

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 23rd OF NOVEMBER, 2023

WRIT PETITION No. 26176 of 2023

BETWEEN:-

EQUITAS SMALL FINANCE BANK LIMITED THROUGH ITS
AUTHORIZED SIGNATORY MR. SURYAKANT RAWAT S/O SHRI
MAHESH CHANDRA RAWAT, AGED ABOUT 28 YEARS,
OCCUPATION: SERVICE AUTHORIZED OFFICER REGD OFFICE
AT 4TH FLOOR PHASE 2 SPACE PLAZA 769 ANNASALAI CHENNAI
600002 AND BRANCH OFFICE AT PLOT NO. 28 EM 1 NEAR BSNL
TELEPHONE EXCHANGE SCHEME NO. 94 SECTOR E BENGALI
SQUARE INDORE 452016 (MADHYA PRADESH)

....PETITIONER

(BY SHRI ROHIT SABOO, ADVOCATE FOR THE PETITIONER)

AND

THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY LAW
AND LEGISLATURE AFFAIRS VALLABH BHAWAN BHOPAL
(MADHYA PRADESH)

....RESPONDENT

(BY SHRI BHUWAN GAUTAM, GOVT. ADVOCATE FOR THE RESPONDENT)

Reserved on : 12.10.2023

Pronounced on : 23.11.2023

*This petition having been heard and reserved for orders coming on for
pronouncement this day, Justice Sushrut Arvind Dharmadhikari passed the
following:*

ORDER

Heard on the question of admission and interim relief.

The instant writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner being aggrieved by the inaction of Chief Judicial Magistrate, Khargone who is sitting tight over the application filed by the petitioner u/S 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(referred to as "SARFAESI Act" hereinafter) praying for the following relief:

"It is therefore prayed that for the peculiar facts contained herein and ground raised, the learned Chief Judicial Magistrate be directed to register the cases as listed in Annexure P-5 and dispose of then same within 30 days as prescribed in law."

2. Brief facts of the case are that the petitioner is a banking company involved in the business of advancing housing loans to its customers. The petitioner had filed an application u/S 14 of the SARFAESI Act before the Chief Judicial Magistrate, Khargone [referred to as CJM, Khargone" hereinafter] against one Mr. Badruddin & ors in the month of December, 2022. The learned CJM, Khargone has neither registered the application nor taken any steps to proceed in the matter and in contravention to the provisions of Section 14 of the SARFAESI Act, the CJM is listing the matter for arguments on registration. Being aggrieved, the petitioner filed an application dated 08.09.2023 under the Right to Information Act, 2005 seeking status of all similar SARFAESI Act matters pending before the CJM, Khargone which was forwarded by the State Public Information Officer, Distt. & Sessions Court, Mandleshwar to the CJM who has issued the list of cases u/S 14 of SARFAESI ACT pending before the CJM, Khargone annexed with the petition. Now the present petition is preferred.

3. Learned counsel for the petitioner submitted that the CJM, Khargone has failed to consider that the petitioner company is a secured creditor and the property in question is secured by way of mortgage. The CJM exceeded its jurisdiction by listing the cases u/S 14 of SARFAESI Act for the purpose of arguments on registration. In fact, the CJM ought to have considered only two aspects:

- (i) Determine whether the secured assets fall within its territorial jurisdiction?
- (ii) Whether notice u/S 13(2) of the SARFAESI Act has been furnished or not?

4. In support of his contention, learned counsel for the petitioner relied on the judgment passed by Single Bench of this Court in the case of **Cholamandalam Investments and Finance Ltd. Vs. Additional District Magistrate and Others [2018(3) MPLJ 123]** wherein , in para 20 it is held that :

20. "It has been held that the District Magistrate has to consider only two aspects. He has to first determine whether the secured asset falls within his territorial jurisdiction and secondly whether the notice under Section 13(2) has been furnished or not and no adjudication has been contemplated at that stage."

5. He further relied upon the order passed by the Division Bench of this Court in the case of **HDFC Bank Ltd. Vs. Additional District Magistrate, Indore & Others in W.P. No. 14976/2022.**

6. Learned counsel for the respondent/State submitted that petition may be disposed of with directions to the CJM, Khargone to decide the applications filed u/S 14 of the SARFAESI Act within a time bound period.

7. Heard, learned counsel for the parties and perused the record.

8. Before adverting to the relief sought in the petition, it is apt to go through the provisions of Section 14 of the SARFAESI Act which are reproduced below for

convenience:

9. Section 14 of the SARFAESI Act:

"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 authorized 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 ²[within a period of thirty days from the date of application:]

²[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.]

³[(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 ¹[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.

10. In the present case, the petitioner has rightly approached the CJM by filing an application u/S 14 of the SARFAESI Act in the light of the law laid down by the Apex Court in the case of Authorized Officer, Indian Bank Vs. D. Visalakshi and Another reported in (2019) 20 SCC 47.

Recently, this Court in W.P. No. 3024/2023 has dealt with two core legal questions which are as follows:

(i) Whether the CJM can exercise powers u/S 14 of the SARFAESI Act?

(ii) Whether the borrower can and /or "any other person" is required to be given an opportunity of hearing before passing the order u/S 14 of the SARFAESI Act?

11. The questions so framed are answered as mentioned below:

So far as the answer to the first question is concerned, this question came up for consideration before The Hon'ble Apex Court in the case of Authorized Officer, Indian Bank (supra) was tasked to deal with the contrary views being taken from

various High Courts in the country. The High Court of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand interpreted the said provision to mean that only the CMM in metropolitan areas and the DM in non-metropolitan areas were competent to deal with the applications u/S 14 of the SARFAESI Act whereas on the other hand High Courts of Kerala, Allahabad, Andhra Pradesh and Karnataka took a contrary view and concluded that the provision does not debar or preclude the CJM to exercise the powers u/S 14 of the Act. The Apex Court in the case of **Authorized Officer, Indian Bank**(supra) has held thus:

"34. Notably, the powers and functions of the CMM and the CJM are equivalent and similar; in relation to matters specified in the Cr.P.C.. These expressions (CMM and CJM) are interchangeable and synonymous to each other. Moreover, Section 14 of the 2002 Act does not explicitly exclude the CJM from dealing with the request of the secured creditor made thereunder. The power to be exercised under Section 14 of the 2002 Act by the concerned authority is, by its very nature, nonjudicial or State's coercive power. Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy under Section 17 of the 2002 Act and/or judicial review under Article 226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lessee; nor is it possible to suggest that they are rendered remediless in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any advantage muchless added advantage. Taking totality of all these aspects, there is nothing wrong in giving expansive meaning to the expression "CMM", as

inclusive of CJM concerning nonmetropolitan area, who is otherwise competent to discharge administrative as well as judicial functions as delineated in the Cr.P.C. on the same terms as CMM. That interpretation would make the provision more meaningful. Such interpretation does not militate against the legislative intent nor it would be a case of allowing an unworthy person or authority to undertake inquiry which is limited to matters specified in Section 14 of the 2002 Act.

44. Suffice it to observe that keeping in mind the subject and object of the 2002 Act and the legislative intent and purpose underlying Section 14 of the 2002 Act, contextual and purposive construction of the said provision would further the legislative intent. In that, the power conferred on the authorised officer in Section 14 of the 2002 Act is circumscribed and is only in the nature of exercise of State's coercive power to facilitate taking over possession of the secured assets.

54. To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (Banks)."

12. So far as the answer to Question No.2 is concerned, the maiden attempt to decide the said question was made by the Apex Court in the case of **Standard Chartered Vs. Noble Kumar & Others** reported in **(2013) 9 SCC 620** wherein the

Apex Court has observed thus:

"25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking the possession of the secured asset."

13. The Apex Court in the case of Authorized Officer, (supra) went to throw light on the operation and application of Section 14 of the SARFAESI Act. Relevant extracts of the judgment are as follows:

".....Concededly, the nature of inquiry to be conducted by the designated authorities under the 2002 Act, is spelt out in Section 14 of the 2002 Act. The same is circumscribed and is limited to matters specified in Clauses (i) to (ix) of the first proviso in subsection (1) of Section 14 of the 2002 Act, inserted in 2013. Prior to the insertion of that proviso, it was always understood that in such inquiry, it is not open to adjudicate upon contentious pleas regarding the rights of the parties in any manner. The stated authorities could only do verification of the genuineness of the plea and upon being satisfied that it is genuine, the adjudication thereof could then be left to the Court of competent jurisdiction.

33. Suffice to observe that an inquiry conducted by the stated authority under Section 14 of the 2002 Act, is a sui generis inquiry. In that, majorly it is an administrative or executive function regarding verification of the affidavit and the relied upon documents filed by the parties. That inquiry is required to be concluded within the stipulated time frame. While undertaking such an inquiry, as is observed by this Court, the authority must display judicious approach, in considering the relevant factual position asserted by the parties. That presupposes that it is a quasijudicial inquiry though, a nonjudicial process. The inquiry does not result in adjudication of inter se rights of the parties in respect of the subject property or of the fact that the transaction is a fraudulent one or otherwise. "

14. In the present petition, as per the information gathered by the petitioner by way of filing an application through the Right to Information Act,(Annexure P-5) at least around 17 cases are pending before the Chief Judicial Magistrate Distt. Khargone which are of similar nature and are pending for arguments on registration of application u/S 14 of the SARFAESI Act which is reproduced below for ready reference:

न्यायालय - श्रीमति पदमा राजौरे तिवारी मुख्य न्यायिक मजिस्ट्रेट

प.नि. खरगोन

इस न्यायालय में लंबित सर्फेसी अधिनियम के प्रकरणों की जानकारी नियमानुसार है :-

अनुक्रमांक	पक्षकार का नाम	प्रक्रम	पेशी दिनांक
01	उज्जीवन स्माल फायनेंस विरुद्ध संजय	पंजीयन पर तर्क हेतु	27.09.2023
02	ए यू स्मॉल फायनेंस विरुद्ध लक्की सोहनी	पंजीयन पर तर्क हेतु	29.09.2023
03	इक्विटाटॉस स्मॉल फायनेंस विरुद्ध प्रवीण इत्यादी	पंजीयन पर तर्क हेतु	04.10.2023
04	ए यू स्मॉल फायनेंस विरुद्ध चिंताराम इत्यादी	पंजीयन पर तर्क हेतु	04.10.2023
05	ए यू स्मॉल फायनेंस विरुद्ध स्वतंत्र इत्यादी	पंजीयन पर तर्क हेतु	05.10.2023
06	पूनावाला हाउसिंग फायनेंस विरुद्ध महेश	पंजीयन पर तर्क हेतु	16.10.2023
07	ए यू स्मॉल फायनेंस विरुद्ध राधेश्याम इत्यादी	पंजीयन पर तर्क हेतु	16.10.2023
08	पूनावाला हाउसिंग फायनेंस विरुद्ध भीमसिंग	पंजीयन पर तर्क हेतु	30.10.2023
09	पूनावाला हाउसिंग फायनेंस विरुद्ध विरेन्द्र	पंजीयन पर तर्क हेतु	31.10.2023
10	पूनावाला हाउसिंग फायनेंस विरुद्ध सुरेन्द्र	पंजीयन पर तर्क हेतु	04.11.2023
11	इक्विटाटॉस स्मॉल फायनेंस विरुद्ध बदरुददीन	पंजीयन पर तर्क हेतु	04.11.2023
12	पूनावाला हाउसिंग फायनेंस विरुद्ध दिनेश	पंजीयन पर तर्क हेतु	06.11.2023
13	ए यू स्मॉल फायनेंस विरुद्ध शब्बीर इत्यादी	पंजीयन पर तर्क हेतु	07.11.2023
14	ए यू स्मॉल फायनेंस विरुद्ध मंजीत	पंजीयन पर तर्क हेतु	17.11.2023
15	पूनावाला हाउसिंग फायनेंस विरुद्ध कमलेश	पंजीयन पर तर्क हेतु	20.11.2023
16	ए यू स्मॉल फायनेंस विरुद्ध मुकेश	पंजीयन पर तर्क हेतु	24.11.2023
17	पूनावाला हाउसिंग फायनेंस विरुद्ध सुनिल इत्यादी	पंजीयन पर तर्क हेतु	30.11.2023

15. As has been already held by this Court as well as by the Apex Court on number of occasions, the Chief Judicial Magistrate has to consider two aspects before passing an order u/S 14 of the SARFAESI Act:

- (i) to determine whether secured assets fall within their territorial jurisdiction?
- (ii) whether notice u/S 13(2) of the SARFAESI Act has been furnished.

Therefore the action of the Chief Judicial Magistrate, Khargone is absolutely illegal and is not the requirement of law.

16. The scope and extent of jurisdiction vested in the DM/ADM/CJM as provided

u/S 14 of the SARFAESI Act is clear from a bare reading of Section 14 as well as from the catena of judgments passed by the Apex Court[**See : R.D. Jain & Company Vs. Capital First Limited & Others, (2023) 1 SCC 675 and Kotak Mahindra Bank Limited Vs. Girnar Corrugators Pvt. & Ors. (2023) 3 SCC 210**]. For taking physical possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the DM/ADM/CJM by way of a written application. The statutory obligation upon the DM/ADM/CJM is to immediately move into action by passing an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the SARFAESI Act. As per Section 14 of the SARFAESI Act, the DM/ADM/CJM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be further extended for such further period but not exceeding to 60 days. The possession of the secured assets could be taken by the DM/ADM/CJM himself/herself or through any officer sub-ordinate to him/her. Thus, from the above, it is apparent that nature of power u/S 14 of SARFAESI Act vested in the DM/ADM/CJM is executory and ministerial and not adjudicatory.

17. This Court while dealing with the SARFAESI matters has also come across certain cases wherein the secured assets have been given on lease or tenancy by the borrower prior to mortgage and the tenants/lessee on an apprehension of dispossession from the mortgaged property approach this Court. Under such circumstances, the DM/ADM/CJM before deciding application under Section 14 of the SARFAESI Act shall follow the mandate as held in the cases of **Harshad Govardhan Sondagar vs. International Assets Reconstruction Co. Ltd., (2014) 6 SCC 1** and **Vishal N.Kalsaria vs. Bank of India & Ors., (2016) 3 SCC 762**.

18. This Court every other day is dealing with number of cases where District Magistrate/Additional District Magistrate/Chief Judicial Magistrate instead of complying with the provisions of Section 14 of the SARFAESI Act either exceed their jurisdiction by adjudicating the case or sitting tight over the matter, as in the case in hand. In the considered opinion of this Court, Chief Judicial Magistrate, Khargone has travelled beyond the scope of Section 14 of the SARFAESI Act, in as much as, that in place of deciding the application within the stipulated time which was filed in December, 2022, the application is kept pending for months together for arguments on registration of the case which is not warranted as per the provisions of Section 14 of the SARFAESI Act. The Chief Judicial Magistrate attained the role of adjudicatory authority/ *functus officio*. This Court as well as the Apex Court time and again reiterated that the role of DM/ADM/CJM is ministerial in nature so far as Section 14 of the SARFAESI Act is concerned and not that of adjudication. In number of cases, it is seen that the orders are being passed as per convenience of the Officer concerned without following the mandate of this Court as well as the Apex Court.

19. In view of the above discussion, it is clear as day light that DM/ADM/CJM have to strictly follow the provisions of Section 14 of SARFAESI Act as well as law laid down by the Apex Court in the case of **R.D. Jain & Company**(supra) and **Kotak Mahindra Bank Limited**(supra) in deciding the applications filed by the secured creditors keeping in the mind the interest of lessee/tenant of borrowers also as held in the cases of **Harshad Govardhan Sondagar & Vishal N.Kalsaria** (supra).

20. Accordingly, the present petition is allowed with the following directions:

A. The Chief Judicial Magistrate, Khargone is directed to decide the pending application of the petitioner as well as other pending applications in accordance with law keeping in view the statutory provisions as contained in Section 14 of the SARFAESI Act as well as in the light of the judgments mentioned above, within a period of 30 days

from the date of receipt of certified copy of the order passed today.

B. Looking to the fact that being aggrieved by the inaction of the DM/ADM/CJM in deciding the applications filed under Section 14 of SARFAESI Act, the secured creditors rushed to this Court leading to opening of a flood gate of writ petitions, in the considered opinion of this Court, it would be apposite **to issue guidelines/directions to be followed by these DM/ADM/CJM while passing orders for deciding applications u/S 14 of the SARFAESI Act which are as follows** :

(i) DM/ADM/CJM have to determine whether secured assets fall within their territorial jurisdiction.

(ii) whether notice u/S 13(2) of the SARFAESI Act has been furnished by the secured creditor and also whether the case of secured creditor falls under the any of the exceptions provided under Section 31 of the SARFAESI Act?

(iii) DM/ADM/CJM is not at all required to hear the application u/S 14 of the SARFAESI Act for the purpose of registration of the case.

(iv) DM/ADM/CJM acting under Section 14 of the SARFAESI Act is not required to give notice either to the borrower or to the 3rd party.

(v) The DM/ADM/CJM shall ensure that the secured creditor should file an affidavit declaring that the terms and conditions prescribed u/S 14(1) of the SARFAESI Act are satisfied.

(vi) DM/ADM/CJM should ensure that application filed u/S 14 of the SARFAESI Act shall be decided as expeditiously as possible, preferably within 45 days from the date of filing of such an application.

21. Petition stands disposed off.

Let a copy of this order be sent to the Registrar General, High Court of M.P, Jabalpur.

The Registrar General, High Court of M.P., Jabalpur is directed to circulate the copy of this order to all the Principal District Judges in the State of M.P. with a direction to circulate this order amongst Chief Judicial Magistrate who are exercising powers under the SARFAESI Act in their respective districts. The Registrar General is also directed to send a copy of this order to the Principal Secretary, Revenue Department, Bhopal with a request to circulate this order amongst all DM/ADM in the State of Madhya Pradesh only for the purpose of avoiding unnecessary delays and unwanted procedures giving rise to flooding of High Court with unwanted litigation.

(S. A. DHARMADHIKARI)
JUDGE

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(PRANAY VERMA)
JUDGE

