

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1423 of 2017

Order reserved on: 3-8-2017

Order delivered on: 11-8-2017

1. Vishal Chopra, S/o Late Shri S.N. Chopra, Aged about 49 years, R/o House No. 8, Tagore Nagar, Tikrapara, Raipur, District Raipur (C.G.)
 2. Smt. Deepali Chopra, W/o Shri Vishal Chopra, Aged about 45 years, R/o House No. 8, Tagore Nagar, Tikrapara, Raipur, District Raipur (C.G.)
 3. M/s. Chopra Trading Company, Through its Proprietor Vishal Chopra, C/o Chopra Chashma Ghar, Ravi Bhawan, Opp. G.P.O., Jaistambh Chowk, Raipur, District Raipur (C.G.)
- Smt. Pratibha Chopra (Since died)

---- Petitioners

Versus

1. State of Chhattisgarh, Through its Secretary, Department of Revenue, Mahanadi Bhawan, Naya Raipur (C.G.)
2. The District Collector & District Magistrate, Raipur, District Raipur (C.G.)
3. M/s Aditya Birla Finance Limited Company, Through its Authorized Officer, Having branch office at 2nd Floor, UCO Bank Building, 5, Sansad Marg, New Delhi – 110001

---- Respondents

For Petitioners: Mr. Manoj Paranjpe, Advocate.

For State/Respondents No.1 and 2: -

Mr. Ashish Surana, Panel Lawyer.

For Respondent No.3: Mr. Sanjeev Sagar and Mr. Prateek Sharma, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India , the petitioners herein have called in question

legality, validity and correctness of the order passed by the Collector and District Magistrate, Raipur under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') by which it has been directed to take physical possession of the subject land from the petitioners.

2. Necessary facts needed to adjudicate the dispute to correct the order dated 20-3-2017 state as under: -

2.1) Respondent No.3 being a financial institution took an action under Section 13(4) of the SARFAESI Act against which the petitioners have preferred Securitisation Application before the Debts Recovery Tribunal at Jabalpur in which interim order dated 28-3-2017 has been passed. In the meanwhile, respondent No.3 has filed an application under Section 14 of the SARFAESI Act before the District Magistrate, Raipur along with an affidavit of Mr. Mahesh Parashar, authorized officer, in which the petitioners were noticed and ultimately, time up to 15-3-2017 was granted and the case was fixed on 20-3-2017 and on 20-3-2017, the impugned order was passed. Feeling aggrieved against the order dated 20-3-2017, this writ petition has been filed by the petitioners herein principally on the ground that the District Magistrate has failed to satisfy himself about the contents of the affidavit for the purpose of taking possession of the secured assets. An application for dismissal of writ petition on the ground of maintainability of writ petition has been filed by respondent No.3.

3. Mr. Manoj Paranjpe, learned counsel appearing for the petitioners, would submit that the learned District Magistrate is absolutely unjustified in granting application under Section 14 of the SARFAESI Act without being satisfying the nine point requirements under Section 14(1) of the SARFAESI Act, as required under the second proviso to Section 14(1) and passed the impugned order without recording its satisfaction for the purpose of taking possession of the secured assets. The order passed by the learned District Magistrate runs contrary to the decisions rendered by the Supreme Court in the matters of **Standard Chartered Bank v. V. Noble Kumar and others**¹ and **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and others**². Therefore, the impugned order is liable to be dismissed.
4. Mr. Sanjeev Sagar, learned counsel appearing for respondent No.3, would submit at the outset that the writ petition as framed and filed is not maintainable on the ground that against the order taking symbolic possession under Section 13(4) of the SARFAESI Act, the petitioners have already approached the DRT and the DRT has already taken cognizance of the matter and the grounds which have been taken herein had already been taken in the representation filed by the petitioners under Section 13(3). The DRT has already passed interim order on 28-3-2017 and it has also been modified on 15-5-2017 by the Debts Recovery Appellate Tribunal, Delhi (DRAT) directing the petitioners to deposit ₹ 2

1 (2013) 9 SCC 620

2 (2014) 6 SCC 1

crores which has not been complied and therefore the petitioners can very well approach the DRT in view of the decision rendered by the Supreme Court in the matter of **Kanaiyalal Lalchand Sachdev and others v. State of Maharashtra and others**³. He has also relied upon the judgment of the Supreme Court in **Standard Chartered Bank** (supra) to support his submission. He would further submit that the representation of the petitioners has already been disposed by Annexure P-4 by respondent No.3 and nine points affidavit as required under Section 14(1) of the SARFAESI Act has already been filed before the District Magistrate. He would also submit that the petitioners did not inform this Court and by suppressing the material fact that on 15-5-2017, the interim order dated 28-3-2017 has already been modified by the DRAT directing deposit of ₹ 2 crores, the petitioners have obtained interim order dated 18-5-2017 from this Court and as such, the writ petition deserves to be dismissed on the ground of suppression of material facts. He would finally submit that respondent No.3 not being State within the meaning of Article 12 of the Constitution of India, the writ petition is not maintainable in law and as such, the writ petition deserves to be dismissed.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
6. I will first take-up the availability of alternative remedy to the petitioner against the order passed by the learned District

³ (2011) 2 SCC 782

Magistrate granting application under Section 14 of the SARFAESI Act.

7. Learned counsel for respondent No.3 would submit that the petitioner be directed to approach the DRT under Section 17 (1) of the SARFAESI Act, whereas learned counsel for the petitioner would submit that writ petition under Article 226 of the Constitution of India would be maintainable placing reliance upon the judgment of the Supreme Court in Harshad Govardhan Sondagar (supra).
8. In Harshad Govardhan Sondagar (supra), Their Lordships of the Supreme Court have clearly held that against the order of the Chief Metropolitan Magistrate, the aggrieved party can challenge it in petition under Articles 226 and 227 of the Constitution of India and held as under: -

“In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled principles of law.”

Accordingly, it is held that against an order granting application under Section 14 of the SARFAESI Act, writ petition under Article 226 and 227 of the Constitution of India would be maintainable.

9. Mr. Paranjpe, learned counsel, would further contend that in view of the decision rendered by a Division Bench of this Court in M/s. G.P. Ispat Private Limited and others v. Authorised Officer and others⁴, the petitioner cannot approach under Section 17 (1) of the

⁴ (2017) 1 MPJR 85 (Chh)

SARFAESI Act before the Tribunal, as they are in possession of secured assets. The Division Bench of this Court held as under: -

“The remedy of appeal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is available against the order passed by the District Magistrate under Section 14 of the Act after the borrower/guarantor loses its possession and as long as the borrower has not been possessed, the remedy of appeal under Section 17 of the SARFAESI Act is not available to him.”

10. This would bring me to the merits of the matter. The submission of learned counsel for the petitioner would be that the order passed under Section 14 of the SARFAESI Act is unsustainable for the reason that the petitioner has not been given reasonable opportunity of being heard before passing order under Section 14 and further, the order passed under Section 14 is unsustainable in law.
11. In order to consider the above-stated plea, it would be appropriate to consider the nature of order passed under Section 14 of the SARFAESI Act.
12. While the vires of the SARFAESI Act was for consideration before the Supreme Court in the matter of **Mardia Chemicals v. Union of India**⁵, 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: -

5 (2004) 4 SCC 311

“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 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.”

13. 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**⁶ 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

6 AIR 2012 Gujarat 90

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.”

14. A Division Bench of the Kerala High Court in the matter of **Rafeeqe v. Union of India**⁷, 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.”

15. Similarly, the Madras High Court in the matter of **Kanderi Fruitpack Pvt. Ltd. v. Bank of Baroda**⁸ 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.”

16. In the matter of **Nagarathna and others v. The Indian Bank, Koramangala Branch and others**⁹, 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: -

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

8 AIR 2015 Mad 50

9 IV (2015) BC 179 (Kar.)

“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. ...”

17. 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**¹⁰ 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: -

“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.”

18. Thus, Section 14 of the SARFAESI Act is an enabling provision which is non-adjudicatory provision and executory in nature.

19. 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.

20. 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.

21. 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:”

22. 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.

23. At this stage, it would be appropriate to notice para 25 of the decision of the Supreme Court in **Standard Chartered Bank** (supra) 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.”

24. Thus, 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).

25. Reverting back to the facts of the case, it is apparent that the petitioners have filed Securitisation Application No.5/2017 (Vishal Chopra and others v. Aditya Birla Finance Ltd. and another) before the DRT, Jabalpur raising an issue of non-compliance of Section 13 (3A) of the SARFAESI Act and in which the DRT by its order dated 28-3-2017 stayed the further proceedings pursuant to the notice under Section 13 (2) of the SARFAESI Act and that interim order has been modified by the DRAT on appeal preferred by respondent No.3 directing continuance of interim order subject to deposit of ₹ 2 crores.
26. In this writ petition, the petitioners submit that the District Magistrate has not considered and satisfied that the objections of the borrower had in fact been considered and rejected and the reasons for such rejection had been communicated to the borrower, therefore, the order is liable to be set aside.
27. The learned District Magistrate has satisfied himself with the contents of the application and mandatory affidavit filed along with Section 14 application and passed order under Section 14 of the SARFAESI Act extending the assistance. The petitioners have filed substantive securitisation application before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act raising the plea of non-compliance of Section 13 (3A) of the SARFAESI Act. That is kept open to be decided by the DRT. I do not find any illegality / infirmity in the impugned order. The writ petition deserves to be and is accordingly, dismissed leaving the parties to

bear their own cost(s). However, this will not affect the securitisation application pending which was filed by the petitioners. The petitioners are at liberty to raise all such permissible grounds.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma