

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SUJOY PAUL

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 17th OF MARCH, 2023

WRIT PETITION No. 6213 of 2023

BETWEEN:-

M/S AGRAWAL COALS AND LOGISTICS (PARTNERSHIP)
THROUGH ITS PARTNER ANKIT AGRAWAL S/O RAJESH
AGRAWAL AGED ABOUT 36 YEARS HAVING
REGISTERED OFFICE AT A- 22, RAMALIFE CITY
USLAPUR ROAD INFORNT OF THE JAIN
INTERNATIONAL SCHOOL SAKRI BILASPUR
(CHHATTISGARH)

.....PETITIONER

(BY SHRI PRABHANSHU SHUKLA - ADVOCATE)

AND

1. DEBTS RECOVERY TRIBUNAL CIVIL LINES BOI
BUILDING NEAR CIVIL LINES POLICE STATION
JABALPUR (MADHYA PRADESH)
2. TATA MOTORS FINANCE LIMITED HAVING
OFFICE AT I THINK TECHNO CAMPUS BUILDING
A 2ND FLOOR OFF POKHRAN ROAD 2 THANE
WEST MUMBAI 400601 (MAHARASHTRA)
3. TATA MOTORS FINANCE LIMITED HAVING
BRANCH OFFICE AT JEEVAN BUILDING 1ST
FLOOR ABOVE SBI BANK SHANTI NAGAR RING
ROAD NO. 2 BILASPUR (CHHATTISGARH)

.....RESPONDENTS

(NONE)

.....
*This petition coming on for orders this day, JUSTICE SUJOY PAUL
passed the following:*

ORDER

Heard on the preliminary objection of territorial jurisdiction/maintainability raised by the registry. The registry has raised objection because petitioner belongs to Chhattisgarh.

Learned counsel for the petitioner submits that orders under challenge are dated 03/03/2023 (Annexure P/2) passed by Registrar, Debts Recovery Tribunal (DRT), Jabalpur which got stamp of approval in Chamber Appeal by learned Presiding Officer by order dated 09/03/2023 (Annexure P/4). Both the orders were passed by competent officers of DRT, Jabalpur which is within the territorial jurisdiction of Principle Seat of this Court, thus the office objection deserves to be overruled.

We find substance in the said argument in the light of Clause-2 of Article 226 of the Constitution which envisages that even if a minuscule part of cause of action has arisen within the territory of this Bench, petition can be entertained. Thus, Office objection is overruled.

Since impugned orders are passed without putting the other side to notice, we do not find any reason to put the other side to notice and deem it proper to hear Shri Shukla finally.

Shri Shukla, learned counsel for the petitioner submits that by order dated 06/03/2023, learned Registrar of DRT declined to register his application preferred under Section 17(1) of the SARFAESI Act and under the relevant Rules of 2002.

A plain reading of order dated 03/03/2023 (Annexure P/2) makes it clear that the singular reason for non-registration of application is that there exists no document on record indicating that the secured creditor has taken action under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act. Since registration was

declined, the petitioner availed the remedy of Chamber Appeal as per Rule 5(5) of Debts Recovery Tribunal (Procedure) Rules, 1993. The chamber hearing was given to the petitioner and learned Presiding Officer by impugned order dated 09/03/2023 held that an application under Section 17(1) can be entertained provided the secured creditor has taken some action under Section 13(4) of the Act. The finding of learned Presiding Officer is that although in the pleadings, the appellant/petitioner stated that secured creditor has repossessed the hypothecated vehicle but for this purpose, no documentary evidence was filed. Thus, the application was not tenable.

Criticizing the said finding, Shri Shukla, learned counsel for the petitioner submits that when no documents were given while taking possession of the vehicle, the expectation of Tribunal that some documents should have been filed is without any basis. There was no reason to disbelieve the pleadings. Neither the SARFAESI Act nor the Rules make it obligatory to file any such document to substantiate the case. The reliance is placed on Section 17(1) of the SARFAESI Act which makes it clear that any person aggrieved by any of the measure referred to in sub-section (4) of Section 13 taken by secured creditor may approach the Tribunal. What is important, submits Shri Shukla is whether measure has been taken or not. Section 17(1) nowhere talks about existence of any documentary evidence for that purpose.

To elaborate, Shri Shukla placed reliance on Section 13(4)(a) SARFAESI Act, which reads as under :-

"Section 13(4) in The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

(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;"

(Emphasis supplied)

It is submitted that once it is pleaded that possession has been taken without any documents, there was no impediments for the D.R.T. for registering the application under Section 17 of the SARFAESI Act™. He placed reliance on a Patna High Court Judgment in the case of **Sanjay Kumar Vs. UCO Bank (Civil Writ Jurisdiction Case No. 18557 of 2019)** decided on 15th November 2019 wherein it is held that even in the cases of immovable property, the secured creditor is bound to follow the procedure prescribed under the SARFAESI Act and the rules made thereunder. Thus, the learned Registrar and Presiding Officer have committed an error in declining registration of application under Section 17 of the said Act.

We have heard learned counsel for the petitioner at length and find substantial force in the argument of learned counsel for the petitioner.

A conjoint reading of Section 13(4) of Section 17(1) of the SARFAESI Act makes it clear that what is required to be established is that the secured creditor has taken measure under sub-Section(4) of Section 13 in order to invoke the remedy under Section 17 of the said Act. Since no documents were made available to the petitioner, the petitioner categorically pleaded in this regard which was even accepted by learned Presiding Officer that vehicle was repossessed. If no document is given to the petitioner, an impossible act to produce the document should not have been expected by the Tribunal. Moreso, when filing of such document is not a condition precedent for entertaining and registering an application under Section 17 of the SARFAESI Act™.

Thus, we are unable to countenance the orders passed by the learned Registrar and Presiding Officer of the D.R.T. The petitioner could make out a case deserving registration of his application under Section 17 of the said Act.

In view of foregoing discussion, the impugned order dated 3.3.2023 (Annexure P-2) passed by the learned Registrar and the order dated 9.3.2023 passed by the learned Presiding Officer are set aside. The D.R.T. is directed to register the application preferred by the petitioner under Section 17 of the Act and proceed therefrom in accordance with law. It is made clear that this court has not expressed any opinion on the merits of the case.

The petition is **allowed** to the extent indicated above.

At this stage, learned counsel for the petitioner has expressed some urgency.

Liberty is reserved to mention the matter before the learned Presiding Officer, D.R.T. on Monday, i.e. on 20.3.2023. This Court has no doubt that the learned D.R.T. will look into the aspect in accordance with law.

Certified copy today. सत्यमेव जयते

(SUJOY PAUL)
JUDGE

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(AMAR NATH (KESHARWANI))
JUDGE