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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 657/2020 & CM APPL. 1851/2020**

Date of decision: 17.01.2020

RAHUL CHAUDHARY

..... Petitioner

Through: Mr. Rajeep Panday with Ms. Sunieta
Ojha and Ms. Monika Jain,
Advocates.

versus

ANDHRA BANK AND ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

CM APPL. 1852/2020 (Exemption)

1. Allowed, subject to just exceptions.

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2. Shorn of verbiage, the singular submission advanced on behalf of the petitioner is that the appointment of receiver by the Learned Chief Metropolitan Magistrate (in short "CMM") is contrary to the language of Section 14 (1A)¹ of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short "SARFAESI Act").

3. In support of his plea, learned counsel for the petitioner relies upon the

¹ **14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset. -**

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[(1A) 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.]

judgment of the Division Bench of the Bombay High Court dated 06.11.2019, passed in W.P. (C) No. 28480/2019, titled: ***Subir Chakravarty and Ors. vs. Kotak Mahindra Bank Ltd.*** (hereinafter referred to as “***Subir Chakravarty’s case*”**).

3.1 To be noted, the receiver has been appointed by the learned CMM vide order dated 05.12.2019.

4. The learned CMM has appointed an advocate to take possession of the secured asset.

5. Counsel for the petitioner does not dispute that fact that the receiver appointed by the learned CMM has taken possession of the subject secured asset on 16.01.2020.

6. It is, however, the say of the counsel for the petitioner that appointment of an advocate as a receiver was contrary to the provisions of Section 14 (1A) of the SARFAESI Act and, therefore, that part of the order passed by the learned CMM should be set aside as was done by the Bombay High Court in the aforementioned matter.

7. To my mind, the writ petition, in fact, has been rendered infructuous, in a sense, that the receiver would have handed over the possession of the subject asset to the secured creditor, that is, the Andhra Bank.

8. Nevertheless, according to me, the language of Section 14(1A) of the SARFAESI Act uses the expression “*may*” and not “*shall*”.

8.1 There are two ways of appreciating the provision. First, that the expression “*may*” relates to the choice of the subordinate officer. The other meaning that can be placed on the provision is that District Magistrate/CMM is vested with discretion to appoint officers subordinate to him to take possession of the secured asset.

8.2 The District Magistrate/CMM is obliged to take possession once an

application in that behalf is preferred under sub-section (1) of Section 14 of the SARFAESI Act by the secured creditor.

8.3 It is in the exercise of such power that recourse can be taken by the District Magistrate/CMM to the provisions of sub-section (1A) of Section 14. This provision was introduced *via* Act 1 of 2013. Before that the District Magistrate/CMM were perhaps taking recourse to sub-section (2) of Section 14 and, thus, appointing advocates as receiver.

8.4 To my mind, after the insertion of sub-section (1A) in Section 14, the only change that has been brought about is that the District Magistrate/CMM has now the discretion to appoint even their subordinate officers as receivers.

8.5 Pertinently, sub-section (1A) of Section 14 does not bar the appointment of advocates as receivers. The same position obtains *vis-à-vis* Rule 8(3) of The Security Interest (Enforcement) Rules, 2002, which has been cited in the aforementioned judgment of the Bombay High Court.

9. As was noticed in ***Subir Chakravarty's*** case, the District Magistrates and the CMMs are overburdened. The position is no different in Delhi.

10. Thus, in my view, since the provision vests discretion in the District Magistrate/CMM and as long the discretion is exercised with due care and caution, the appointment of advocates as receivers cannot be faulted.

11. Therefore, I find no merit in the writ petition, the same is, accordingly, dismissed.

12. Consequently, the pending interlocutory application shall stand closed.

RAJIV SHAKDHER, J

JANUARY 17, 2020

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