

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1801 of 2015

(Arising out of order dated 31-3-2015 in Case No.35/B-121/Year 2012-13 of the learned Collector and District Magistrate, Raipur and order dated 26-8-2015 of the Naib Tahsildar, Dharsiva)

Order reserved on: 10-8-2017

Order delivered on: 30-8-2017

1. M/s G.P. Ispat Private Limited, Through Director, Gurpreet Singh Chandhok, S/o Pritpal Singh, Aged about 39 years, R/o Pritpal Farm House, V.I.P. Road, Raipur (C.G.)
2. S.P. Cold Storage, Through Partner, Gurpreet Singh Chandhok, S/o Pritpal Singh, Aged about 39 years, R/o Pritpal Farm House, V.I.P. Road, Raipur (C.G.)

---- Petitioners

Versus

1. Authorized Officer and Chief Manager, State Bank of India, S.M.E. Branch, Administrative Office Building, Byron Bazaar, Raipur (C.G.)
2. The Collector/District Magistrate, Raipur, District Raipur (C.G.)
3. The Naib Tehsildar, Dharsiva, Raipur, District Raipur (C.G.)
4. Harpal Singh, S/o Sardar Singh, R/o Near Railway Crossing, Khamtra, Veer Shivaji Ward No. 7, Raipur (C.G.)

---- Respondents

For Petitioners:	Mr. Ravish Chandra Agrawal, Senior Advocate with Mr. Sankalp Kochar and Mr. Anand Dadariya, Advocates.
For Respondent No.1:	Mr. R.K. Verma, Senior Advocate with Mr. Abhishek Sinha and Mr. Ghanshyam Patel, Advocates.
For Respondents No.2 and 3 / State: -	Mr. Dhiraj Kumar Wankhede, Govt. Advocate.
For Respondent No.4:	None present though served.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Impugning legality, validity and correctness of the order passed by

the District Magistrate, Raipur granting application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') and also questioning the consequential order passed by the Naib Tahsildar, Dharsiva dated 26-8-2015, the writ petitioners, who are borrower and guarantor, respectively, have filed this writ petition under Article 226 of the Constitution of India seeking quashment of those orders.

2. Essential facts necessary to judge the correctness of the aforesaid orders are as under: -

2.1) Respondent No.1 Bank granted loan facility of ₹ 58.62 crores on 29-3-2008 to petitioner No.1 to which petitioner No.2 stood as guarantor. The outstanding amount which was found against the petitioners as on 30-9-2015 was ₹ 64.58 crores. Thereafter, due to financial indiscipline, diversion of funds and for other reasons, the account was declared non-performing asset (NPA) on 30-11-2012. After declaring the account as NPA, on 7-12-2012 (Annexure P-3), a notice under Section 13 (2) of the SARFAESI Act was issued and on 19-2-2013, possession notice was issued and thereafter, the Bank filed recovery suit bearing O.A.No.33/2013. Measures under Section 13(4) of the SARFAESI were taken. Since physical possession of secured assets could not be taken, the respondent Bank filed application under Section 14 of the SARFAESI Act before the District Magistrate, Raipur for obtaining physical possession and affidavit was also filed supporting the contents of the application as required under the proviso to Section 14 (1). In

that application, the petitioners appeared and filed their objection raising plea that the matter is pending consideration before the company court and therefore without due permission / leave of the company court, Section 14 application cannot be granted. Against the measures taken under Section 13 (2) of the SARFAESI Act, petitioner No.1 has filed Securitisation Application No.68/2013 under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal and that is pending consideration in which the application for interim relief was rejected by the Tribunal on 12-4-2013. Securitisation Application No.3/2015 was also filed by petitioner No.2 challenging the measures under Section 13 (4) of the SARFAESI Act which was dismissed by the DRT for want of prosecution on 20-3-2015. Ultimately, the learned District Magistrate by its impugned order, granted the application after having satisfied with the affidavit filed by the respondent Bank and further directed the Naib Tahsildar to verify and proceed for taking possession, if no other case is pending. Calling in question the order of the District Magistrate as well as that of the Naib Tahsildar, this writ petition has been filed.

2.2) The impugned challenge made in the writ petition is on the ground that the learned District Magistrate has no jurisdiction to delegate his power of satisfying himself under the first proviso to Section 14 (1) of the SARFAESI Act and delegation of that power by the District Magistrate makes the order of the District Magistrate as well as the Naib Tahsildar without jurisdiction and without authority of law. It is the further case of the petitioners that since

company petition is pending before the company court, therefore, without leave of the company court, no order under Section 14 of the SARFAESI Act could have been passed. Statutory compliance of the proviso to Section 14 (1) of the SARFAESI Act has not been recorded by the learned District Magistrate while passing the impugned order in its letter and spirit, therefore, the writ petition be allowed and the order of the District Magistrate followed by the order of the Naib Tahsildar deserves to be set aside.

2.3) Detailed return has been filed by the State / respondents No.2 and 3 stating inter alia that the petitioners have suppressed the material fact that they have filed two securitisation applications challenging the measures taken under Section 13 (4) of the SARFAESI Act by petitioner No.1 and petitioner No.2 separately, and the securitisation application filed by petitioner No.1 is still pending, however, the interim relief application has already been refused, and the securitisation application filed by petitioner No.2 has already been dismissed by the DRT for want of appearance. It has further been pleaded that the subsequently filed two company petitions are only an afterthought in order to frustrate the measures taken by the Bank including the measures to take possession by filing an application under Section 14 of the SARFAESI Act. The amount in question is not in dispute, therefore, the writ petition deserves to be dismissed.

3. Mr. Ravish Chandra Agrawal, learned Senior Advocate ably assisted by Mr. Sankalp Kochar appearing for the petitioners, would submit as under: -

3.1) The statutory compliances as mandated under the first proviso to Section 14 of the SARFAESI Act in shape of affidavit was not filed before the District Magistrate by the respondent Bank and even otherwise, the learned District Magistrate has not recorded the subjective satisfaction that the respondent Bank has complied with the statutory compliances which is *sine qua non* for passing an order under Section 14 of the SARFAESI Act granting that application particularly with regard to Sections 13 (8) and 13 (9) of the said Act, no satisfaction has been recorded by the District Magistrate which is also necessary in view of clause 9 of the first proviso to Section 14 as such, not only the filing of application but even the statutory compliances and satisfaction to be recorded by the learned District Magistrate are imperative in nature. Reliance has been placed in the matters of **Shiv Charan Lal Sharma v. Allahabad Bank, A.M.U. Branch, Aligarh through its Authorised Officer and others**¹, **Arun Kumar Arora and another v. Union of India and others**² and **Standard Chartered Bank v. V. Noble Kumar and others**³.

3.2) The District Magistrate has not taken the absolute decision to “take possession” while exercising the power under Section 14 of the SARFAESI Act and has delegated his power to the Naib Tahsildar to verify the pendency of any other litigation qua the subject property, therefore that amounts to delegation of power which is impermissible in law. Reliance has been placed upon the

1 AIR 2015 All 136

2 AIR 2006 Punjab and Haryana 211

3 (2013) 9 SCC 620

case of **Arupeswar Chatterjee and others v. Bank of Baroda and others**⁴.

3.3) Since the company petition for winding up filed by one Sarabjeet Singh Chhatwal, one of the secured creditors, and another namely Company Petition No.5/2013 is pending before the company court (this High Court) and one another company petition namely Company Petition No.26/2013 filed by Jagdish Singh Saini, Charanjeet Singh Saini and Sunny Saini which was filed under Sections 397, 398, 399, 402 and 403 of the Companies Act, 1956 before the Company Law Board, Mumbai has been dismissed on 19-2-2015 against which Miscellaneous Appeal No.62/2015 under Section 10F of the Companies Act, 1956 is pending before this Court. It is pertinent to mention here that in Company Petition No.26/2013, the Company Law Board had passed interim order dated 28-8-2013 and on miscellaneous appeal preferred by the Bank against that order, this Court has stayed the operation of the order passed by the Company Law Board by order dated 24-12-2014. Ultimately, the said miscellaneous appeal (M.A.No.84/2013) has been allowed. Therefore, without leave of the Company law Board, order under Section 14 of the SARFAESI Act could not be passed. Company Petition No.5/2013 and Misc. Appeal No.62/2015, both, have been admitted for consideration by this Court. Therefore, order passed under Section 14 of the SARFAESI Act is bad and unsustainable in law.

4. Opposing the submissions made on behalf of the petitioners, Mr.

4 AIR 2015 Calcutta 282

R.K. Verma, learned Senior Advocate appearing for respondent No.1 Bank, would vehemently submit as under: -

4.1) The learned District Magistrate by its impugned order did not delegate any such power and jurisdiction to take possession to the Naib Tahsildar, he has only by way of additional safeguard directed the Naib Tahsildar to verify the pendency of any other case qua the subject matter which cannot by any stretch of imagination be said to be the order of delegation. Moreover, the respondent Bank has moved to the District Magistrate to delete that part of the order by which he has directed the Naib Tahsildar to verify the pendency of other case which is pending consideration as the learned District Magistrate has already passed order for taking possession and absolute decision has been taken by the learned District Magistrate to take possession of the secured assets from the petitioners.

4.2) The petitioners did not take any such objection that representation against the notice under Section 13 (2) of the SARFAESI Act has not been considered by the Bank and result thereof has not been communicated. Learned Senior Counsel would draw the attention of this Court towards page 188 (Annexure R-1 of the return) to elaborate his submission that notice under Section 13 (2) of the SARFAESI Act was replied by the petitioners and their objections have been considered and communicated to the petitioners and the said objections have been very well taken before the DRT by filing securitisation application and the DRT is ceased of the matter and, therefore, that point cannot be permitted to be raised again before this Court in the writ petition filed calling

in question legality, validity and correctness of order under Section 14 of the SARFAESI Act.

4.3) The petitioners have not raised any plea qua the compliance of the proviso to Section 14 of the SARFAESI Act either before the District Magistrate or in the writ petition filed before this Court and under Section 17 proceeding, a question has already been raised before the Debts Recovery Tribunal that the Tribunal is ceased of the matter and it is pending consideration.

4.4) It is not the case of the petitioners that the respondent Bank has not filed affidavit, it has filed affidavit complying with the proviso to Section 14 (1) of the SARFAESI Act, mere omission, if any, in absence of prejudice having been established either before the District Magistrate or before this Court would not make the order passed under Section 14 of the SARFAESI Act vulnerable and as such, omission to mention the admitted fact would be inconsequential and would not affect validity and legality of the order under Section 14 passed by the District Magistrate, as the principle of substantial compliance would apply in the facts of the case.

4.5) Mr. Abhishek Sinha, learned counsel appearing on behalf of the respondent Bank, would submit that there was no impediment or legal bar on the part of the District Magistrate to pass the order of directing to take possession, as on that day, even in any proceeding, no interim order restraining the Bank was in operation. In Company Petition No.5/2013, the respondent Bank was made a party by the order of this Court dated 19-10-2016 and on that day

itself, the interim order was vacated by the Company Court (this Court). Finally, he would submit that the petitioners are unnecessarily taking advantage of the company petitions and other petitions filed by other persons i.e. secured creditors and Directors, which were not filed at the instance of the petitioners and only to stall the recovery proceedings, all such pleas have been raised.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.

6. The following issues arise for consideration: -

1. Whether the leave of the Company Court was required before considering / granting the application under Section 14 of the SARFAESI Act by the learned District Magistrate?
2. What is the scope and ambit of jurisdiction of the learned District Magistrate under Section 14 (1) of the SARFAESI Act and whether the first proviso to Section 14 (1) of the SARFAESI Act has been complied with by the learned District Magistrate while granting that application?
3. Whether the learned District Magistrate had delegated its jurisdiction to take possession under Section 14 of the SARFAESI Act to the subordinate revenue officer (Tahsildar) by passing the impugned order making his order vulnerable?

ISSUE NO.1

7. The star submission raised on behalf of the petitioners is that since the winding up petition is pending before the Company Court

(before this Court) and another petition under Sections 442, 446, 537 and 529A of the Companies Act is pending in the shape of appeal under Section 10F of the Companies Act, 1956, no proceeding could have been taken or continued by the learned District Magistrate under Section 14 of the SARFAESI Act without the leave of the Company Court. In order to buttress his submission, Mr. Agrawal, learned Senior Counsel, would rely upon the decisions of the Supreme Court in the matters of **Harihar Nath and others v. State Bank of India and others**⁵, **International Coach Builders Ltd. v. Karnataka State Financial Corpn.**⁶, **Anita International v. Tungabadra Sugar Works Mazdoor Sangh and others**⁷, **KSL and Industries Limited v. Arihant Threads Limited and others**⁸, **Central Bank of India v. State of Kerala and others**⁹ and **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and others**¹⁰. Whereas, Mr. Verma, learned Senior Counsel, would rely upon the decision of the Supreme Court in the matter of **Pegasus Assets Reconstruction P. Limited v. M/s. Haryana Concast Limited and another**¹¹.

8. In the matter of **Pegasus Assets Reconstruction Private Limited** (supra), Their Lordships of the Supreme Court in opening paragraph of the judgment formulated a question of law, “whether a Company Court, directly or through an Official Liquidator, can wield

5 (2006) 4 SCC 457

6 AIR 2003 SC 2012

7 (2016) 9 SCC 44

8 (2015) 1 SCC 166

9 (2009) 4 SCC 94

10 (2014) 6 SCC 1

11 AIR 2016 SC 494

any control in respect of sale of a secured asset by a secured creditor in exercise of powers available to such creditor under the SARFAESI Act". Their Lordships considered the question and answered in negative holding that secured creditor has right to enforce the security interest as the SARFAESI Act is a complete Code and secured creditor has right to enforce its security interest without intervention of Court or Tribunal. Their Lordships pertinently held in paragraphs 24 and 25 as under: -

"24. Since we have held earlier in favour of views of Delhi High Court, it is not necessary to burden this judgment with the case laws which support that view and have been noted by the High Court. We are in agreement with the submissions advanced on behalf of respondent Kotak Mahindra Bank as well as respondent No.2 that there is no lacuna or ambiguity in the [SARFAESI Act](#) to warrant reading something more into it. For the purpose it has been enacted, it is a complete code and the earlier judgments rendered in the context of [SFC Act](#) or [RDB Act](#) vis-à-vis the [Companies Act](#), cannot be held applicable on all force to the [SARFAESI Act](#). There is nothing lacking in the Act so as to borrow anything from the [Companies Act](#) till the stage the secured assets are sold by the secured creditors in accordance with the provisions in the [SARFAESI Act](#) and the Rules. At the post sale stage, the rights of the persons or parties having any stake in the sale proceeds are also taken care of by sub-section (9) of [Section 13](#) and its five provisos (not numbered). It is significant that as per sub-section (9) a sort of consensus is required amongst the secured creditors, if they are more than one, for the exercise of rights available under sub-section (4). If borrower is a company in liquidation, the sale proceeds have to be distributed in accordance with the provisions of [Section 529A](#) of the Companies Act even where the company is being wound up after coming into force of the [SARFAESI Act](#), if the secured creditor of such company opts to stand out of the winding up proceedings, it is entitled to retain the sale proceeds of its secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of [Section 529A](#) of the Company Act. The third proviso is also meant to work out the provisions of [Section 529A](#) of the Companies Act, in case the

workmen's dues cannot be ascertained, by relying upon communication of estimate of such dues by the liquidator to the secured creditor, who has to deposit the amount of such estimated dues with the liquidator and then it can retain the sale proceeds of the secured assets. The other two provisos also are in aid of the liquidator to discharge his duties and obligations arising under [Section 529A](#) of the Companies Act. Thus, it is evident that the required provisions of the [Companies Act](#) have been incorporated in the [SARFAESI Act](#) for harmonizing this Act with the [Companies Act](#) in respect of dues of workmen and their protection under [Section 529A](#) of the Companies Act. In view of such exercise already done by the legislature, there is no plausible reason as to take recourse to any provisions of the [Companies Act](#) and permit interference in the proceedings under the [SARFAESI Act](#) either by the Company Judge or the liquidator. As noted earlier, the Official Liquidator as a representative of the borrower company under winding up has to be associated, not for supplying any omission in the [SARFAESI Act](#) but because of express provisions therein as well as in the Rules. Hence the exercise of harmonizing that this Court had to undertake in the context of [SFC Act](#) or the RDB Act is no longer warranted in respect of [SARFAESI Act](#) vis-à-vis the [Companies Act](#).

25. The aforesaid view commends itself to us also because of clear intention of the Parliament expressed in [Section 13](#) of the SARFAESI Act that a secured creditor has the right to enforce its security interest without the intervention of the court or tribunal. At the same time, this Act takes care that in case of grievance, the borrower, which in the case of a company under liquidation would mean the liquidator, will have the right of seeking redressal under [Sections 17](#) and [18](#) of the SARFAESI Act."

9. In **Pegasus Assets Reconstruction Private Limited** (supra),

Their Lordships have further held that the SARFAESI Act is a complete Code and the earlier judgments rendered in the context of the State Financial Corporations Act, 1951 (SFC Act) or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDB Act) vis-a-vis the Companies Act, cannot be held applicable on all force to the SARFAESI Act, and authoritatively

held so because of clear intention of the Parliament expressed in Section 13 of the SARFAESI Act that a secured creditor has the right to enforce its security interest without the intervention of the court or tribunal.

10. Thus, from the aforesaid judgment of the Supreme Court, it is quite vivid that till the stage the secured assets are sold by the secured creditors in accordance with the provisions of the SARFAESI Act and the rules made thereunder, leave of the Company Court is not required and after the sale is made, the rights of the persons or parties having any stake in the sale proceeds or their provisions are safeguarded by the provisions contained in sub-section (9) of [Section 13](#) and its five provisos.

11. Not only this, thereafter, in the matter of **M/s. Madras Petrochem Ltd. and another v. BIFR and others**¹², the question before the Supreme Court was, whether the SARFAESI Act would prevail over the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, as the SICA is not included in Section 37 of the SARFAESI Act. The Supreme Court considered the issue in great detail and held that though SICA is not included in Section 37 of the SARFAESI Act, but is covered by non obstante clause in Section 35 of the SARFAESI Act which deals with the overriding effect of the said Act over other laws. The Supreme Court further held that the further expression 'or any other law for time being in force' contained in Section 37 of the SARFAESI Act would mean other laws having relation to securities market only which the

12 AIR 2016 SC 898

SARFAESI Act will deal with and the SICA does not deal with securities market but rehabilitates sick companies. In **M/s. Madras Petrochem Ltd.** (supra), the Supreme Court has also noticed the earlier judgment rendered in **Pegasus Assets Reconstruction Private Limited** (supra) to the effect that the Securitisation Act is a complete code in itself and earlier judgments rendered in the context of the State Financial Corporation Act, 1951 or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 cannot be held applicable to the Securitisation Act. Further, the very incorporation of certain provisions of the Companies Act in the Securitisation Act themselves harmonise the latter Act with the Companies Act in respect of workers' debts under Section 529A of the Companies Act. (See paragraph 51 of the report.)

12. Thus, it is held that leave of the Company Court is not required to be taken till the stage the secured assets sold by the secured creditors in accordance with the provisions of the SARFAESI Act and the rules made thereunder and at the post sale stage, the rights of the persons or parties having any stake in the sale proceeds are also taken care of subject to the provisions contained in sub-section (9) of [Section 13](#) and its five provisos.
13. Not only this, Sarabjeet Singh Chhatwal and Karamjeet Singh & Company Limited preferred Company Petition No.5/2013 before this Court titled as **Sarabjeet Singh Chhatwal and another v. G.P. Ispat Private Limited and others** for winding-up of the petitioner Company under the provisions of the Indian Companies Act, 1956 on the ground that the petitioner Company has failed to

liquidate the debt due to them. In that case, the company court by its order dated 19-10-2016 considered the issue and the interim order passed earlier was vacated relying upon the decision of the Supreme Court in **Pegasus Assets Reconstruction Private Limited** (supra) and has held that the sale proceeds obtained therefrom in accordance with the SARFAESI Act will remain subject to the outcome of the company petition to the extent of the sum involved in the company petition and observed as under in paragraph 14: -

“14. In view of the above and particularly considering the judgment rendered by the Supreme Court in **Pegasus Assets Reconstruction Private Limited** (supra), the interim order dated 02.07.2013 is vacated subject, however, to the observation that in the event the winding up petition is allowed and if the SBI succeeds in conducting the auction sale of the secured assets of the respondent Company to realize its debt, the sale proceed obtained therefrom will remain subject to the outcome of this company petition to the extent of the sum involved in this petition.”

14. Thus, the Company Court has also permitted the Bank/secured creditor to go ahead with the provisions of the SARFAESI Act subject to the outcome of the company petition. Therefore, the objection raised in this behalf by the petitioners is hereby repelled and it is held that the secured creditor / Bank is entitled to proceed under Section 14 (1) of the SARFAESI Act.
15. It is also the contention of the petitioners that the company petition filed before the Company Law Board by Shri Jagdish Singh Saini and two others being Company Petition No.26/2013, under Sections 397, 398, 399, 402 and 403 of the Companies Act, 1956 has been dismissed by order dated 19-2-2015 and M.A.

No.62/2015 under Section 10F of the Companies Act, 1956 is pending before this Court, that is of no consequence as it has already been held that the Company Court has no control directly or indirectly in respect of sale of secured assets by the secured creditor in exercise of power available to such creditor under the SARFAESI Act and in view of law laid down by Their Lordships of the Supreme Court in **Pegasus Assets Reconstruction Private Limited** (supra) and further considering the fact that the Company Court has already vacated the interim order and allowed the Bank to proceed further by granting leave and sale proceed has been made subject to the final outcome of the company petition to the extent of sum involved in the company petition, the first issue is answered accordingly rejecting the plea raised on behalf of the petitioners.

16. To be fair with Mr. Agrawal, learned Senior Counsel, it would be appropriate to consider the judgments cited by him.

(i) **Harihar Nath** (supra) relates to grant of leave under Section 446 (1) of the Companies Act and the question involved was altogether different.

(ii) In **International Coach Builders Ltd.** (supra), the question was whether the State Financial Corporation can sell and realise security without reference to the Company Court after winding up order is passed.

(iii) In **KSL and Industries Ltd.** (supra), it was held that the provisions of the SICA in particular Section 22, shall prevail over

the provisions for recovery of debts under the RDB Act.

(iv) In **Central Bank of India v. State of Kerala** (supra), the question before the Supreme Court was whether Section 38-C of the Bombay Sales Tax Act, 1959 and Section 26-B of the Kerala General Sales Act, 1963 are inconsistent with the RDB Act, 1993 and the SARFAESI Act, 2002 and whether Section 34 of the RDB Act and Section 35 of the SARFAESI Act will have primacy over State legislations.

(v) In **Anita International** (supra), the Supreme Court has held that the Company Court has jurisdiction to entertain application of the creditor Bank or Financial Institution seeking leave for recovery of debts from company under winding-up by sale of its properties under the RDB Act.

17. Thus, the aforesaid judgments are clearly inapplicable and distinguishable to the factual score of the present case, as the Supreme Court in **Pegasus Assets Reconstruction Private Limited** (supra) has clearly held that earlier judgments rendered in the context of the SFC Act or the RDB Act vis-a-vis the Companies Act cannot be held applicable on all force to the SARFAESI Act.

ISSUE NO.2

18. In order to answer the second issue, the following judgments rendered by the Supreme Court and some other High Courts may be noted herein-below profitably.

19. The vires of the SARFAESI Act was taken-up for consideration before the Supreme Court in the matter of **Mardia Chemicals v.**

Union of India¹³ and it was upheld accordingly. The constitutional validity of Section 14 of the SARFAESI Act specifically came for consideration in the case of Siddhi Vinayak Hotels (P.) Ltd. v. Union of India (W.P.No.26663 and 27553 of 2005, decided on 17-2-2006) before the Andhra Pradesh High Court. It was held as under upholding the constitutional validity of Section 14 of the SARFAESI Act: -

“An analysis of the above reproduced provisions show that by virtue of non obstante clause contained in Sub-section (1) of section 13 any security interest created in favour of any secured creditor may be enforced without the intervention of the court or Tribunal. In terms of Sub-section (2) the secured creditor can issue notice to the borrower requiring the latter to discharge his liabilities within sixty days from the date of notice. Such notice is required to be delivered in accordance with rule 3 of the Rules. On receipt of notice issued under Sub-section (2), the borrower can make a representation or raise objection against the demand. The secured creditor is required to consider such representation or objection. If it is found that the representation or objection is not acceptable or tenable, then the secured creditor is duty bound to communicate the reasons for non-acceptance to the borrower. If the borrower fails to discharge his liability in full within a period of sixty days specified in Sub-section (2), the secured creditor can take recourse to one or the other mode as specified in Sub-section (4). One of the modes is to take over the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset. The secured creditor can also appoint any person to manage the secured assets of which possession has been taken over. Any person who may have acquired any of the secured assets from the borrower can also be called upon to pay such sum of money as may be sufficient to pay the secured debt. [Section 14\(1\)](#) lays down that 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, then he may, for the purpose of taking possession or control of any such secured asset make an application in writing to the Chief Metropolitan Magistrate or the District Magistrate within whose

13 (2004) 4 SCC 311

jurisdiction any such secured asset or other documents relating thereto is situated or is found for taking possession thereof. On receipt of such request, the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall take possession of the asset or document and forward the same to the secured creditor. Sub-section (2) of [Section 14](#) empowers the Chief Metropolitan Magistrate or the District Magistrate to take appropriate steps or use, or cause to be used, such force, as may be necessary for taking possession of secured assets and documents relating thereto. Sub-section (3) of [Section 14](#) declares that any action taken by the Chief Metropolitan Magistrate or the District Magistrate under [Section 14](#) shall not be called in question by any court or before any authority. [Section 17](#) which is captioned as "Right to appeal" lays down that any person (including the borrower) aggrieved by any of the measures taken under Sub-section (4) of [Section 13](#) by the secured creditor or his authorized officer can make an application to the Debts Recovery Tribunal within forty five days from the date of taking such measures. Under Sub-section (2) of [Section 17](#) the Debts Recovery Tribunal is required to consider whether any of the measures taken by the secured creditor under Sub-section (4) of [Section 13](#) for enforcement of security is in accordance of the provisions of the Act and Rules made thereunder. If the Tribunal comes to the conclusion that such measure is not in accordance with the provisions of Securitisation Act and Rules, then it may require restoration of management of business to the borrower or restoration of possession of the secured assets and declare that the action taken by the secured creditor is invalid. The Tribunal can pass any other appropriate order in regard to the steps taken by the secured creditor under [Section 13\(4\)](#). If the Tribunal declared that the action taken by the secured creditor is in consonance with Sub-section (4) of [Section 13](#) then such creditor can take recourse to one or more of the modes mentioned in [Section 13](#) for the purpose of recovery of secured debts.

A conjoint reading of [Sections 13\(4\)](#) and [14](#) makes it clear that the source of power to take possession of the secured assets of the borrower can be traced in [Section 13\(4\)](#) and not under [Section 14](#), which has been enacted as an aid for execution of decision taken by the secured creditors to take possession of the secured assets or documents. To put it differently the substantive provision entitling the secured creditor to take possession of the secured assets is contained in [Section 13\(4\)](#) and [Section 14](#) merely contains a provision to facilitate taking over of possession without

any impediment. If a person feels aggrieved by the action of the secured creditor to take possession of the secured asset, then he can file an application under [Section 17\(1\)](#) before the Tribunal and the Tribunal can, after examining the facts and circumstances of the case and evidence produced by the parties declare that the action taken by the secured creditor is not inconsonance with [Section 13\(4\)](#). The Tribunal can also direct the secured creditor to restore the possession of secured assets of the borrower.

In view of the above analysis of the relevant provisions, we are inclined to agree with Mr. Mohan Parasaran that right of appeal/representation available to the aggrieved person under [Section 17](#) can be exercised as and when the secured creditor decides to take possession of the property. He can also challenge order passed by the Chief Judicial Magistrate or the District Magistrate, as the case may be, under Section 14 of the Securitisation Act.

If [Section 14](#) is read in the manner indicated above, it is not possible to accept the argument of the learned counsel for the petitioners that the same is violative of [Article 14](#) of the Constitution.”

20. The Gujarat High Court while upholding the constitutional validity of Section 14 of the SARFAESI Act in the matter of **Mansa Synthetic Pvt. Ltd. and others v. Union of India and another**¹⁴ has held that taking possession of secured assets, District Magistrate/Chief Metropolitan Magistrate has a ministerial role in form of rendering assistance to secured creditor in taking possession and he is not vested with any adjudicatory powers and further not empowered to decide the question of legality and propriety of any actions taken by secured creditor under Section 13 (4) of the SARFAESI Act.

“15.2 On a plain reading it is apparent that the said provision is a procedural provision whereunder the Chief Metropolitan Magistrate or the District Magistrate, (the Authority) as the case may be, shall, on a request being made to him – (a) take possession of such asset and documents relating to the assets; AND (b) forward such

assets and documents to the secured creditor. Under sub-section (2) of Section 14 of the Securitisation Act the authority is empowered to take such steps and use such force as may be necessary for taking possession of the secured assets and the documents relatable thereto. Under sub-section (3) of Section 14 of the Securitisation Act, such act of the authority is protected and the action shall not be questioned in any Court or before any authority. Thus, it is apparent that the role envisaged by the legislature insofar as the Authority is concerned, is a ministerial role in the form of rendering assistance and exercising powers by virtue of the authority vested in the District Magistrate or the Chief Metropolitan Magistrate including use of force as may be necessary. The said Authority, namely, the Chief Metropolitan Magistrate or the District Magistrate is not vested with any adjudicatory powers. There is no other provision under the Securitisation Act in exercise of which the said Authority, who is approached by a secured creditor, can undertake adjudication of any dispute between the secured creditor and the debtor or the person whose property is the secured asset of which possession is to be taken. If such adjudicatory powers were to be vested in the Authority, the Securitisation Act would have made a specific provision in this regard.

15.5 Hence, the Authority who is called upon to act under Section 14 of the Securitisation Act can only assist, nay, is bound to assist the secured creditor in taking possession of the secured asset. Any dispute between the parties regarding the secured asset raised before the Authority cannot be gone into by the Authority.

20. Our final conclusions are summarised thus :

- (i) [Section 14](#) of the Act is a valid piece of legislation and is declared intra vires.
- (ii) The District Magistrate or Chief Metropolitan Magistrate, as the case may be, is bound to assist the secured creditor in taking possession of the secured assets and is not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor under [Section 13\(4\)](#) of the Act.
- (iii) Though [Section 14](#) of the Act provides that no act of the Chief Metropolitan Magistrate or District Magistrate done in pursuance of [Section 14](#) shall be called in question in any Court or before any authority, the right of judicial review

under Articles 226 and 227 of the Constitution of India cannot be taken away, but that power can be exercised only in cases where the concerned Magistrate or the Commissioner, as the case may be, exceeds his power or refuses to exercise his jurisdiction vested in him under the law.

(iv) Absence of an appeal does not necessarily render the legislation unreasonable as only because no appeal is provided under the Act against the order passed under [Section 14](#) of the Act will not render [Section 14](#) ultra vires the provisions of the Constitution of India.”

21. A Division Bench of the Kerala High Court in the matter of **Rafeeqe v. Union of India**¹⁵, while upholding the constitutional validity of Section 14 of the SARFAESI Act held that the process by means of which assistance is provided by the Chief Metropolitan Magistrate or the District Magistrate is non-adjudicatory. It was pertinently held as under: -

“However, the restriction provided by sub-section (3) to section 14, does not at all ensure to benefit the borrower to contend that the total absence of an appellate or revisional remedy makes the provision itself unconstitutional. As has been found by us, section 14 is an enabling provision in the nature of assistance extended to the secured creditor to bring to culmination the proceedings issued under section 13(4). Any action taken under section 13(4) is appealable under section 17 of the Act and in the event of such appeal being allowed, necessarily the order of the jurisdictional magistrate issued under section 14 will not survive thereafter.”

22. Similarly, the Madras High Court in the matter of **Kanderi Fruitpack Pvt. Ltd. v. Bank of Baroda**¹⁶ succinctly held as under:-

“The learned Chief Metropolitan Magistrate, in fact does not adjudicate any dispute, but renders assistance to ensure that the powers of secured debtor to take over possession as one of measures to recover the debt under Section 13(4) of the Act of 2002.”

15 I (2014) BC 414 (DB) (Ker)

16 AIR 2015 Mad 50

23. In the matter of **Nagarathna and others v. The Indian Bank, Koramangala Branch and others**¹⁷, the Karnataka High Court speaking through S. Abdul Nazeer, J (as then His Lordship was), considered the legislative mandate as contained in Section 14 of the SARFAESI Act and summarised the law as under: -

“10. Section 14 of the Act provides for granting assistance to the secured creditor to take possession of the secured asset. It states that 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 the 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 therefore, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him forward such assets 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 the Provision of the 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. ...”

24. Recently, a Division Bench of the Allahabad High Court in the matter of **M/s. Lakshya Concosts Pvt. Ltd., Aligarh and others v. Bank of Baroda and others**¹⁸ while dealing with Section 14 of the Act of 2002 has held that Section 14 of the Act of 2002 does not empower the District Magistrate with any power to adjudicate regarding dispute pertaining to secured assets and held as under: -

17 IV (2015) BC 179 (Kar.)

18 AIR 2017 All 172

“11. ... In our considered opinion, Section 14 of the Act is procedural in nature and only empowers the authorities to assist the secured creditor in taking over possession of the secured assets as per the procedure contemplated therein. The Section does not empower the authorities specified therein with any power to adjudicate in respect of any dispute pertaining to the secured assets. Power exercised by the authorities specified in Section 14, since is only an administrative power, authorizing any authority to exercise the same, will not amount to delegation of power.”

25. In a decision rendered by the Bombay High Court in the matter of **S.I.C.O.M. Ltd., Nagpur v. District Magistrate/Collector, Nagpur and others**¹⁹, the Bombay High Court has clearly held that District Magistrate cannot enter into question of validity of mortgage in respect of secured asset and declare the mortgage to be invalid, as he cannot adjudicate on validity of the instruments by which asset is secured. The report of the Bombay High Court reads thus,

“7. Having considered the matter, we are of the view that the District Magistrate to whom the petitioner had forwarded the request in writing for taking over possession of the mortgaged asset, had no power or authority in law to enter into the question of the validity of the mortgage in respect of secured asset and declare the mortgage to be invalid and thus refuse to perform the duty imposed upon him by the SARFAESI Act. Section 14 contains a clear mandate for the District Magistrate that he shall take possession of such asset and documents relating thereto and upon such request he shall forward such assets and documents to the secured creditor. The Act does not confer any power on the District Magistrate to transform himself into the Court of law with powers to adjudicate on the validity of the instrument by which the assets is secured. ...”

26. Similarly, in the matter of **Jawahar Singh v. United Bank of India and others**²⁰, similar proposition has been struck by the Calcutta High Court and in paragraphs 63 and 72, it has been held as

19 AIR 2011 Bombay 32

20 AIR 2015 Calcutta 306

under: -

“63. The marginal note of section 14 shows what section 14 is all about. It provides an avenue for the secured creditor, when faced with resistance by the borrower or anyone else, or when the borrower simply refuses to surrender possession, to seek administrative assistance of the CMM/DM to facilitate taking of possession of a secured asset and/or documents in relation thereto to ultimately enable the secured creditor to put up the secured asset for sale and to recover its dues.

72. In view of such understanding based on authoritative decisions of the supreme Court, I am sure the Supreme Court in V. Noble Kumar (supra) never intended to lay down as law declared under Article 136 read with Article 141 of the Constitution that the power exercised by the CMM/DM under section 14 of the SARFAESI Act granting assistance for obtaining possession of the secured asset is the exercise of the judicial power of the State. That this observation does not constitute the ratio of the decision is evident from observations made in paragraph 25 thereof, where it has been clearly held that the legal niceties of the transaction between the secured creditor and the borrower are not to be examined by the CMM/DM. If indeed a lis were involved, it would not be open to the CMM/DM to say that it would examine factual aspects only and not the legal niceties. Since the CMM/DM does not decide any lis between parties upon receiving evidence from them, the judicial power of the State is not exercised by him.”

27. Very recently, the Bombay High Court in the matter of **Bank of Maharashtra, Nagpur v. Additional District Magistrate, Nagpur and others**²¹ while dealing with the provisions contained in Sections 14 and 31(i) of the SARFAESI Act in respect of taking possession of secured asset i.e. agricultural land held that the District Magistrate while assisting secured creditor in taking possession of secured asset is not empowered to determine the nature of such asset, he is only duty bound to verify declarations

21 AIR 2017 Bombay 92

and affidavit tendered by the creditor and pass order of taking actual possession.

28. The SARFAESI Act suffered amendment by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 with effect from 15-1-2013. The Act now requires an affidavit to be filed by the secured creditor, duly affirmed by its authorized officer confirming therein the aggregate amount of financial assistance granted, total claim existing as on the date of filing application, details of properties of the borrower on which security interest has been created, and declaring that the borrower has made a default in repaying the financial assistance, that his account has been classified as an NPA, that notice has been served under section 13(2), that reply has been given under section 13(3A), that the secured creditor is entitled to take steps under section 13(4), and in general that all the provisions of the Act and the rules made thereunder have been complied with. Thus, the scope of the affidavit is pervasive.

29. Going further, by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 with effect from 1-9-2016, which amends Section 14 of the Act as to provide timelines – a time period of 30 days has been provided for disposal of applications filed by banks or financial institutions. By amendment, after the second proviso, another proviso has been inserted which states that if no order is passed by the CMM or DM within the said period of 30 days for reasons beyond his control, he may, after recording reasons in

writing for the same, pass the order within such further period but not exceeding in aggregate 60 days.

30. The second proviso to Section 14(1) of the SARFAESI Act states as under: -

“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 within a period of thirty days from the date of application:”

31. Thus, what is required to be done by the DM/CMM is to satisfy with the contents of the affidavit before passing order under Section 14 of the SARFAESI Act.

32. At this stage, it would be appropriate to notice para 25 of the decision of the Supreme Court in the matter of **Standard Chartered Bank v. V. Noble Kumar and others**²² which states 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.”

33. In **Standard Chartered Bank** (supra) and in aforesaid cases, it has been clearly held that the District Magistrate has no power to adjudicate legal niceties of the transaction between the secured creditor and the borrower.

34. Thus, Section 14 of the SARFAESI Act is an enabling provision

22 (2013) 9 SCC 620

which is non-adjudicatory provision and executory in nature. The function of the learned District Magistrate under Section 14 of the Act is non-adjudicatory in nature subject to examination of factual correctness of the assertions made in the affidavit filed under the proviso to Section 14 (1) of the Act as held in **Standard Chartered Bank** (supra).

35. Now, the question is whether the learned District Magistrate has complied with the proviso to Section 14 (1) of the SARFAESI Act.
36. The case of the petitioners is that while passing the impugned order, learned District Magistrate has not recorded subjective satisfaction regarding compliance of clauses (i) to (ix) of the first proviso to Section 14 (1) of the SARFAESI Act. The first proviso to Section 14 (1) of the SARFAESI Act is as under: -

“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.”

37. At the outset, it would be appropriate to mention that the petitioners have neither filed the copy of application under Section 14 of the SARFAESI Act nor brought the alleged affidavit filed by the respondent Bank with an application under Section 14 of the SARFAESI Act on record to buttress their submission except raising the plea that the affidavit is not in accordance with the clauses and particularly satisfaction of clause (vii) and clause (ix) is absent in the impugned order.

38. Thus, the objection is that the affidavit is blissfully silent with regard to clause (vii) of the first proviso to sub-section (1) of Section 14 of the SARFAESI Act that 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. The learned District Magistrate after perusal of the application and

documents filed and also the affidavit filed had come to specific conclusion and satisfied himself and has decided to direct to take possession of the secured assets. The petitioners though have filed their reply before the District Magistrate twice, but no such objection appears to have been raised before the learned District Magistrate on the ground of non-compliance of clause (vii) of the first proviso to Section 14 (1) of the SARFAESI Act. The seriousness of the petitioners' objection can be appreciated from the fact that neither such application under Section 14 of the SARFAESI Act nor such affidavit filed by the Bank under the first proviso to Section 14 (1) of the SARFAESI Act as per the provision was brought on record and for the first time, the objection has been raised before this Court. But in view of the clear cut subjective satisfaction and appreciation recorded by the learned District Magistrate, I do not find any good ground to hold that the order of the learned District Magistrate granting Section 14 of the SARFAESI Act directing to take possession is unsustainable on this score.

39. The next contention of the petitioners is that the learned District Magistrate has not complied with clause (ix) of the first proviso to Section 14 (1) of the SARFAESI Act by not complying with the provisions of the SARFAESI Act and the rules made thereunder particularly, sub-section (9) of Section 13 of the SARFAESI Act. This contention needs to be noted for its rejection.

40. The Supreme Court in **Pegasus Assets Reconstruction Private Limited** (supra) has clearly held that nothing is missing in the

SARFAESI Act to borrow from the provisions of the Companies Act till the stage the secured assets are sold by the secured creditors in accordance with the provisions in the SARFAESI Act and the Rules made thereunder, and at the post sale stage, the rights of the persons or parties having any stake in the sale proceeds are also taken care of by sub-section (9) of Section 13 and its five provisos. Therefore, the stage of complying Section 13 (9) of the SARFAESI Act would come after the sale is made by the secured creditor in accordance with the SARFAESI Act and not at the stage while considering the application under Section 14 of the SARFAESI Act.

41. In the instant case, the Company Court by its order dated 19-10-2016 has already held that the proceeds of the sale shall be subject to the outcome of the company petition to the extent of liability of the Company. Therefore, the objection raised in this behalf by the petitioners cannot be sustained that the learned District Magistrate has not complied with the provisions of Sections 13 (9) and 13 (10) of the SARFAESI Act.

ISSUE NO.3

42. This would bring me finally to the last submission raised on behalf of the petitioners that the learned District Magistrate has delegated its power to the Naib Tahsildar by the impugned order and in fact, it is the Naib Tahsildar who has exercised the power under Section 14 of the SARFAESI Act.
43. In order to judge the correctness of the plea raised in this behalf, it

would be appropriate to notice Section 14 of the SARFAESI Act. Section 14 (1) of the SARFAESI Act provides the power of Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.

44. Section 14 (1-A) of the SARFAESI Act states as under: -

“(1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.”

45. “*Delegatus non potest delegare*” is a celebrated maxim which means a delegate has no power to delegate and it is a well settled principle of law.

46. “Delegation” is defined in Black's Law Dictionary as under: -

“The act of entrusting another with authority or empowering another to act as an agent or representative.”

47. Their Lordships of the Supreme Court in the matter of **Gwalior**

Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST²³ have succinctly laid

down the concept of delegation and held as under: -

“37. ... Delegation is not the complete handing over or transference of a power from one person or body of persons to another. Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much confusion of thought has unfortunately resulted from assuming that delegation involves or may involve, the complete abdication or

23 (1974) 4 SCC 98

abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced.”

48. The Supreme Court in the matter of **Sidhartha Sarawgi v. Board of Trustees for the Port of Kolkata and others**²⁴ defined the meaning of delegation as under: -

“2. Delegation is the act of making or commissioning a delegate. It generally means parting of powers by the person who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself. ...”

49. Further, Their Lordships of the Supreme Court in **Sidhartha Sarawgi** (supra) pointed out the principles with regard to delegation of non-legislative/administrative powers as under: -

“5. Regarding delegation of non-legislative/administrative powers on a person or a body to do certain things, whether the delegate himself is to perform such functions or whether after taking decision as per the terms of the delegation, the said agency can authorize the implementation of the same on somebody else, is the question to be considered. Once the power is conferred, after exercising the said power, how to implement the decision taken in the process, is a matter of procedure. The legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy²⁵. So long as the essential function of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate. It is not necessary that the primary delegate himself should perform the ministerial acts as well. In furtherance of the implementation of the decision already taken by the primary delegate as per the delegation, ministerial or clerical tasks may be performed by authorized officers. The complexity of modern day administration and the expansion of functions of the State to the economic

24 (2014) 16 SCC 248

25 Khambhalia Municipality v. State of Gujarat, AIR 1967 SC 1048 at p. 1051, para 7

and social spheres have made it necessary that the legislature gives wide powers to various authorities when the situation requires it. Today's governmental functions are a lot more complex and the need for delegation of powers has become more compelling. It cannot be expected that the head of the administrative body performs each and every task himself.

8. It would also be useful in this context to refer to the decision of this Court in *Barium Chemicals Limited v. Company Law Board*²⁶ wherein it is held at para 36 as follows: (AIR p. 312)

“36.. ... the maxim *delegatus non potest delegare* must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima facie, a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. But the intention may be negated by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted.”

9. The Constitution confers power and imposes duty on the legislature to make laws and the said functions cannot be delegated by the legislature to the executive. The legislature is constitutionally required to keep in its own hands the essential legislative functions which consist of the determination of legislative policy and its formulation as a binding rule of conduct. After the performance of the essential legislative function by the legislature and laying the guiding policy, the legislature may delegate to the executive or administrative authority, any ancillary or subordinate powers that are necessary for giving effect to the policy and purposes of the enactment. In construing the scope and extent of delegated power, the difference between the essential and non-essential functions of the delegate should also be borne in mind. While there cannot be sub-delegation of any essential functions, in order to achieve the intended object of the delegation, the non-essential functions can be sub-delegated to be performed under the authority and supervision of the delegate.”

50. Noticing the principles of law stated herein-above, I would come to

the provisions contained in Section 14 of the SARFAESI Act. A

plain reading of the provisions contained in Section 14 of the SARFAESI Act would show that the Legislature has conferred the power under Section 14 of the Act only on the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, to be exercised after being satisfied with the affidavit filed by the authorised officer of the secured creditor in terms of the first proviso to Section 14 (1) to take possession of such asset and documents relating thereto and forward such asset and documents to the secured creditor. By the subsequent amendment, Section 14 (1-A) has been incorporated making the position further clear that the District Magistrate after exercising his discretion of satisfaction based on the affidavit of the authorised officer of the secured creditor in terms of the first proviso to Section 14 (1), authorise a subordinate officer to take possession of the assets and documents relating thereto pursuant to his order and to forward such assets and documents to the secured creditor. Thus, recording of satisfaction based on materials on record vests only in the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, but the consequent action of taking possession of the assets and documents relating thereto pursuant to his order and of forwarding such assets and documents to the secured creditor can be delegated to his subordinate officer by virtue of the provisions contained in Section 14 (1-A) of the SARFAESI Act.

51. In the present case, by order dated 31-3-2015, learned District Magistrate after having recorded subjective satisfaction with the affidavit filed under the first proviso to Section 14 (1) of the

SARFAESI Act took a decision to take possession of the secured assets from the petitioners, but only directed to verify the pendency of any case in the competent court against the petitioners and its Directors.

52. A careful perusal of the order of the learned District Magistrate would show that the direction/observation of the learned District Judge to verify the pendency of any other case is not related to nine points affidavit as per the first proviso to Section 14 (1) of the SARFAESI Act. By way of abundant precaution as a precautionary measure, the learned District Magistrate has directed to verify the pendency of any other case pending in the competent jurisdictional court, therefore, it will not make the order of the District Magistrate vulnerable, since the parties are at *ad idem* on the point as the respondent Bank has also applied for deletion of that portion of the order before the District Magistrate, therefore, that portion of the order directing verification of pending case, if any, is hereby deleted. I am of the considered opinion that the District Magistrate himself has taken decision to take possession of secured assets from the petitioners and has only allowed the Naib Tahsildar to make verification with regard to pendency of any other case in the jurisdictional court. This would by no stretch of imagination amount to delegation of any power by the District Magistrate to take possession under Section 14 (1) of the SARFAESI Act. Therefore, this contention raised on this behalf is also liable to be rejected.

53. As a fallout and consequence of aforesaid discussion, all the issues raised by the petitioners are answered against them and

accordingly, the writ petition deserves to be and is accordingly, dismissed subject to the above-stated observation. However, the respondent Bank would be entitled for cost of Rs.10,000/- from the petitioners.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma