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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 247 of 2015

Rajkumar Kuchwaha S/o Late Shri Dauprasad Kuchwaha, aged about 53 years, Resident of Juna Bilaspur, Tahsil and District Bilaspur, Chhattisgarh, Revenue District Bilaspur Chhattisgarh.

---- Appellant

Versus

1. Bank of India, Through Authorised Officer, Main Branch, Dayalband Bilaspur, Chhattisgarh, Tahsil and District Bilaspur, Chhattisgarh.

2. Shri Suresh Kuchwaha S/o Late Shri Dauprasad Kuchwaha.

3. Smt. Jamuna Devi Kuchwaha W/o Late D.P.Kuchwaha.

Both 2 and 3 resident of Pachrighat, Juna Bilaspur, Police Station City Kotwali, Bilaspur, Tahsil and District Bilaspur, Chattisgarh.

---- Respondents

For Appellant : Shri Rajeev Bharat, Advocate.
For Respondents : None.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Navin Sinha, Chief Justice

29/04/2015

1. The present appeal arises from order dated 12.3.2015 passed in Writ Petition (C) No. 447 of 2015 holding that the term "Chief Metropolitan Magistrate" in Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called 'the Act') would include Chief Judicial Magistrate in non-metropolitan areas relying upon a judgment of the Kerala High Court in Volume (IV) 2006 Banking Cases, 536 (Solaris Systems v. Oriental Bank & Commerce) as having the power to take possession of the secured assets.

2. Learned Counsel for the Appellant submits that a Full Bench of the Madras High Court in AIR 2013 Madras 206 (K. Arockiyaraj v. Chief Judicial Magistrate, Srivilliputhur) has held that the powers under Section 14 of the Act are to be read as confined and exercisable by the Chief Metropolitan Magistrate in metropolitan areas and in non-metropolitan areas, the secured creditor has to approach the District Magistrate alone. The Chief Judicial Magistrate has no jurisdiction under Section 14. The assumption of jurisdiction by the Chief Judicial Magistrate at the request of the Secured creditor was illegal.

3. The Act was promulgated inter alia for enforcement of security interests and for matters connected therewith or incidental thereto. The statement of objects and reasons recites that there is no legal provision for facilitating securitization of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow place of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. The provisions of the Act would enable the banks and financial institutions to realize long term assets, manage problems of liquidity, assets liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction.

4. The Full Bench of the Madras High Court while interpreting Section 14 has applied the rule of literal interpretation. The purpose of the Act has not been considered while making the literal interpretation. When the secured creditor takes steps for attachment of the property, naturally difficulties can arise on the spot and therefore the law provides for taking the assistance of the Chief Metropolitan Magistrate or the District Magistrate. The power is vested in duality. The intention of the legislature was therefore to give power in duality as nothing prevented the legislature from using the word 'District Magistrate' only or the 'Chief Metropolitan Magistrate' only.

5. The order for taking possession of the assets under Section 13(4) of the Act is amenable to appeal under Section 17 of the Act as held in (2011) 2 SCC 782 (Kanaiyalal Lalchand Sachdev v. State of Maharashtra). Appropriately, the writ petition was not maintainable as the very question could be raised before the Appellate authority also. But in view of the fact that the Learned Single judge has decided the matter the question of relegating the Appellant to the alternate remedy does not arise now. That the Chief Judicial Magistrate was equally competent under Section 14 of the Act is apparent from the following extract of the judgement holding :-

> “25. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate, etc. are involved, an efficacious statutory remedy of appeal under Section 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution.”

6. The view taken by the Learned Single Judge also finds support from (2002) 4 SCC 247 (All India Judges’ Assn. (3) v. Union of India) observing as follows :-

> “30….Considering the nature and duties of the Chief Judicial Magistrates and the Chief Metropolitan Magistrates, the only difference being their location, the posts of Chief Judicial Magistrate

> and Chief Metropolitan Magistrate have to be equated and they have to be placed in the cadre of Civil Judge (Senior Division)….”

We are therefore inclined to approve the view taken by the Learned Single Judge which only furthers the purpose of the Act. Any other interpretation, in our opinion, would stultify the purpose of the Act and enforcement of its provisions under Section 13 of Act.

7. Respondent No. 2 is the own brother of the Appellant. Against a cash credit limit of Rs. 15,00,00/- he is stated to have an outstanding of more than 22,00,000/-. It constitutes public money belonging to the tax payer. The present outstanding is evidence of the fact that literally, no repayment has been made.

8. The property furnished as secured asset was in the name of Respondent No. 3, the mother of the Appellant and Respondent No. 2. The pleadings in paragraph 8.3 of the memo of appeal are indeed interesting where Respondent No. 3 was now seeking to question her own right to furnish the joint family property as security.

9. We are of the considered opinion that the present proceedings are a complete abuse of the process of law. We were inclined to impose costs but refrain from doing so.

10. The appeal is dismissed.

Sd/-	Sd/-
(Navin Sinha)	(P.Sam Koshy)
CHIEF JUSTICE	**JUDGE**

Amit