BAKHRU, J.**

1. The petitioner has filed the present petition impugning an order dated 20.03.2017 (hereafter '**the impugned order**') passed by the Debts Recovery Appellate Tribunal (hereafter '**DRAT**'), rejecting the petitioner's appeal (Appeal No.346/2016). The petitioner had filed the said appeal impugning an order dated 11.07.2016 passed by the Debts Recovery Tribunal-I (hereafter '**DRT**') rejecting the Securitisation Application (SA No.144/2014 captioned **Rekha Verma v. Oriental Bank of Commerce**).
2. The petitioner had preferred the aforesaid Securitisation Application (SA No.144/2014) *inter alia* praying that respondents be restrained from taking any steps under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereafter '**the SARFAESI Act**') in respect of the property described as "property bearing no. I-37, 3rd Floor (along with terrace rights), Lajpat Nagar-III, New Delhi (hereafter '**the subject property**'). The learned DRT had rejected the said application on merits.
3. The learned DRAT found that in view of the decision of the Supreme Court in **Standard Chartered Bank v. Noble Kumar and Ors.: (2013) 9 SCC 620**, the Securitisation Application filed by the petitioner under Section 17 of the SARFAESI Act before the learned DRT was not maintainable as the respondent had not taken possession of the subject property.
4. Mr Ringe, learned counsel appearing for the petitioner points out that in a later decision in **Hindon Forge Private Limited and Anr. v. State of Uttar Pradesh: (2019) 2 SCC 198**, the Supreme Court had clarified that it is not necessary that the actual physical possession of the mortgaged property be taken before recourse under Section 17(1) of the SARFAESI Act can be availed. Paragraph 36 of the said decision is set out below:

"36. Another case strongly relied upon by the learned counsel for the respondents is *Standard Chartered Bank v. V. Noble Kumar, (2013) 9 SCC 620*. This judgment decided that it is not necessary to first resort to the procedure under Section 13(4) and, on facing resistance, then approach the Magistrate under Section 14. The secured creditor need not avail of any of the remedies under Section 13(4), and can approach the Magistrate straightaway after the 60-day period of the notice under Section 13(2) is over, under Section 14 of the Act. This Court therefore held:

"35. Therefore, there is no justification for the conclusion that the Receiver appointed by the Magistrate is also required to follow Rule 8 of the Security Interest (Enforcement) Rules, 2002. The

procedure to be followed by the Receiver is otherwise regulated by law. Rule 8 provides for the procedure to be followed by a secured creditor taking possession of the secured asset without the intervention of the court. Such a process was unknown prior to the SARFAESI Act. So, specific provision is made under Rule 8 to ensure transparency in taking such possession. We do not see any conflict between different procedures prescribed by law for taking possession of the secured asset. The finding of the High Court in *V. Noble Kumar v. Standard Chartered Bank, 2010 SCC OnLine Mad 4067* in our view is unsustainable.

36. Thus, there will be three methods for the secured creditor to take possession of the secured assets:

37. (i) The first method would be where the secured creditor gives the requisite notice under Rule 8(1) and where he does not meet with any resistance. In that case, the authorised officer will proceed to take steps as stipulated under Rule 8(2) onwards to take possession and thereafter for sale of the secured assets to realise the amounts that are claimed by the secured creditor.

38. (ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under Rule 8(1) is given. In that case he will take recourse to the mechanism provided under Section 14 of the Act viz. making application to the Magistrate. The Magistrate will scrutinise the application as provided in Section 14, and then if satisfied, appoint an officer subordinate to him as provided under Section 14(1-A) to take possession of the assets and documents. For that purpose the Magistrate may authorise the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.

39. (iii) The third situation will be one where the secured creditor approaches the Magistrate concerned directly under Section 14 of the Act. The Magistrate will thereafter scrutinise the application as provided in Section 14, and then if satisfied, authorise a subordinate officer to take possession of the assets and documents and forward them to the secured creditor as under para 36.2.(ii) above.

40. (iv) In any of the three situations above, after the possession is handed over to the secured creditor, the subsequent specified provisions of Rule 8 concerning the preservation, valuation and sale of the secured assets, and other subsequent rules from the Security Interest (Enforcement) Rules, 2002, shall apply.”

When this Court referred to the first method of taking possession of secured assets in para 36.1.(i), this Court spoke of a case in which, once possession notice is given under Rule 8(1), no resistance is met with. That is why, this Court states that steps as

stipulated under Rule 8(2) onwards to take possession, and thereafter, for sale of the secured assets to realise the amounts that are claimed by the secured creditor would have to be taken, meaning thereby that advertisement must necessarily be given in the newspaper as mentioned in Rule 8(2), after which steps for sale may take place. This case again does not deal with the precise problem that is before the Court in this case. The observation made in para 36.1.(i), which is strongly relied upon by the Full Bench of the High Court, to arrive at the conclusion that actual physical possession must first be taken before the remedy under Section 17(1) can be availed of by the borrower, does not flow from this decision at all.”

(emphasis added)

5. In view of the above, the impugned order holding that the petitioner’s securitisation application would not maintainable in the light of the decision of the Supreme Court in ***Standard Chartered Bank v. Noble Kumar and Ors.*** (*supra*), is erroneous.
6. In view of the above, the impugned order is liable to be set aside.

The present petition is, accordingly, allowed. The petitioner’s appeal – being Appeal No.346/2016 captioned ***Rekha Verma v. Oriental Bank of Commerce*** is restored before the learned DRAT, to be decided in accordance with law.
7. The pending application also stands disposed of.

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