IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

Writ Petition No. 228 of 2013

District : Ahmednagar

Ambajogai People's Co-operative
Bank Ltd., Branch Savedi,
Ahmednagar,
through Branch Manager,
Taluka & District : Ahmednagar. .. Petitioner.

versus

1. The Additional Collector,
Ahmednagar,
District : Ahmednagar.

2. Sau. Deepali Vinod Changediya,
Age : 42 years,
Occupation : Household,
R/o. Cosmic Housing Society,
Balika Ashram Road,
Ahmednagar,
Taluka & District : Ahmednagar. .. Respondents.

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Mr. V.D. Salunke, Advocate, for the petitioner.

Mr. S.G. Karlekar, Asst. Government Pleader, for respondent no.1.

Respondent no.2 served (Absent).

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CORAM : S.V. GANGAPURWALA & A.M. BADAR, JJ.

DATE : 1ST FEBRUARY 2016

COURT'S ORDER *(Per S.V. Gangapurwala, J.)* **:**

1. The petitioner had filed application before the District Magistrate for the purpose of recording the name of the petitioner in the revenue record, purportedly under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 **(hereinafter referred to as "SARFAESI Act" for the sake of brevity)**. The said application is rejected on the ground that the name of the borrower in respect of the said property differs.

2. Mr. Salunke, the learned Counsel for the petitioner, submits that the petitioner is a secured creditor of the secured asset and had invoked the provisions of the SARFAESI Act. After invoking the provisions of the SARFAESI Act, the petitioner had applied to the District Magistrate under Section 14 of the said Act to incorporate the name of the petitioner so as to safeguard the said secured asset. It is one of the step in furtherance of safeguarding the secured asset. According to the learned Counsel, the respondent / authority has failed in its duty.

3. We have heard the learned Asst. Government Pleader for respondent no.1. None present for respondent no.2 though served.

4. Section 14 of the SARFAESI Act reads thus :-

> "**Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset. —** (1) Where the possession of any secured asset is

required to be taken by the secured creditor or if any of the secured asset 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 asset, 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 authorised 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 :
>
> 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.
>
> (1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him, —
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> (i) to take possession of such assets and documents relating thereto, and
>
> (ii) to forward such assets and documents to the secured creditor.
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> (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.
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> (3) No act of the Chief Metropolitan Magistrate or the District Magistrate 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."

5. When a District Magistrate or Metropolitan Magistrate, as the case may be, exercises its powers under Section 14 of the SARFAESI Act, it is only performing a ministerial act. The said act is neither *quasi*

judicial or judicial act. Section 14 of the said Act is incorporated to assist the secured creditor in seeking possession of the secured asset or in managing the said secured asset as the secured creditor is entitled to take steps as enumerated in Section 13(4) of the said Act. Various modes are provided under Sub-Section 4 of Section 13 of the said Act and in case, the secured creditor is not in a position to take possession and / or such other steps as enumerated in Sub-Section 4 of Section 13 of the Act, then can approach the District Magistrate / Metropolitan Magistrate so as to enable it to take such steps.

6. Mutating the name in *'other rights'* column or recording the name in *'other rights'* column in the revenue record is governed by the provisions of the Maharashtra Land Revenue Code 1966, and the authority i.e. District Magistrate or Metropolitan Magistrate does not have the said authority under the provisions of the SARFAESI Act. The purpose and object of Section 14 of the said Act underlined is to enable the secured creditor to effectively take steps enumerated in Section 13(4) of the Act.

7. In the light of the above, the Writ Petition is disposed of. No costs.

(A.M. BADAR) **JUDGE**	**(S.V. GANGAPURWALA)** **JUDGE**

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