

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 12th OF JANUARY, 2024

W.P. No.19144 of 2023

BETWEEN:-

**UMESH KUMAR GUPTA S/O LATE SHRI
RAM SAJIVAN GUPTA, AGED ABOUT 51
YEARS, OCCUPATION: THROUGH NEXT
FRIEND SMT. MAMTA GUPTA W/O UMESH
KUMAR GUPTA AGED 48 YEARS 457 IN
FRONT OF PANCHAYAT BHAWAN WARD
NO. 02 BAIKUNTHPUR DISTRICT REWA
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI PUSHPENDRA DUBEY - ADVOCATE)

AND

- 1. THE COLLECTOR REWA DISTRICT REWA
(MADHYA PRADESH)**
- 2. HINDUJA HOUSING FINANCE LIMITED
THROUGH ITS AUTHORIZED
OFFICER/CHIEF MANAGER REWA NO.
392/1 MITRA HEIGHT, SHILPI PLAZA WN 17
COLLEGE CHOWK NARENDRA NAGAR
REWA DISTRICT REWA (MADHYA
PRADESH)**

.....RESPONDENTS

*(RESPONDENT NO.1 BY SHRI ANKIT AGRAWAL - GOVT. ADVOCATE
AND RESPONDENT NO.2 BY SHRI ANUPAM BHATT - ADVOCATE)*

*This petition coming on for admission this day, Hon'ble Shri
Justice SHEEL NAGU passed the following:*

ORDER

This petition filed under 226 of the Constitution of India assails order dated 27.06.2023 (Annexure P/1) passed by respondent No.1 Collector, Rewa dismissing objection preferred by petitioner-borrower in a proceeding u/S 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') pending before District Magistrate, Rewa.

2. Bare facts giving rise to the present case are that petitioner is a borrower while respondent No.2 is a financial institution which had extended loan facility of Rs.45.00 lacs to petitioner and for securing the same petitioner mortgaged certain piece of land. It is further not disputed that petitioner defaulted in repayment of loan leading to the loan account becoming NPA and the financial institution after resorting to Section 13(1) & (2) of the SARFAESI Act took recourse to Section 13(4) of the SARFAESI Act by filing an application u/S 14 of the SARFAESI Act before District Magistrate, Rewa. During pendency of

these proceedings u/S 14 of the SARFAESI Act, the objection of petitioner-borrower has been rejected.

2.1 The objection of petitioner-borrower was that the financial institution has already invoked arbitration clause in the agreement between petitioner-borrower and financial institution whereafter award has been passed on 27.08.2021 in favour of financial institution and an application u/S 36 for executing the same is preferred and pending before the Commercial Court, Rewa.

2.2 It is further not disputed by petitioner that a Securitization Application has been filed by petitioner-borrower assailing the notice for possession issued by respondent financial institution u/S 13(4) of the SARFAESI Act.

3. Learned counsel for petitioner Shri Pushpendra Dubey referring to Section 11 of the SARFAESI Act submits that the said provision mandates settlement of dispute regarding non-payment of amount due including interest by way of conciliation or arbitration in terms of procedure provided under Arbitration & Conciliation Act, 1996 (for short '**AC Act**'), notwithstanding non-grant of consent by any of the rival parties.

4. After having heard learned counsel for rival parties, this Court is of the considered view that power of judicial review as sought by petitioner cannot be invoked by this Court in the given and attending facts and circumstances for the reasons infra:-

4.1 No doubt Section 11 of the SARFAESI Act mandates dispute to be resolved by way of conciliation and arbitration but Section 35 & 37 of the SARFAESI Act are worthy of reference at this stage. The said two provisions i.e. Section 35 & 37 of the SARFAESI Act for ready reference and convenience are produced hereinbelow:

“35. The provisions of this Act to override other laws.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

37. Application of other laws not barred—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.”

Section 35 of SARFAESI Act stipulates that provisions of SARFAESI Act shall have overriding effect over anything in consistent in any other law for the time being in force or any instrument having effect by virtue of any such law. The Apex Court in AIR 2016 SC 530 (***Vishal N. Kalsaria vs. Bank of India***) has interpreted the expression “any other law for the time being in force” to mean that any other law operating in the same field i.e. the field occupied by SARFAESI Act.

4.2 Whereas Section 37 prescribes that the provisions of SARFAESI Act are mandated to take effect in addition to and not in derogation of Companies Act, 1956, Securities Contracts (Regulation) Act, 1956 Securities and Exchange Board of India Act, 1992, and Recovery of

Debts Due to Banks and Financial Institutions Act, 1993 and any other law for the time being in force. Meaning thereby that the overriding effect of the SARFAESI Act mandated in Section 35 of the SARFAESI Act is diluted to a consideration extent by Section 37 of the SARFAESI Act by providing that the provisions of SARFAESI Act would be in addition to and not in derogation of various enactments referred to in Section 37 of the SARFAESI Act and also any other law for the time being in force, including AC Act, which has been invoked by respondent financial institution herein.

5. In view of above express provision u/S 35 & 37 of the SARFAESI Act, it is obvious that the provisions of AC Act of 1996 are available to the financial institution to be invoked in addition to the remedy available under the SARFAESI Act. In the instant case, respondent financial institution invoked the AC Act and obtained an award for execution of which an application is pending before the Commercial Court. Simultaneously, respondent financial institution has invoked one of the recourses of Section 14 of the SARFAESI Act available u/S 13(4) of the SARFAESI Act, by approaching District Magistrate, Rewa u/S 14 of SARFAESI Act.

5.1 While taking the aforesaid view, this Court is bolstered by Apex Court decision extract of which is reproduced below:-

“32. The aforesaid is not a case of election of remedies as was sought to be canvassed by the learned Senior Counsel for the appellants, since the alternatives are between a civil court, Arbitral Tribunal or a Debt Recovery Tribunal constituted under

the RDDB Act. Insofar as that election is concerned, the mode of settlement of disputes to an Arbitral Tribunal has been elected. The provisions of the SARFAESI Act are thus, a remedy in addition to the provisions of the Arbitration Act. In Transcore v. Union of India, (2008) 1 SCC 125, it was clearly observed that the SARFAESI Act was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. Liquidation of secured interest through a more expeditious procedure is what has been envisaged under the SARFAESI Act and the two Acts are cumulative remedies to the secured creditors.

33. SARFAESI proceedings are in the nature of enforcement proceedings, while arbitration is an adjudicatory process. In the event that the secured assets are insufficient to satisfy the debts, the secured creditor can proceed against other assets in execution against the debtor, after determination of the pending outstanding amount by a competent forum.

34. We are, thus, unequivocally of the view that the judgments of the Full Bench of the Orissa High Court in Sarthak Builders (P) Ltd. v. Orissa Rural Dev. Corpn. Ltd., 2014 SCC OnLine Ori 75, the Full Bench of the Delhi High Court in HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 and the Division Bench of the Allahabad High Court in Pradeep Kumar Gupta v. State of U.P., 2009 SCC OnLine All 877 lay down the correct proposition of law and the view expressed by the Andhra Pradesh High Court in Deccan Chronicles Holdings Ltd. v. Union of India, 2014 SCC OnLine AP 104 following the overruled decision of the Orissa High Court in Subhash Chandra Panda v. State of Orissa, 2008 SCC OnLine Ori 10 does not set forth the correct position in law. SARFAESI proceedings and arbitration proceedings, thus, can go hand in hand.”

5.2 In view of above, no fault can be found with the respondent financial institution invoking Section 14 of SARFAESI Act by approaching District Magistrate, Rewa.

6. Though District Magistrate, Rewa while dismissing the objection of petitioner borrower ought to have passed a speaking order which was not done. However, since non-passing of speaking order cannot help the petitioner-borrower as the invocation of Section 14 of the SARFAESI Act by the financial institution has been held by this order to be well within the parameters of law, this Court declines to interfere on the said technical ground of impugned order being non-speaking.

7. Consequently, petition is **dismissed** with liberty to petitioner-borrower to raise all available contentions including one raised herein in the Securitization Application pending before Debt Recovery Tribunal. The interim order passed by this Court on 28.08.2023 stands vacated.

8. No cost.

(SHEEL NAGU)
JUDGE

(VINAY SARAF)
JUDGE