

+ WRIT PETITION NO.25645 OF 2015

1. (2013) 9 SCC 620

2. 2016 (2) ALT 226 (F.B.)
3. (2012) 7 SCC 200
4. (2016) 3 SCC 762
5. (2012) 7 SCC 200

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO**

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WRIT PETITION NO.25645 OF 2015

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ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is a securitisation and reconstruction company registered under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the Act of 2002'). It is a 'secured creditor' as defined under Section 2(zd) thereof. By way of this writ petition, it challenges the order dated 13.05.2015 passed by the learned Chief Metropolitan Magistrate, Hyderabad, in CrI.M.P.No.1250 of 2015 in CrI.M.P.No.904 of 2015. A consequential direction is sought to the Advocate-Commissioner appointed by the learned Chief Metropolitan Magistrate, Hyderabad, to execute the warrant of possession.

The petitioner company acquired a financial asset, being the loan given by the Central Bank of India to the second respondent company, under Assignment Agreement dated 28.03.2014. Even before acquisition of this financial asset by the petitioner company, the Central Bank of India had classified the loan account of the second respondent company as a non-performing asset and issued it demand notice dated 20.08.2013 under Section 13(2) of the Act of 2002. The outstanding dues mentioned therein aggregated to Rs.37,84,33,827/-. The objections raised in response thereto, under Section 13(3A) of the Act of 2002, were considered by the Central Bank of India and rejected under reply dated 21.10.2013.

After acquisition of this financial asset, the petitioner company initiated further measures for enforcement of the security interest created by the second respondent company in relation thereto. This 'security

interest' was the land admeasuring 6020 square yards and the buildings thereon along with plant and machinery situated at Sarojini Devi Road, Secunderabad. Proceedings under Section 13(4) of the Act of 2002 were initiated by issuance of a possession notice on 09.12.2014 under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002. However, as there was resistance to delivery of possession, the petitioner company lodged a FIR against the Director of the second respondent company under Sections 323 and 447 IPC. Simultaneously, it filed CrI.M.P.No.904 of 2015 before the learned Chief Metropolitan Magistrate, Hyderabad, taking recourse to Section 14 of the Act of 2002, which enables a secured creditor to avail the assistance of the Chief Metropolitan Magistrate/District Magistrate concerned to take possession of the secured asset. The learned Chief Metropolitan Magistrate, Hyderabad, thereupon passed order dated 15.04.2015 appointing an Advocate-Commissioner, the seventh respondent, and directed him to assist the petitioner company in taking possession of the secured asset.

While so, the second respondent company filed CrI.M.P.No.1250 of 2015 in CrI.M.P.No.904 of 2015 seeking dismissal of the application filed by the petitioner company under Section 14 of the Act of 2002. Thereupon, the learned Chief Metropolitan Magistrate, Hyderabad, passed order dated 13.05.2015 restraining the seventh respondent from proceeding further till examination of the application. Hence, this writ petition.

Heard Sri P. Sriraghuram, learned senior counsel representing Sri P.Sri Ram, learned counsel for the petitioner company, Sri Gopal Rao Amancherla, learned counsel representing Sri B.Sreenivasa Reddy, learned counsel for the second respondent company, and Sri M.Hamsa Raj, learned counsel for the seventh respondent.

The question raised before us is whether the Chief Metropolitan Magistrate, Hyderabad, has jurisdiction under Section 14 of the Act of 2002 to examine the objections raised by the second respondent company in its application, CrI.M.P.No.1250 of 2015. Though Sri Gopal

Rao Amancherla, learned counsel, would strive to raise various contentions as regards the alleged failure on the part of the petitioner company in taking steps under the Act of 2002, we are of the opinion that without addressing the preliminary issue as to maintainability of Crl.M.P.No.1250 of 2015, the second respondent company cannot expect this Court to examine on merits the contentions urged by it in Crl.M.P.No.1250 of 2015.

Primarily, the scope of the power of a Chief Metropolitan Magistrate/District Magistrate under Section 14 of the Act of 2002 falls for determination.

