

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			SPA No. 375 of 2023 <u>Hon'ble Manoj Kumar Tiwari, ACJ.</u> <u>Hon'ble Vivek Bharti Sharma, J.</u> (1) Mr. Jitendra Chaudhary, learned counsel for the appellant. (2) Mr. J.C. Pande, learned Standing Counsel for the State of Uttarakhand. (3) Mr. Siddharth Jain, learned counsel for respondent no. 1. (4) This intra court appeal has been filed by appellant, challenging the final order dated 06.11.2023 passed in WPMS No. 3027 of 2023. By the said order, writ petition, filed by Bank of Baroda (<i>respondent no. 1 herein</i>), was disposed of with a direction to District Magistrate, Udham Singh Nagar to decide application filed by Bank under Section 14 (1) & (2) of the SARFAESI Act, 2002, within two months. (5) Learned counsel for appellant contends that he is a guarantor in respect of Cash Credit Limit taken by M/s Chavi Traders from Bank of Baroda. He further submits that in the writ petition, Bank of Baroda did not disclose the correct facts, which has resulted in passing of impugned order, which may prejudice his rights. It is further contended that Bank has filed Original Application under Section 19 of Recovery of Debts and Bankruptcy Act, 1993 for recovery of principal amount as well as interest, which is pending before Debts

			Recovery Tribunal, Dehradun and is numbered as OA No. 603 of 2022. It is further contended that after availing the remedy under Section 19 of the said Act, Bank cannot invoke power available under Section 14 of SARFAESI Act, 2002. (6) Per contra, learned counsel for Bank submits that merely because the Bank has invoked Section 19 of Recovery of Debts and Bankruptcy Act by approaching the Tribunal will not preclude it from invoking its power under Section 14 of SARFAESI Act. In support of this contention, he has placed reliance upon a decision of Hon'ble Supreme Court in the case of <i>Transcore v. Union of India & another</i>, reported in (2008) 1 SCC 125. Para 69 of the said judgment is extracted below:- “69. For the above reasons, we hold that withdrawal of the OA pending before DRT under the DRT Act is not a precondition for taking recourse to the NPA Act. It is for the bank/FI to exercise its discretion as to cases in which it may apply for leave and in cases where they may not apply for leave to withdraw. We do not wish to spell out those circumstances because the said first proviso to Section 19(1) is an enabling provision, which provision may deal with myriad circumstances which we do not wish to spell out herein.” (7) Learned counsel for bank further submits that no prejudice would be caused to the appellant by the order passed by writ court, impugned in this appeal, as by the said order, District Magistrate was simply asked to take decision on bank's application filed under Section 14 of SARFAESI Act. He further submits that power under Section 14 of SARFAESI Act available to District
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			Magistrate is administrative in nature and while exercising these powers, District Magistrate does not adjudicate a dispute. (8) We find substance in the contention raised on behalf of the Bank. While passing an order under 14 of SARFAESI Act, District Magistrate does not perform judicial or quasi judicial function. Moreover, appellant would not be remediless after passing of the order by District Magistrate. (9) However, having regard to the facts and circumstances of the case, this appeal is disposed of with liberty to appellant to file objection before District Magistrate within two weeks, which shall be considered by District Magistrate while passing order under Section 14 of SARFAESI Act. It goes without saying that the order shall be passed by District Magistrate within statutory period. (Vivek Bharti Sharma, J.) (Manoj Kumar Tiwari, ACJ) 26.12.2023 <i>Aswal</i>
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