

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE AN APPROPRIATE WRIT TO STATE LAW THAT IN VIEW OF CONCEPT OF NON-PERFORMING ASSET DEFINED UNDER SECTION 2(1)(O) OF SARFAESI ACT, 2002, INDICATING IT AS BASED ON VALUATION OF THE ASSETS IN THE HANDS OF SECURED CREDITOR, THE EXPRESSION NON-PERFORMING ASSET USED IN SECTION 2(1)(j) OF SARFAESI ACT 2002, RENDERED AS APPLICABLE ONLY FOR BOOK PURPOSES OF THE BANKS/FINANCIAL INSTITUTIONS AND FOR NO OTHER PURPOSES, IN CONSEQUENCE WHEREOF, SET ASIDE THE PROVISIO (v) TO SECTION 14 OF SARFAESI ACT 200, INSERTED VIDE ANNEXURE-K VIDE NOTIFICATION IN THE GAZETTE OF INDIA DATED 04/01/2013. ISSUE AN APPROPRIATE WRIT ORDER TO DECLARE SECTION 14 OF SARFAESI ACT, 2002, VIDE ANNEXURE-K1 GOVERNMENT OF INDIA GAZETTE DATED 17/12/2001, WHICH THOUGH IS LEGISLATIVELY COMPETENT, IN ITS APPLICATION TO IMMOVABLE PROPERTIES OF GUARANTORS, AS VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION IN ABSENCE OF PROVIDING SAFE GUARDS OF PROTECTING GUARANTORS RIGHTS UNDER SECTION 139 AND 141 OF THE CONTRACT ACT 1872, INTENDED IN ARTICLE 300-A OF THE CONSTITUTION OF INDIA & ETC.

THIS W.P. COMING ON FOR ORDERS, THIS DAY, **ALOK ARADHE J.**, MADE THE FOLLOWING:

ORDER

Heard on the question of admission.

In this writ petition, petitioner inter alia has assailed the validity of proviso (v) to Section 14(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter

referred to as 'the Act' for short). The petitioner has also sought declaration of the aforesaid provision as violative of Article 14 of the Constitution of India in the absence of providing safeguards for protecting guarantor's rights under Section 139 and 141 of the Contract Act, 1872.

2. Facts giving rise to filing of this petition briefly stated are that loan facility was sanctioned to the principal borrower namely respondent No.4 on 15.05.2015 by the Respondent No.2 - Bank. The petitioner in pursuance of the loan sanctioned to the principal borrower furnished the guarantee. The principal borrower committed default in repayment of the loan. Thereupon, the bank initiated the proceedings under the Act on 08.04.2019 and symbolically took possession of the property in question on 16.01.2020. Thereafter, the First Additional Chief Metropolitan Magistrate, Bangalore has passed the order on 16.01.2020 under Section 14 of the Act in respect of the dwelling house of the petitioner. In the aforesaid factual background, this petition has been filed.

3. Learned counsel for the petitioner submitted that to Section 14 (1)(v) of the Act as violative of Section 2(1)(o) of the Act, which defines the expression Non-Performing Asset. It is further submitted that the secured creditor has lost all the primary securities, which he held in the trust for the assurance given by the guarantors. Therefore, the obligation of the guarantor viz., the petitioner stands dissolved and discharged. However, Section 14 (1) (v) of the Act is violative of Article 14 of the Constitution of India on account of safeguards to protect the rights of the guarantor.

4. We have considered the submissions made by learned counsel for the petitioner and have perused the record. Section 2 (1) (o) of the Act defines the expression 'Non-Performing Asset', which reads as under:

2(1)(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset,—

(a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with

the directions or guidelines relating to assets classifications issued by such authority or body;

(b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank;

The relevant extract of Section 14(1)(v), which contains the portion which the petitioner seeks to challenge as well 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:

(i) xxxxxx

(ii) xxxxxx

(iii) xxxxxx

(iv) xxxxxx

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

5. Thus, it is evident that Section 14(1)(v) of the Act provides that an application which may be submitted by the secured creditor shall be accompanied by an affidavit duly affirmed by authorized officer of the secured creditor declaring that consequent upon default of repayment of the financial assistance the account of the borrower has been classified as a Non-Performing Asset. Section 2(1)(o) of the Act defines the expression 'Non-Performing Asset'. Section 14 (1)(v) apparently is not in conflict with Section 2(1)(o) of the Act. Therefore, the contention of the petitioner that Section 14(1)(v) of the Act has to be struck down as it is violative of Section 2(1)(o) of the Act is sans substance. Even otherwise, it is well settled in law that in case, there is a

conflict between two provisions of a statute, the principle of harmonious construction has to be applied. Therefore, on this ground also the contention of the petitioner cannot be accepted. So far as submission that Section 14(1)(v) of the Act does not make a distinction between the principal borrower and the guarantor in case the primary securities are lost as stated supra is concerned, Section 14(1)(v) of the Act only provides for requirement of a declaration by the secured creditor that the account of borrower has been classified as a Non-Performing Asset. The aforesaid submission in no way makes Section 14(1)(v) of the Act ultra vires the Constitution.

6. For the aforementioned reasons, we do not find any merit in the contention of the petitioner. Needless to state that the petitioner shall be at liberty to assail the order dated 16.01.2020 passed by the First Additional Chief Metropolitan Magistrate under Section 14 of the Act in an appeal if so advised.

With the aforesaid liberty the petition is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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