

Neutral Citation No. - 2024:AHC-LKO:75623-DB

Court No. - 2

Case :- WRIT - C No. - 9723 of 2024

Petitioner :- Pnb Housing Finance Ltd. Lko. Thru.

Authorised Representative Mr. Surya Prakash Mishra

Respondent :- State Of U.P. Thru. Prin. Secy. Home U.P.

Lko. And 8 Others

Counsel for Petitioner :- Nitesh Kumar Tripathi, Saumya

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Brij Raj Singh, J.

Heard.

This is a petition under Article 226 of the Constitution of India seeking execution / enforcement of the order dated 13.09.2024 passed in Case No. 74239 of 2024 under Section 14 of the SARFAESI Act, 2002 (hereinafter referred to as "the Act, 2002"), as actual physical possession of the secured asset has not yet been provided to the petitioner, who is the secured creditor.

The order dated 13.09.2024 has been challenged by the borrower under Section 17 of the Act, 2002 before Debt Recovery Tribunal but, there is no interim order. If it is so, i.e. there is no stay, then it is for the officer who has passed the order to ensure its execution in terms of Section 14 (1-A), (2) & (3) of the Act, 2002 which reads as under:-

"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:"

[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 [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.]

[(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

***(i) to take possession of such assets and documents relating thereto; and
(ii) to 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 [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority."

The above quoted provision evidently says that the District Magistrate or the Chief Metropolitan Magistrate may authorize any officer subordinate to him (i) to take possession of such assets and documents relating thereto; and (ii) to forward such assets and documents to the secured creditor. This makes intention of the legislature clear, that, it is the District Magistrate or the Chief Metropolitan Magistrate (who in the State of U.P. would be the Chief Judicial Magistrate) are obliged to take possession of such assets and documents relating thereto, and to forward such assets & documents to the secured creditor. Therefore, it is not the secured creditor who after obtaining an order under Section 14 of the Act, 2002 who is supposed to run from pillar to post or to the police personnel to get the order executed, it is the obligation of the aforesaid officer. Further, for the purpose of securing compliance with the provisions of Sub-section (1) of the Act, 2002, 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. This also makes it clear that it is the statutory obligation of the District Magistrate or the Chief Metropolitan Magistrate / Chief Judicial Magistrate, to take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary. In fact, a separate execution case or enforcement case need not be registered either by the District Magistrate or the Chief Judicial Magistrate, but after passing of requisite orders under Section 14 of the Act, 2002, its execution should also be ensured and after possession has actually been handed over to the secured creditor, only then the proceedings under Section 14 should be consigned and treated as concluded, not prior to it. It appears that after passing of such orders, the District Magistrates or the Chief Judicial Magistrates leave the secured creditor to the mercy of the police personnel, as if, it is the secured creditor who has to get the order enforced through the police, which is not the correct legal position. In judgment dated 25.10.2024 rendered in ***Writ C No. 8867 of 2024, Bank of Baroda Vs. State of U.P. and 8 others***, we have already held that there is no requirement of issuing notice to the Borrower in such proceedings under Section 14. However, we must clarify that a reasonable time say of at least 15 days should be given to the occupant of the secured asset to vacate the

premises so that he may shift his belongings.

In view thereof, the petitioner is granted liberty to move an application before the Chief Judicial Magistrate who has passed the order on 13.09.2024, who shall take cognizance for enforcement of his orders in terms of the aforesaid provisions, and then ensure its execution / enforcement at the earliest, keeping in mind the intent and object of the provision contained in the Act, 2002 as the recent judgment of this Court dated 25.10.2024 passed in ***Writ C No. 8867 of 2024, Bank of Baroda Vs. State of U.P. and 8 others.***

This order is being passed without prejudice to the rights of the borrower who has preferred an application under Section 17 of the Act, 2002 and the officer aforesaid shall verify as to whether there is any interim order in favour of the borrower by the Debt Recovery Tribunal or not; and thereafter, proceed to enforce his orders. The Senior Registrar of this Court at Lucknow shall communicate this order to Chief Judicial Magistrate, Lucknow for compliance.

We direct Shri Raj Bux Singh, learned Additional Chief Standing Counsel to communicate this order to the Chief Secretary, U.P., for circulation amongst the District Magistrates in the State of U.P.. Likewise, a copy of this order be also sent to the Director, Judicial Training Research Institute, Lucknow, U.P..

The writ petition is **disposed of** in the aforesaid terms.

Order Date :- 14.11.2024

Lokesh Kumar

[Brij Raj Singh, J.] [Rajan Roy, J.]