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HIGH COURT OF CHHATTISGARH, BILASPUR
WPC No.2629 of 2017

1. M/s. Yogesh Traders Proprietor Smt. Reeta Agrawal W/o Ghanshyam Agrawal, aged about 57 years,
2. Ghanshyam Agrawal S/o Omkarmal Agrawal, aged about 61 years,
   Both R/o Azad Market, Station Road, Raipur, District-Raipur (CG)

---- Petitioners

Versus

1. The State of C.G. through the Collector and District Magistrate, Raipur (CG)
2. Prescribed Officer and Chief Manager, Bank of India, Zonal Office – Raipur Zone, G.D. Shesh Nilayam, Kankali Para Road, Tatyapara, Raipur, District Raipur (CG)
3. Prescribed Officer, Bank of India, Devendra Nagar Branch, District Raipur (CG)

---- Respondents

For Petitioners	:	Mr.A.K.Prasad, Advocate
For Respondent No.1	:	Mr.Gary Mukhopadhay, Dy.G.A.
For Res.No.2 and 3	:	Mr.Anand Shukla, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

10/10/2017

With the consent of learned counsel appearing for the parties, the matter is heard finally.

1. The present writ petition is directed against the order dated 31.7.2017 (Annexure P/1) by which the Collector/District Magistrate in exercising the power and jurisdiction conferred under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called as "SARFAESI Act") has passed an order directing taking of possession of the secured assets.

2. Mr.A.K.Prasad, learned counsel appearing for the petitioners, would submit that the learned District Magistrate has passed an order under Section 14 of the SARFAESI Act without securing the compliance of first proviso to Section 14 (1) of the SARFAESI Act as along with application no affidavit duly affirmed by the Authorised Officer of the secured creditor of Central Bank of India was filed, which is mandatory in nature, therefore, the impugned order deserves to be set aside on this ground alone. He would place reliance upon the judgment of the Supreme Court in the matter of **Standard Chartered Bank v. Noble Kumar and others**[1] and High Court of Allahabad in the matter of **Shiv Charan Lal Sharma v. Allahabad Bank A.M.U. Branch, Aligarh and others**[2].

3. On the other hand, learned counsel appearing for respondents No.2 and 3 would oppose the submission and submit that in the event of non-compliance of said proviso to Section 14(1) of the SARFAESI Act they may be granted liberty to file a fresh affidavit in accordance with law.

4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

5. Section 14 (1) of the SARFAESI Act provides as under:-

> "14. **Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking**

1 (2013) 9 SCC 620
2 AIR 2015 Allahabad 136

possession of secured asset.-(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets 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 assets, 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 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."

6. A careful perusal of the aforesaid provisions would show that filing of an affidavit along with application under Section 14 of the SARFAESI Act is mandatory in order to consider the application under Section 14 of the SARFAESI Act.

7. In the matter of **Standard Chartered Bank** (supra), the Supreme Court has held that the Magistrate can pass the order under Section 14 of the SARFAESI Act regarding taking of possession of the secured asset. It was observed as under:-

"25. 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. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset."

8. The Division Bench of the High Court of Allahabad in the matter of **Shiv Charan Lal Sharma** (supra) has held as under:-

> “8. This provision was considered by the Supreme Court in Standard Chartered Bank Vs. V. Noble Kumar and others (Supra) whereas the Supreme Court analysed the nine sub clauses of the proviso indicating that the following information must be furnished in the affidavit, namely that there was a loan transaction under which a borrower is liable to repay the loan amount with interest; that there was a security interest created in a secured asset belonging to the borrower; that the borrower committed a default in the repayment; that a notice contemplated under Section 13(2) was in fact issued; that in spite of such a notice, the borrower did not make the repayment; that the objections of the borrower was considered and rejected and the reasons was communicated to the borrower.
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> 9. The Supreme Court held that this insertion was done in order to provide safeguards to the interest of the borrower and that this provision stipulates that a secured creditor who is seeking the intervention of the Magistrate under Section 14 was required to file an affidavit furnishing the information contemplated under various sub-clauses (i) to (ix) of the proviso. The Supreme Court further held that the affidavit containing the aforesaid information was necessary as it would obligate the Magistrate to pass suitable orders regarding taking and delivery of possession of the secured asset only after being satisfied with the contents of the affidavits. The Supreme Court further held that the satisfaction of the Magistrate 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 and only after recording the satisfaction that the Magistrate could pass appropriate orders regarding taking of possession of the secured assets.
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> 10. From the aforesaid decision of the Supreme Court in Standard Chartered Bank (Supra), we are of the opinion that the word 'shall' used in the first proviso to Section 14(1) of the Act is mandatory. It is an essential requirement for the Bank that the application filed under Section 14 must be accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor indicating the ingredients contemplated under sub clause (i) to sub clause (ix) to the first proviso. Non filing of the

affidavit in our opinion would be fatal."

9. Thus, it is quite apparent that filing of an affidavit along with application under Section 14(1) of the SARFAESI Act is mandatory and it is essential requirement of the Bank that the application filed under Section 14 must be accompanied by an affidavit duly affirmed by the Authorised Officer of the secured creditor indicating the ingredients contemplated under first proviso to Section 14(1) of the SARFAESI Act, therefore, the impugned order regarding taking of possession of secured assets is vulnerable.

10. It is not in dispute that affidavit as contemplated under first proviso to Section 14(1) of the SARFAESI Act was not filed by the respondent-Bank and order has been passed regarding taking of possession of the secured assets. Therefore, the impugned order is quashed. However, the respondent-Bank is at liberty to proceed in accordance with law.

11. The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-