

GAHC010229202023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6376/2023

PUNJAB NATIONAL BANK
A BODY CORPORATE CONSTITUTED UNDER THE BANKING COMPANIES
(ACQUISITION AND TRANSFER OF UNDERTAKING) ACT, 1970,
HAVING ITS OFFICE AT PLOT NO. 4, SECTOR 10, DWARKA, NEW DELHI-
110075,
CARRYING ON BANKING BUSINESSES AT DIFFERENT PLACES ALL OVER
INDIA INCLUDING ZONAL OFFICE AT HEM BARUAH ROAD,
PAN BAZAR, GUWAHATI- 781001,
AND HAVING A SPECIALISED VERTICAL OFFICE AT CIRCLE SASTRA
CENTRE,
NILGIRI MANSION, BHANGAGARH, GS ROAD,
GUWAHATI, ASSAM- 781005.
THROUGH ITS AUTHORISED PERSON, SHRI SAMIR GIRI,
S/O. A.K. GIRI, PRESENTLY POSTED AS CHIEF MANAGER(AUTHORISED
OFFICER)
AT RECOVERY CENTRE, GUWAHATI CIRCLE OFFICE
SITUATED AT NILGIRI MANSION, 1ST FLOOR,
BHANGAGARH, GUWAHATI- 781005.

VERSUS

THE STATE OF ASSAM AND 4 ORS
THROUGH THE COMMISSIONER AND SECRETARY,
HOME AND POLITICAL DEPARTMENT,
DISPUR, ASSAM.

2:THE DEPUTY COMMISSIONER CUM DISTRICT MAGISTRATE
CACHAR
SILCHAR
ASSAM- 788001.

3:THE SUPERINTENDENT OF POLICE

CACHAR
SILCHAR
ASSAM- 788001.

4:SUDIP PAITYA
S/O- LATE SUDHANGSHU SEKHAR PAITYA

RESIDENT OF HOUSE NO. 76
LANE NO. 9

1ST LINK ROAD
WARD NO. 15

SILCHAR- 788006
DIST.- CACHAR
ASSAM.

5:GARGI PAITYA
W/O- SRI SUDIP PAITYA

RESIDENT OF HOUSE NO. 76
LANE NO. 9

1ST LINK ROAD
WARD NO. 15

SILCHAR- 788006
DIST.- CACHAR
ASSAM

For the Petitioner(s)	: Mr. A. Ganguly, Advocate
For the Respondent(s)	: Mr. N. Goswami, Government Advocate
	: Mr. G. R. Dutta, Advocate

Date of Hearing	: 02.08.2024
Date of Judgment	: 02.08.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. A. Ganguly, the learned counsel appearing on behalf of the Petitioner and Mr. N. Goswami, the learned Government Advocate appearing on behalf of the Respondent Nos. 1, 2 and 3. I have also heard Mr. G. R. Dutta, the learned counsel appearing on behalf of the Respondent No.4. It is also taken note of that the Respondent No.5 is the wife of the Respondent No.4.

2. The Petitioner herein has approached this Court being aggrieved by the inaction on the part of the District Magistrate to take action in terms of Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (for short "the Act of 2002").

3. The facts as can be discerned from the materials on the record are that the Respondent Nos. 4 and 5 had taken financial assistance from the Petitioner Bank. Upon failure on the part of the Respondent Nos. 4 and 5 to make payment, the account of the Respondent Nos. 4 and 5 were declared to be non-performing assets and subsequently steps were taken in terms with Section 13 of the Act of 2002. The Petitioner Bank while taking steps under Section 13(4) of the Act of 2002 issued a possession notice over a plot of land which was a secured asset having House No.76, Holding No.336, 1st Link Road main, Ward No.15, Silchar in the District of Cachar – 788006, Assam standing over a plot of land measuring 8 Kathas 18 Gondas covered by Dag No.113, Patta No.27 Vill/Pargana - Barakpur, Mouza Kanakpur Part-II, District Cachar.