Section 14(1) of the Act of 2002 broadly provides to the effect that where the possession of a secured asset is required to be taken by a secured creditor or if a secured asset is required to be sold or transferred by a secured creditor, such secured creditor may, for the purpose of taking possession or control of such asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction such secured asset is situated to take possession thereof and the Chief Metropolitan Magistrate or the District Magistrate shall, on such request being made to him, take possession of and forward such asset to the secured creditor. The first proviso thereto states that any application by the secured creditor in this regard shall be accompanied by an affidavit, duly affirmed by the authorized officer of the secured creditor, and such affidavit shall be in conformity with the declarations stipulated under Clauses (i) to (ix) thereunder. The second proviso to Section 14 states that on receipt of such an affidavit from the authorized officer, the Chief Metropolitan Magistrate or the District 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 asset. Section 14(1A) empowers the Chief Metropolitan Magistrate or District Magistrate to authorize any officer subordinate to him to take possession and forward such asset to the secured creditor. Sub-section (2) of Section 14 empowers the Chief Metropolitan Magistrate or District Magistrate to take or cause to be taken such steps and use or cause to be used such force,

as may, in his opinion, be necessary, for securing compliance with the provisions of Section 14(1).

The scope and nature of the jurisdiction of a Chief Metropolitan Magistrate/District Magistrate under Section 14 of the Act of 2002 fell for consideration before the Supreme Court in ***STANDARD CHARTERED BANK V/s. V.NOBLE KUMAR***^[1]. The Supreme Court observed therein that the satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. Again, in ***HARSHAD GOVARDHAN SONDAGAR V/s. INTERNATIONAL ASSETS RECONSTRUCTION CO. LTD.***^[2], the Supreme Court had occasion to deal with the scope of the power exercised by a Chief Metropolitan Magistrate/District Magistrate under Section 14 of the Act of 2002 and observed that when a secured creditor seeks assistance to take possession of a secured asset thereunder and a lessee of a mortgagor/borrower is in actual possession, the secured creditor must state so in the affidavit filed along with the application under Section 14 of the Act of 2002 and also as to which class the lease in question falls under, that is, as to whether it was created before the mortgage, or, after the mortgage but before issuance of the demand notice under Section 13(2) of the Act of 2002, or lastly, if it was created after issuance of the demand notice under Section 13(2) of the Act of 2002. Once this aspect is brought out in the affidavit filed by the secured creditor, the Supreme Court held that the Magistrate would have to give notice and opportunity of hearing to the lessee in possession of the secured asset, falling under either the first class or the second class of leases but not the last class, along with the secured creditor, in consistency with the principles of natural justice, and then take a decision. If the Magistrate is satisfied that there is a valid lease created before the mortgage or prior to receipt of the notice under Section 13(2) of the Act of 2002, he cannot pass an order for delivering possession of the secured asset. In such cases, when the

lessee makes out a case that his lease falls under either of the first two classes of leases specified above, the actual possession cannot be delivered to the secured creditor until the lease is validly determined in accordance with law.

Relying on the aforestated judgments of the Supreme Court, a Full Bench of this Court in ***T.R.JEWELLERY V/s. STATE BANK OF INDIA, VEDAYAPALEM BRANCH, NELLORE***^[3] held that a Magistrate is empowered under Section 14 of the Act of 2002 to authorize a subordinate official to take possession of the asset after examining the factual correctness of the assertions made in the affidavit and therefore, it could be said without any shadow of doubt that the assistance taken under this provision is only procedural in nature and no adjudication is involved. The Full Bench observed that use of the word 'order' in Section 14 is only a reference to an administrative order made for taking possession of the secured asset if all other conditions are fulfilled. The Full Bench confirmed that the power exercised by the Chief Metropolitan Magistrate or District Magistrate was synonymous and that it was not adjudicatory in nature.

It may be noticed that in ***VISHAL N.KALSARIA V/s. BANK OF INDIA***^[4], clarifying the law laid down in ***HARSHAD GOVARDHAN SONDAGAR***², the Supreme Court stated that even if no registered lease deed exists, then such tenants who are required to prove that they have been in occupation of the premises as tenants may be permitted to produce such evidence in proceedings under Section 14 of the Act of 2002 before the Chief Metropolitan Magistrate/District Magistrate. This decision was rendered in relation to protected tenants under the Maharashtra Rent Control Act, 1999. The applicability of the *ratio* of this judgment in the States of Telangana and Andhra Pradesh is however open to question in the light of the amendment effected in the year 1999 to the Registration Act, 1908, in so far as it applies to the erstwhile combined State of Andhra Pradesh, making lease deeds in respect of leases even for a period of less than one year compulsorily registrable

under Section 17 thereof. Significantly, there is no such requirement in Maharashtra.

In any event, the aforestated case law makes it crystal clear that the Chief Metropolitan Magistrate/District Magistrate, in exercise of power under Section 14 of the Act of 2002, is only required to undertake a factual examination of the 'entitlement' of a secured creditor to take possession in terms of Section 14(1)(b)(viii), by ascertaining the factum of actual possession. Beyond determining this fact on the basis of a hearing and the documents placed on record, the Chief Metropolitan Magistrate/District Magistrate is not empowered to undertake any sort of adjudicatory process.

This being the settled legal position, the Chief Metropolitan Magistrate, Hyderabad, was only empowered to examine the assertions made in the affidavit filed by the petitioner company and upon being satisfied therewith, to the extent indicated in the aforestated decisions, pass an appropriate order. This exercise already culminated in the order dated 15.04.2015. Being an administrative functionary in the scheme of Section 14 of the Act of 2002, the Chief Metropolitan Magistrate, Hyderabad, had no power of reviewing the order dated 15.04.2015, as no such power is conferred upon him under the Act of 2002. Well settled is the legal proposition that unless the power of review is specifically conferred by the statute itself, an administrative authority acting in furtherance of the power conferred by such statute cannot assume unto itself such power of review (See **HARYANA STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED V/s. MAWASI**^[5]). In the event an erroneous order is passed by a Chief Metropolitan Magistrate/District Magistrate in exercise of the administrative power conferred by Section 14 of the Act of 2002, the borrower's remedy against the same, as pointed out in **STANDARD CHARTERED BANK**¹, is by way of an application under Section 17 of the Act of 2002 to the Debts Recovery Tribunal concerned. The Chief Metropolitan Magistrate, Hyderabad, therefore had no right to keep further proceedings pursuant

to the order dated 15.04.2015 in abeyance while seeking to exercise the power of review upon the application in CrI.M.P.No.1250 of 2015 filed by the second respondent company.

We are informed that S.A.No.71 of 2013 has already been preferred by the second respondent company before the Debts Recovery Tribunal, Hyderabad, and that it is pending consideration. This being the lawful and proper remedy for the second respondent company, its parallel attempt to thwart the order dated 15.04.2015 by practically seeking review thereof cannot be countenanced. It is therefore left open to the second respondent company to pursue its lawful remedies in accordance with law. We reiterate that we have not ventured into the merits of the contentions raised by the second respondent company *vis-à-vis* the order dated 15.04.2015 and all such issues are left open.

The writ petition is accordingly allowed setting aside the order dated 13.05.2015 passed by the learned Chief Metropolitan Magistrate, Hyderabad, in CrI.M.P.No.1250 of 2015 in CrI.M.P.No.904 of 2015. We further hold that the said criminal miscellaneous petition is not maintainable in terms of Section 14 of the Act of 2002 and the learned Chief Metropolitan Magistrate, Hyderabad, is directed to take steps accordingly. The learned Chief Metropolitan Magistrate, Hyderabad, is also directed to take necessary consequential steps pursuant to the order dated 15.04.2015 passed in CrI.M.P.No.904 of 2015, subject to orders, if any, in S.A.No.71 of 2013. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

**DR.B.SIVA SANKARA RAO,
J**

24th JUNE, 2016

L/R copy to be marked – Yes
B/o PGS

[\[1\]](#) (2013) 9 SCC 620

[\[2\]](#) (2014) 6 SUPREME COURT CASES 1

[\[3\]](#) 2016 (2) ALT 226 (F.B.)

[\[4\]](#) (2016) 3 SCC 762

[\[5\]](#) (2012) 7 SCC 200