

HIGH COURT OF DELHI

Date of Decision: 9th February, 2024

Bench: JUSTICE MINI PUSHKARNA

W.P.(C) 1869/2024

M/S SUBHASH CHAND KATHURIA ...PETITIONER

VERSUS

PUNJAB NATIONAL BANK ...RESPONDENT

Legislation:

Sections 13(2), 13(4), 14, and 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Subject: Petition seeking quashing of order for possession of property under SARFAESI Act on grounds of territorial jurisdiction of the Chief Metropolitan Magistrate (CMM), North-West, Rohini.

Headnotes:

Territorial Jurisdiction – Improper Exercise of Jurisdiction by CMM, North-West, Rohini – Case involving property located under North District's jurisdiction, mistakenly handled by CMM, North-West, Rohini – Order dated 09th January, 2024 held without territorial jurisdiction. [Paras 1, 6, 9-10, 16, 19]

SARFAESI Act Enforcement – Loan Default and NPA Classification – Petitioner's loan account classified as Non Performing Asset (NPA) by Punjab National Bank – Bank's initiation of proceedings under SARFAESI Act for recovery of secured debt – Property in question kept as collateral security by the petitioner. [Paras 2-5, 11]

Jurisdictional Assessment by DRT – Role of Debt Recovery Tribunal (DRT) under SARFAESI Act – DRT to assess whether enforcement of security by secured creditor is in accordance with the Act's provisions – Petitioner advised to approach DRT for jurisdictional issues related to SARFAESI Act enforcement. [Paras 12-13, 17-18]

CMM's Authority under SARFAESI Act – Chief Metropolitan Magistrate's role in assisting secured creditor for possession of secured asset – Necessity of filing case under appropriate CMM's jurisdiction as per location of the secured asset. [Paras 14-15, 17]

Interim Relief Granted – Suspension of Impugned Order – Court suspends order dated 09th January, 2024 for one week, allowing petitioner time to approach DRT under Section 17 of the SARFAESI Act – Balancing of equities in view of jurisdictional error. [Para 19]

Referred Cases: Not mentioned in the provided text.

Representing Advocates:

Petitioner: Mr. Bharat Bhushan with Mr. Pulkit Sanghi

Respondent: Mr. Nitin Garg with Mr. Rahul Kumar and Mr. Satyakam, ASC.

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present petition has been filed seeking quashing of order dated 09th January, 2024 passed by the learned Chief Metropolitan Magistrate (“CMM”) North-West, Rohini in case bearing no. *CT 96/2024*. It is alleged that the learned CMM has passed the aforesaid order without having the territorial jurisdiction.

2. It is submitted that the petitioner has taken a credit limit of Rs. 1,40,00,000/- from the respondent/Bank in which the respondent had kept the entire first floor with common stair case of the built-up Property No. 33, Block-D, admeasuring 200 sq. yards situated at CC Colony, opposite Rana Pratap Bagh, Delhi-110007 as a collateral security.

3. It is submitted that the loan account of the petitioner had been classified as Non Performing Asset (“NPA”), pursuant to which the respondent/Bank served a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (“SARFAESI Act”).

4. Subsequently, the respondent/Bank filed the case bearing no. *CT 96/2024* under Section 14 of the SARFAESI Act before the learned CMM, North-West, Rohini Court to assist the secured creditor in taking possession of the secured asset against the petitioner.

5. It is submitted that by order dated 09th January, 2024 the learned CMM has allowed the petition filed on behalf of the respondent/Bank. Consequently, the petitioner has received a notice dated 16th January, 2024 from the receiver appointed by the learned CMM to take possession of the property in question.

6. The petitioner has approached this Court on the ground that the Court of learned CMM, North-West, Rohini does not have the territorial jurisdiction, as the property in question falls within the jurisdiction of learned CMM, North District, under Police Station: Model Town.

7. The present matter was listed for hearing yesterday i.e. 08th February, 2024, when this Court had requested Mr. Satyakam, learned Additional Standing Counsel, for Government of NCT of Delhi (“GNCTD”) to take requisite instructions and apprise the Court as to whether the Court of learned CMM, North-West District or the Court of learned CMM, North District would have the requisite jurisdiction, in terms of the contention raised on behalf of learned counsel for the petitioner.

8. Today, Mr. Satyakam, learned Additional Standing Counsel, GNCTD has handed over a letter dated 09th February, 2024, issued by the Office of the Principal District & Sessions Judge (North-West) Rohini Courts, Delhi, which reads as under:-

**“OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS
JUDGE (NORTH-WEST) ROHINI COURTS DELHI**

No. 39/Lit./NW/RC/2024

Delhi, Dated 09/2/2024

*To
Sh. Satyakam
Addl. Standing Counsel (GNCTD)
High Court of Delhi*

***Sub: Report w.r.t Jurisdiction sought in writ petition 1869/2024,
titled as M/s Subhash Chand Kathuria vs. Punjab National Bank.***

Respected Sir,

I am directed to communicate you that the said petition (CT 96/2024) was filed before the Ld CMM (North-West) mentioning the P.S. Bharat Nagar which falls under the jurisdiction of the Ld CMM (North-West), however, the area of property in question falls for Civil and Criminal Jurisdiction under North District.

Thanking you,

Yours faithfully

*Branch Incharge
Litigation Branch (North-West),*

Rohini Courts, Delhi”

(Emphasis Supplied)

9. In view of the aforesaid letter, it is clear that the area where the property in question is situated, falls within the jurisdiction of the learned CMM, North District and not learned CMM, North-West District.

10. Thus, it is clear that the order dated 09th January, 2024 passed by the learned CMM, North-West District, Rohini in CT No. 96/2024 is clearly without any territorial jurisdiction.

11. This Court notes that in terms of Section 13(4) of SARFAESI Act, in case the borrower fails to discharge his liability in full within the period specified, the secured creditor has the authority to take recourse to the measures as given in the said Section, which includes taking possession of the secured assets of the borrower. Section 13(4) of the SARFAESI Act reads as under:-

“Section 13. Enforcement of security interest.

xxx xxx xxx

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

⁴[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

xxx xxx xxx”

12. This Court also notes that Section 17(2) of the SARFAESI Act categorically elucidates that any person, including the borrower, who is aggrieved by any of the measures referred in Sub-Section (4) of Section 13 taken by the secured creditor, shall move an application to the Debt Recovery Tribunal (“DRT”) having jurisdiction in the matter. The said section further provides that the DRT shall consider whether any of the measures referred in Sub-Section (4) of Section 13 of the SARFAESI Act taken by the secured creditor for enforcement of security, are in accordance with the provisions of this Act. Section 17 of the SARFAESI Act is reads as under:-

“17. Application against measures to recover secured debts.-- (1) *Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, ²[may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:*

³*[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]*

⁴*[Explanation.--For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]*

⁵*[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction--*

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder. xxx xxx xxx”

13. Perusal of the aforesaid clearly shows that the DRT has the jurisdiction to assess whether the enforcement of security by the secured creditor is in accordance with the provisions of the Act.

14. This Court notes that Section 14 of the SARFAESI Act categorically states that the Chief Metropolitan Magistrate or the District Magistrate has the authority to assist the secured creditor in possession of the secured asset. However, the said section further provides that the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction any such secured asset or other documents related thereto, may be situated or found to take possession thereof, then said Chief Metropolitan Magistrate or the District Magistrate, as the case may be, shall upon application made in this regard by the secured creditor, take possession of such asset. Section 14(1) of the SARFAESI Act reads as under:-

“Section 14. 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 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 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:

¹[Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that---

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets ²[within a period of thirty days from the date of application:]

[Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.]

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.]

xxx xxx xxx”

15. Perusal of Section 14(1) of the SARFAESI Act manifests that the learned CMM has the authority to take action and issue directions for taking over the

- secured assets, where such secured asset is situated within the jurisdiction of the said CMM.
16. In the present case, the order passed by the learned CMM is clearly without jurisdiction, since as per the submission of the learned Additional Standing Counsel for the GNCTD, the area in question where the property is situated, falls for civil and criminal jurisdiction under the North District.
 17. This Court further notes that learned DRT has the authority under Section 17 of the SARFAESI Act to deal with all matters, including considering the fact that the steps taken by the secured creditor for enforcement of security, are in accordance with the provisions of the SARFAESI Act. Thus, the issue that the steps taken by the secured creditor are not in accordance with the provisions of the SARFAESI Act in that the impugned order has been passed by learned CMM without having the territorial jurisdiction, can be raised by the petitioner before the learned DRT.
 18. Therefore, this Court is of the view that the petitioner ought to approach the learned DRT since there is an efficacious remedy available under Section 17 of the SARFAESI Act.
 19. Since in the present case, it has come to the fore that the impugned order dated 09th January, 2024 passed by learned CMM, North-West, Rohini Courts is without any jurisdiction, therefore, in order to balance the equities, the order dated 09th January, 2024 is suspended for a period of one week, in order to grant opportunity to the petitioner to approach the learned DRT under Section 17 of the SARFAESI Act.
 20. With the aforesaid directions, the present petition is disposed of.
 21. This Court records its appreciation for the assistance given by Mr. Satyakam, learned Additional Standing Counsel for Delhi Government.

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