4. Pursuant to the issuance of the possession notice whereby symbolic possession was taken, the Petitioner Bank approached the Respondent No.2 in terms of Section 14 of the Act of 2002. The Respondent No.2 thereupon had taken action and handed over the possession of the said secured asset to the Petitioner Bank. It is the case of the Petitioner Bank that the Petitioner Bank after taking possession over the secured asset had kept it under their possession by keeping certain security persons. However, it is alleged that the Respondent Nos. 4 and 5 with their persons have forcefully taken the possession over the secured asset. It is under such circumstances, an FIR was filed before the Officer-in-Charge of Silchar Police Station which was registered and numbered as Silchar P.S. Case No. 2302/2022 under Section 120B/448/188 of the Indian Penal Code. In addition to that, the Petitioner Bank also sought the assistance of the Respondent No.2 for again taking over the possession by submitting certain representations. However, as the Respondent No.2 did not take any steps, the Petitioner Bank has approached this Court by filing the instant petition.

5. This Court pursuant to filing of the instant writ petition issued notice on 22.11.2023. On various dates, instructions have been sought for, however nothing has been placed before this Court on behalf of the Respondent Nos. 2 and 3. It is however noticed that the Respondent Nos. 4 and 5 have filed an affidavit-in-opposition on 01.08.2024. In the said affidavit-in-opposition, it has been mentioned that a suit has been filed by the Respondent No.4 before the Court of the Civil Judge, No.1, Cachar at Silchar which have been registered and numbered as Title Suit No.163/2022 along with an injunction application being Misc. (J) Case No.205/2022. It has been further mentioned that in the said injunction application which is Misc. (J) Case No.205/2022,

the learned Trial Court i.e. the Court of the learned Civil Judge, No.1 Cachar at Silchar had issued an order on 29.03.2023 thereby appointing a Local Commissioner to conduct such investigation and submit a report to the Court as to whether the building in question is in the suit property or in the mortgaged property of the Bank. However, there is nothing mentioned as regards issuance of any injunction order.

6. I have heard the learned counsels appearing on behalf of the parties.

7. Mr. A. Ganguly, the learned counsel appearing on behalf of the Petitioner Bank submitted that as the Petitioner Bank was handed over the possession of the secured asset on the basis of an order passed under Section 14 of the Act of 2002 and thereupon having been dispossessed, the Respondent Authorities more particularly the Respondent No.2 ought to have acted on the representation so submitted by the Petitioner. He further drawing the attention of this Court to the judgment of the Supreme Court in the case of ***Balkrishna Rama Tarlay, (Dead through LRS) Vs. Phoenix Arc Private Limited and others reported in (2023) 1 SCC 662*** submitted that the Respondent No.2 is bound to take action upon being satisfied when an application is filed under Section 14 of the Act of 2002. Referring to the paragraph Nos. 15 and 16 of the said judgment, the learned counsel appearing on behalf of the Petitioner submitted that the Respondent No.2 was bound to take action when the Petitioner has duly approached by submitting a representation. The learned counsel for the Petitioner Bank further submitted that as a statutory duty had been conferred upon the Respondent No.2 to act and there is a failure to act, the Petitioner Bank therefore approached this Court seeking a mandamus for issuance of

appropriate directions.

8. Mr. N. Goswami, the learned Government Advocate appearing on behalf of the State Respondents submitted that the application by which the Petitioner Bank had approached the Respondent No.2 is not available in the records of the Respondent No.2. He however submitted that the Petitioner Bank, if so aggrieved, ought to have filed an application in terms with Section 14 of the Act of 2002 rather than submitting a representation.

9. Mr. G. R. Dutta, the learned counsel appearing on behalf of the Private Respondent No.4 submitted that a suit is spending as regards the identity of the mortgaged property. He further submitted that an injunction application has been filed however he duly submitted that there is no injunction order passed rather, only an order has been passed for local investigation in terms with Order XXXIX Rule 7 of the Code of Civil Procedure, 1908.

10. This Court upon hearing the learned counsels appearing on behalf of the parties put a specific query upon the learned counsel appearing on behalf of the Respondent No.4 as to whether the Respondent No.4 is in possession of the secured asset. The learned counsel submitted that as per his instruction, the Respondent No.4 is not in possession of the secured asset.

11. In the backdrop of the above, let this Court analyze and determine the dispute on the basis of the materials on record and with consideration to the respective submissions. It is seen from a perusal of the Act of 2002 that upon the failure of the borrower to comply with the notice as given under Section 13 (2) of the Act of 2002, the secured creditor has been empowered

to take various measures to recover the secured debt. Amongst the various measures, one of such measures is to take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset. This power can be traced to Section 13(4)(a) of the Act of 2002. For the purpose of taking steps in accordance with Section 13(4)(a), the Act of 2002 also provides that the secured creditor can approach the Chief Metropolitan Magistrate or District Magistrate to seek assistance for taking possession of the secured asset in terms with Section 14 of the Act of 2002.

12. A perusal of Section 14 of the Act of 2002 shows that for taking possession of the secured asset, in terms of Section 14(1) of the Act of 2002, the secured creditor can seek assistance of the District Magistrate/Chief Metropolitan Magistrate by filing a written application requesting the District Magistrate or Chief Metropolitan Magistrate as the case may be, to assist the secured creditor in taking possession of the secured assets.

13. It is further seen from a reading of Section 14 of the Act of 2002 that the said application is required to be accompanied by an affidavit affirming to the mandate as stipulated in Clauses (i) to (ix) of the first proviso to Section 14(1) of the Act of 2002. Upon such an application being filed, a statutory obligation is cast upon the Chief Metropolitan Magistrate/District Magistrate to immediately move into action under Section 14(1) of the Act of 2002 to take possession of the secured assets. This Court further takes note of that the District Magistrate or the Chief Metropolitan Magistrate as the case may be is required to be satisfied with the contents of the affidavit and

pass suitable orders for the purpose of taking possession of the secured assets and it is further mentioned that the said order is to be passed within a period of 30 days from the date of the application.

14. The third proviso to Section 14(1) of the Act of 2002 further provides that in the circumstance the Chief Metropolitan Magistrate or the District Magistrate is not in a position to pass the order within 30 days for the reasons beyond his control, the said official shall duly record reasons in writing for the same and pass the order within such period but not exceeding in aggregate 60 days. This Court finds it very pertinent at this stage to refer to Paragraph No.18 of the judgment in the case of **Balkrishna Rama Tarlay (supra)** which for the sake of convenience is reproduced herein under:

“18. Thus, the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial steps and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section 14 of the SARFAESI Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal.”

15. A perusal of the above quoted paragraph would show that once all the

requirements under Section 14 of the Act of 2002 are complied with or satisfied by the secured creditor, a duty is cast upon the District Magistrate (Respondent No.2 herein) to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets, even with the help of any Officer Sub-Ordinate to him and/or with the help of an advocate appointed as an advocate commissioner. This Court also finds it very pertinent to take note of Section 14(2) which further empowers the District Magistrate (Respondent No.2 herein) to take or cause to be taken such steps and used or cause to be used such force as in his opinion be necessary.

16. The above analysis of Section 14 of the Act of 2002 would therefore show that upon due compliance is made under Section 14(1) by submitting the application along with an affidavit in terms with the first proviso; a duty is cast upon the Respondent No.2 to take such action as stated in the said Section. This Court however takes note of that the Petitioner Bank had only submitted a representation. In the opinion of this Court, when the statute categorically mandates that the power to be exercised by the District Magistrate is subject to the satisfaction on the basis of an application supported by an affidavit giving details as stipulated in the first proviso, the Petitioner Bank is therefore required to file an application in terms with Section 14(1) of the Act of 2002 to the Respondent No.2 to act in terms with the mandate of Section 14 of the Act of 2002. The statutory obligation so cast upon the Respondent No.2 would only arise upon due compliance by the Petitioner in terms with Section 14(1) of the Act of 2002.

17. Accordingly, this Court therefore disposes of the instant writ petition

thereby granting liberty to the Petitioner Bank to file a fresh application in accordance with the provisions of Section 14(1) of the Act of 2002 and upon such application being filed, the Respondent No.2 in terms with the mandate of Section 14(1) of the Act of 2002 shall pass necessary orders within a period of 30 days from the date of such application is filed and not later than 60 days. In the case, there is any deficiency in the application in terms with proviso to Section 14(1) of the Act of 2002, the Respondent No.2 shall duly inform the Petitioner Bank.

18. This Court further directs the Respondent No.2 that upon passing such order(s), the Respondent No.2 shall do the needful to restore the possession of the Petitioner in respect to the secured assets and for that purpose can use such force as in his opinion necessary for the purpose of assisting the Petitioner to get the possession of the secured asset.

19. With the above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant