

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 15 OF 2015**

IDBI Bank Limited,
A body Corporate constituted under the
provisions of the Industrial Development
Bank of India Act, 1964,
Having its office at
IDBI Tower, WTC Complex,
Cuffe Parade, Mumbai and
Branch office at EDC House,
6th floor, Dr. Atmaram Borkar Road,
Panaji.

By its duly constituted attorney and
Branch Head, Panaji Branch,
Mr. Anant Yeshwant Dhond,
Residing at Pato, Ribandar, Goa.

... Petitioner

Versus

- 1] State of Goa,
By Chief Secretary,
Secretariat, Porvorim-Goa.
- 2] District Magistrate, South Goa
Matanhy Sadhanha
Administrative Complex,
Margao, Goa 403 601.
- 3] M/s. Impala Distillery & Brewery Ltd.
No.33, Amonte New Market,
Margao, Goa – 403 601.
- 4] Mr. Francisco Monte Cruz
Managing Director,
M/s. Impala Distillery & Brewery Ltd.
- 5] Mrs. Maria Monica M. Cruz
Both residing at Gold Road, Pajifond,
Margao, Goa 403 601.

... Respondents

Mr. J. J. Mulgaonkar, Advocate for the petitioner.
Mr. S. R. Rivankar, Public Prosecutor for the respondent Nos.1
and 2.
Mr. Pankaj P. Pai Vernekar, Advocate for the respondent Nos.3,
4 and 5.

Coram : C. V. BHADANG, J.

Date : 6th July, 2015.

ORAL JUDGMENT :

Rule, made returnable forthwith. The learned counsel for the respondents waive service. Heard finally with the consent of the learned counsel for the parties.

2] By this petition the IDBI Bank Ltd., which is a secured creditor, is challenging the order dated 24th July, 2013 passed by the District Magistrate / Collector, South Goa, District – Margao, disposing of an application under Section 14 of the Securitisation and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 ('Act of 2002', for short)

3] The brief facts are that the petitioner had sanctioned aggregated loan facility of Rs.5,00,00,000/- (rupees five crores only) to the respondent No.3 on 19th April, 1997, as per the terms and conditions agreed between the parties. As the respondent No.3 ('borrower' for short) has defaulted in the matter of repayment of the dues, the loan account was classified as a non-performing asset. It appears that the petitioner issued a demand notice dated 26th March, 2012 claiming Rs.19,29,09,631/- (rupees nineteen crores twenty-nine lakhs nine thousands six hundred thirty-one only) and putting the borrower to notice that in the event of failure to pay the amount, the

petitioner may take recourse against the secured assets. The respondent No.3 – borrower sent a reply to the notice on 11th April, 2012. It appears that the petitioner had considered the objections of the borrower and had intimated its reasons for refusal, to abide by the objections, by a communication dated 30th April, 2012. This was followed by a notice dated 5th October, 2012 and 25th February, 2013, by which the borrower was called upon to hand over the vacant and peaceful possession of the secured assets. Thereafter, on 11th March, 2013 the authorised officer of the petitioner – Bank had visited the site of the secured assets, which is a factory in running condition. According to the petitioner, as the authorised officer was unable to take physical possession of the secured assets, he obtained the symbolic possession thereof by pasting a copy of possession notice on the subject assets. It is thereafter that the petitioner approached the learned District Magistrate under Section 14 of the Act of 2002, for appropriate measures, steps and assistance for obtaining the possession of the secured assets. The learned District Magistrate by an order dated 24th July, 2013 has disposed of the application on the ground that admittedly, the petitioner has already obtained the symbolic possession of the secured assets. Thus it was held that as the petitioner had obtained symbolic possession of the secured assets, the District Magistrate would have no jurisdiction to entertain the

application. Feeling aggrieved, the petitioner is before this Court.

4] I have heard Mr. Mulgaonkar, the learned counsel for the petitioner, Mr. Rivankar, the learned Public Prosecutor for the respondent Nos.1 and 2 and Mr. Vernekar, the learned counsel for the respondent Nos.3, 4 and 5.

5] It is submitted by Mr. Mulgaonkar, the learned counsel for the petitioner that the whole object and purpose of the Act is to ensure speedy recovery of the outstanding loan amount by recourse to summary remedy as provided under Section 14 of the Act of 2002. It is submitted that the possession would obviously mean actual physical possession and the District Magistrate cannot refuse to exercise jurisdiction on the ground that the petitioner has obtained symbolic possession of the secured assets. It is submitted that Section 14 of the Act of 2002, nowhere contemplates that once the secured creditor obtains the symbolic possession of the secured assets, the jurisdiction to entertain an application under Section 14 of the Act of 2002, is lost. It is thus submitted that the view taken by the learned District Magistrate is against the provisions of Section 14 of the Act of 2002. He therefore submitted that the impugned order needs to be set aside and the application filed by the petitioner has to be remanded.

6] On the contrary, it is submitted by Mr. Vernekar, the learned counsel for the respondent Nos.3 to 5 that in this case, there was a reference made to the Board of Industrial and Financial Reconstruction ('BIFR' for short) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1986 ('SICA Act' for short). It is undisputed that the BIFR by an order dated 27th August, 2013, has found that as the possession of the assets of the company have been taken over by IDBI and EDCL under Section 13(4) of the Act of 2002, the reference of the company before the BIFR would stand abated, in accordance with the third Proviso to Section 15(1) of the SICA Act. The BIFR has stated that all the stakeholders would be at liberty to recover their dues as per law. The learned counsel would submit that, in Para 1.2 of the said order, the BIFR has recorded its satisfaction that the company had become a sick industrial company in terms of Section 3(1)(o) of the Act and had appointed IDBI as the operating agency under Section 17(3) of the said Act. The learned counsel has placed reliance on a Division Bench Judgment of the Orissa High Court in the case of ***Noble Aqua Private Ltd. & ors. Vs. State Bank of India & ors. reported in AIR 2008 ORISSA 103***, in order to submit that when the company has already been declared a sick industrial company, the proceedings under Section 13(4) of the Act of 2002, would not lie. It is submitted

that in the present case, the reference before the BIFR was disposed of before the petitioner took recourse to the provisions of the Act of 2002, and in that view of the matter the provisions before the District Magistrate would not be competent. It is submitted that in such case the remand of the matter would be superfluous and an entity formality.

7] In rejoinder, it is submitted by the learned counsel for the petitioner that the borrower has no right of audience in an application under Section 14 of the Act of 2002. Reliance in this regard is placed on a Division Bench decision of this Court in the case of ***M/s. Hari Trading Corporation & others Vs. Bank of Baroda & others reported in CDJ 2015 BHC 1305***, in which it has been held that at the stage of Section 13(2) and 13(4) and Section 14 of the Act of 2002, a borrower need not be heard. It is submitted that thus, the respondent Nos.3 to 5 cannot justifiable raise any contentions in this petition. The respondent Nos.3 to 5 have not chosen to challenge the order passed by the BIFR, by which it has been held that the reference would stand abated. It is submitted that thus, it would not be open to the respondent Nos.3 to 5 to stake a challenge to the order of the BIFR in this petition. It is submitted that the petitioner has considered the objections raised on behalf of the respondent Nos.3 to 5 and have

also communicated the reasons for their refusal, to act on the same by the communication dated 30th April, 2012, which is sufficient compliance of the matter.

8] On hearing the learned counsel for the parties and on perusal of impugned order and the record, it does appear that the only reason for which the learned Magistrate has refused to entertain the application under Section 14 of the Act of 2002, is that the petitioner has obtained symbolic possession of the secured assets. It is obvious that the Act makes provision for speedy recovery of the loan / financial assistance by way of summary proceedings, which a secured creditor may institute under Section 14 of the said Act. The Division Bench of this Court in the case of *M/s. Hari Trading Corporation* (supra) has held that the borrower has no right to be heard in such proceedings. Thus, the District Magistrate on verification of the application and the affidavit, which the secured creditor is expected to file in support thereof, as per the requirements of the proviso to Section 14(1), has to pass appropriate order. Thus, it is clear that merely because the petitioner / secured creditor has obtained the symbolic possession of the assets, the District Magistrate cannot refuse to exercise jurisdiction. It is trite that unless and until the secured creditor is able to obtain actual physical possession and to

take further steps, the realization of the outstanding amount is not possible. In that view of the matter, the impugned order passed by the learned District Magistrate cannot be sustained and the application will have to be sent back to the District Magistrate for disposal, in accordance with law.

9] In the result the following order is passed :

- i) The petition is allowed.
- ii) The impugned order dated 24th July, 2013 is hereby quashed and set aside.
- iii) The application filed by the petitioner under Section 14 of the Securitisation and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002, is restored to the file of the District Magistrate – Collector, South Goa, District – Margao, for disposal in accordance with law.
- iv) It is needless to mention that the District Magistrate shall decide the application after considering the various requirements as contemplated by proviso to Sub-section 1 of Section 14 of the said Act.
- v) The District Magistrate shall also take into the account the effect, if any, of the order passed by the BIFR in this

case. The petitioner undertakes to produce the copy of the order dated 27th August, 2013 passed by the BIFR before the learned Magistrate. The petitioner's authorised officer / duly constituted attorney, to appear before the District Magistrate on 20th July, 2015.

10] Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

ssk