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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1862 of 2017

Order Reserved on 24.08.2017

Order passed on 04.09.2017

1. Subhash Chand Agrawal S/o Sagarmal Agrawal, Aged About 55 Years R/o Khasra No. 146/92, Plot No. 49/8, Sheet No. 3, Pandaritarai, P. C. No. 109, R I C, Raipur, Tahsil And District Raipur (Chhattisgarh), Also Business Address Of 48, Textile Market, Gate No. 1, Pandri Raipur, District Raipur (Chhattisgarh).

2. Nirmala Agrawal W/o Shri Subhash Chand Agrawal, Aged About 54 Years R/o Khasra No. 146/92, Plot No. 49/8, Sheet No. 3, Pandaritarai, P. C. No. 109, R I C, Raipur, Tahsil And District Raipur (Chhattisgarh), Also Business Address Of 48, Textile Market, Gate No. 1, Pandri Raipur, District Raipur (Chhattisgarh).

3. Pushpa Agrawal, W/o Shri Sagarmal Agrawal, Aged About 76 Years R/o Khasra No. 146/92, Plot No. 49/8, Sheet No. 3, Pandaritarai, P. C. No. 109, R I C, Raipur, Tahsil And District Raipur (Chhattisgarh), Also Business Address Of 48, Textile Market, Gate No. 1, Pandri Raipur, District Raipur (Chhattisgarh).

4. Kanhaiya Agrawal S/o Subhash Chand Agrawal, Aged About 33 Years R/o Khasra No. 146/92, Plot No. 49/8, Sheet No. 3, Pandaritarai, P. C. No. 109, R I C, Raipur, Tahsil And District Raipur (Chhattisgarh), Also Business Address Of 48, Textile Market, Gate No. 1, Pandri Raipur, District Raipur (Chhattisgarh).

5. Sagarmal Agrawal S/o Late Shiv Narayan Agrawal, Aged About 86 Years R/o Khasra No. 146/92, Plot No. 49/8, Sheet No. 3, Pandaritarai, P. C. No. 109, R I C, Raipur, Tahsil And District Raipur (Chhattisgarh), Also Business Address Of 48, Textile Market, Gate No. 1, Pandri Raipur, District Raipur (Chhattisgarh).

6. Parag Agrawal S/o Subhash Chand Agrawal, Aged About 29 Years R/o Khasra No. 146/92, Plot No. 49/8, Sheet No. 3, Pandaritarai, P. C. No. 109, R I C, Raipur, Tahsil And District Raipur (Chhattisgarh), Also Business Address Of 48, Textile Market, Gate No. 1, Pandri Raipur, District Raipur (Chhattisgarh).

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Collector/ District Magistrate, Raipur, District Raipur (Chhattisgarh).

2. Tahsildar, Tahsil Office, Infront Of Bajrang Complex, Office, Raipur,

District Raipur (Chhattisgarh).

3. H D B Financial Services Limited, Through Authorized Officer Prabhat Chandra, Regional Office, 3rd Floor, Simran Tower, Jeevan Beema Marg, Infront Of L I C Building Pandri, Raipur, District Raipur (Chhattisgarh).

4. Omlan Choudhary, Through Authorized Officer H D B Financial Services Limited, Regional Office, 3rd Floor, Simran Tower, Jeevan Beema Marg, Infront Of L I C Building Pandri, Raipur, District Raipur (Chhattisgarh).

5. Sunil Tiwari, Regional Office, 3rd Floor, Simran Tower, Jeevan Beema Marg, Infront Of L I C Building Pandri, Raipur, District Raipur (Chhattisgarh).

6. Reliance Home Finance Limited, Branch Office, Ground Floor, Samvet Shikhar, Rajbandha Maidan, Raipur, District Raipur (Chhattisgarh).

7. H D F C Bank, Devendra Nagar Road Opp. Officer Colony, Near Sai Mandir, Raipur, District Raipur (Chhattisgarh).

8. Mr. Aditya Puri, Chairman, R/o 1001-1002, Vinayak Aangan, N. B. Parulelar Marg, Prabhadevi Mumbai 400025.

9. Mr. Bhavesh Zaveri, Director, H D B Financial Services Limited, R/o 202, Prabhukunj, Cooperative Housing Society, 5 Peddar Road, Mumbai 400026.

10. Mr. Jimmy Tata, Director, H D B Financial Services Limited, Sea Side Bhulabahi Desai Road, Mumbai 440036.

11. Mr. Venkatraman Srinivasan, Independent Director, H D B Financial Services Limited, R/o 73, Keshav Smriti, 88 Veer Savarkar, Marg, Mumbai 400028.

12. Ms. Smita Affinwalla, Independent Director, H D B Financial Services Limited, A- Block, 3rd Floor, Khalakdina Terrace, August Kranti Marg, Mumbai 400036.

13. Mr. G. Ramesh, Managing Director, H D B Financial Services Limited, R/o C- 11, Ashok Gardens, Tokersey, Jivraj Road, Sewree Mumbai 400015.

14. G. Subramanian, Chairman, H D B Financial Services Limited, Authorized Signatory Of Documents, Process House, 2nd Floor, Kamala Mills, Compound, Senapati Bapat Marg, Lower Parel, Mumbai 400013.

15. Harsh Bajpai, Company Secretary, H D B Financial Services Limited, Process House, 2nd Floor, Kamala Mills, Compound, Senapati Bapat Marg, Lower Parel, Mumbai 400013.

---- Respondents

For Petitioners : Shri Prateek Sharma, Advocate.
For State : Shri Prasun Bhaduri, Govt. Advocate.
For Respondent No. 3 : Shri Vikram Singh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C A V Order

(1) Instant writ petition has been filed by the petitioner calling in question the order 25.03.2017 passed by District Magistrate, Raipur under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth "SARFAESI Act").

(2) Learned counsel appearing for the petitioner would assail the aforesaid order on two counts: -

(i) That, learned District Magistrate has not applied its mind to the first proviso to Section 14 of the SARFAESI Act and not recorded a finding to the satisfaction as required under the SARFAESI Act while granting application under Section 14 of the SARFAESI Act and placed reliance upon the judgment of the Supreme Court in the matter of **Standard Chartered Bank Vs. B. Noble Kumar and others**[1] in support of his submissions.

(ii) That, the arbitral proceedings has already been concluded between the parties and culminated into award dated 30.09.2015 and, therefore, the aforesaid

1 (2013) 9 SCC 620

proceedings before the District Magistrate was not maintainable.

(3) On the other hand, learned counsel for respondent No. 3 would submit that physical possession has already been taken from the borrower and, therefore, the writ petition is not maintainable. He placed reliance upon the judgment of the Supreme Court in the matter of **Devi Ispat Limited and another Vs. State Bank of India and others**[2]**.**

(4) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(5) 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.

(6) While the vires of the SARFAESI Act was for consideration before the Supreme Court in the matter of **Mardia Chemicals v. Union of India**[3], 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

2 (2014) 5 SCC 762
3 (2004) 4 SCC 311

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.
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> 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."

(7) 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**[4] 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

4 AIR 2012 Gujarat 90

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."

(8) A Division Bench of the Kerala High Court in the matter of **Rafeeque v. Union of India**[5], 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."

(9) Similarly, the Madras High Court in the matter of **Kanderi Fruitpack Pvt. Ltd. v. Bank of Baroda**[6] 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."

(10) In the matter of **Nagarathna and others v. The Indian Bank, Koramangala Branch and others**[7], the Karnataka High Court speaking through S. Abdul Nazeer, J (as then His Lordship was),

5 I (2014) BC 414 (DB) (Ker)
6 AIR 2015 Mad 50
7 IV (2015) BC 179 (Kar.)

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. ..."

(11) 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**[8] 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

8 AIR 2017 All 172

> 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."

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

(13) 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.

(14) 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.

(15) 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:"

(16) 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.

(17) 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.”

(18) 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).

(19) Applying the principle of law laid down by the Supreme Court and High Court in the above referred cases (supra) to the facts of the case, it is quite vivid that the learned District Judge has considered the application and appended documents thereto and mandatory affidavit on record and came to the specific conclusion that secured creditor satisfies all the requirements for granting the application and allowed the application, in which I do not find any jurisdictional error warranting interference in exercise of jurisdiction under Article 226 & 227 of the Constitution of India.

(20) As far as ground of appeal under Section 17 SARFAESI Act is concerned, the same is said to be not available in terms of the decision of the Division Bench of this Court in the matter of **G.P. Ispat Private Ltd. And others Vs. Authorized Officer and Chief Manager, State Bank of India and others**[9], which was dealing with the following question of law:-

> “Whether remedy of appeal u/S. 17 of the Securitisation and Reconstruction of Financial Assests and Enforcement of Security Interest Act, 2002 is available against the order passed by the District Magistrate u/S. 14 of the Act even before

9 2017 (1) MPJR-CG 85

borrower/guarantor loses its possession."

(21) The said question after detailed discussion of the statutory provisions of the previous laws in this subject was answered in the following manner:-

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

Thus, the writ petition is framed and filed was not maintainable in law, as it is the case of respondent-Bank that possession of secured asset has already been over from the petitioner.

(22) This would bring me to the next question as to whether the initiation of proceedings under the Arbitration & Conciliation Act, 1996 and subsequent culmination into award dated 30.09.2015 would preclude the secured creditor to proceed under Section 14 of the SARFAESI Act.

(23) It would be expedient to notice Section 37 of the SARFAESI Act which reads as under: -

> "**37. Application of other laws not barred**.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or

any other law for the time being in force."

(24) A focused glance of the aforesaid provision would clearly show that the provisions of the SARFAESI Act as well as the rules made thereunder shall be in addition to and not in derogation of the Companies Act, 1956. The expressions "in addition to" and "not in derogation of" have been considered by the Supreme Court in the matter of **P.C. Joshi and another v. The State of Uttar Pradesh** with reference to Section 198B of the CrPC. Their Lordships have held that Section 198 of the CrPC in which such phrases "in addition to" and "not in derogation of" have been employed, are an additional provision and is not intended to take away the right of a person aggrieved even if he belongs to the specified classes and the offence is in respect of his conduct in the discharge of his public functions to file a complaint in the manner provided by Section 198. Their Lordships pertinently observed as under:-

> "The expressions, "in addition to" and "not in derogation of" mean the same thing – that S. 198B is an additional provision and is not intended to take away the right of a person aggrieved even if he belongs to the specified classes and the offence is in respect of his conduct in the discharge of his public functions to file a complaint in the manner provided by s. 198. "Derogation" means, taking away, lessening or impairing the authority, position or dignity, and the context in in which sub-s. (13) occurs clearly shows that the provisions of S. 198B do not impair the remedy provided by S. 198. It means that by S. 198B, the right which an aggrieved person has to file a complaint before a Magistrate under S. 198 for the offence of defamation even if the aggrieved person belongs to the specified classes and the defamation is in respect of his conduct in the discharge of his public functions, is not taken away or impaired. If sub-s. (13) be construed as meaning that the provisions of S. 198B are to be read as

> supplementary to those of S. 198, the non-obstante clause with which sub-s. (1) of S. 198B commences is rendered wholly sterile, and unless the context compels such an interpretation, the court will not be justified in adopting it."

(25) The Supreme Court in the matter of **Secretary, Thirumurgan Co-operative Agricultural Credit Society v. M. Lalitha (Dead) through LRs and others** has held as under:-

> "12. As per Section 3 of the Act, as already stated above, the provisions of the Act shall be in addition to and not in derogation of any other provisions of any other law for the time being in force. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers better, the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar.
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> 14. In *Fair Air Engineers (P) Ltd. v. N.K. Modi* the Supreme Court, after referring to Lucknow Development Authority case, held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It went on to say that:
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> > "It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words "in derogation of the provisions of any other law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e.,

to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy."

(26) Further dealing with the jurisdiction of the forums under the 1986 Act in para 16 the Supreme Court has stated thus:

> "16. It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceeding pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise than those given in the Act."

(27) Their Lordships finally held as under:-

> "20. Thus, having regard to all aspects, we are of the view that the National Commission was right in holding that the view taken by the State Commission that the provisions under the Act relating to reference of disputes to arbitration shall prevail over the provisions of the 1986 Act is incorrect and untenable. ..."

(28) In the matter of **Morgan Securities and Credit Pvt. Ltd. Vs. Modi Rubber Ltd.**[10] their Lordships of the Supreme Court have held as

10 AIR 2007 SC 683

under:-

> "66...... The non obstante nature of a provision although may be of wide amplitude, the interpretative may be of wide amplitude, the interpretative process thereof must be kept confined to teh legislative policy. Only because the dues of the workmen and the debt due to the secured creditors are treated part passu with each other, the same may be itself, in our considered view, would not lead to the conclusion view, would not lead to the conclusion that the concept of inter se priorities amongst the secured creditors had thereby been intended to be given a total go-by.
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> 68. The Board however, has not passed an order under sub-section (3) of Section 2 of SICA. The court, therefore, must proceed with the objection filed by the Respondent under Section 34 of teh 1996 Act. However, if the objection filed by the Respondent is rejected, the question of its enforceability would come into being. Once the arbitral award having the force of a decree is put into execution, sub-section (1) of section 22 of SICA would come in its way from being enforced. The contention raised by Mr. Sundaram that having regard to the provisions of Section 5 of teh 1996 Act, the Board would have no jurisdiction, therefore, does not seem to have any force."

(29) In the matter of **M/s. Madras Petrochem Ltd. and another Vs. BIFR and others**[11], their Lordships of the Supreme Court has held that though Sick Industrial Companies (Special Provisions) Act, 1985 (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 overriding effect of said Act over other laws and further held that 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 and observed as under :-

> "37. An interesting pointer to the direction

11 AIR 2016 SC 898

> Parliament has taken after enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is also of some relevance in this context. The Eradi Committee Report relating to insolvency and winding up of compaines dated 31.7.2000, observed that out of 3068 cases referred to the BIFR from 1987 to 2000 all but 1062 cases have been diposed of. Out of the case disposed of, 264 cases were revived, 375 cases were under negotiation for revival process, 741 cases were recommended for winding up, and 626 cases were dismissed as not maintainable. These facts and figures speak for themselves and place a big question mark on the utility of the Sick Industrial Companies (Special Provisions) Act, 1985. The Committee further pointed out that effectiveness of the Sick Industrial Companies (Special Provisions) Act, 1985 as has been pointed out earlier, has been severely undermined by reason of the enormous delays involved in the disposal of cases by the BIFR. (See paragraphs 5.8, 5.9 and 5.15 of the Report). Consequently, the Committee recommended that the Sick Industrial Companies (Special Provisions) Act, 1985 be repealed and the provisions thereunder for revival and rehabilitation should be telescoped into the structure of the Companies Act, 1956 itself.

(30) Thus, the provision of Section 35 of the SARFAESI Act provides for overriding effect of the SARFAESI Act over other law including Arbitration & Conciliation Act, 1996. It is well settled that when two statutes contain *non-obstante* clauses the later statute would prevail. The rationale behind this is that the Legislature at the time of enactment of the later statute, is aware of the earlier legislation

containing a *non-obstante* clause. Secondly, if there is a special statute though enacted earlier in point of time.

(31) In view of the aforesaid discussion, this Court is of the considered opinion that provisions of SARFAESI Act would prevail over the provisions of Arbitration & Conciliation Act, 1996 and, as such, the arguments raised by the petitioner in this regard is hereby repelled.

(32) In view of above, both the questions raised in this petition are hereby answered in negative.

(33) Accordingly, the writ petition, being devoid of merits and is liable to be and is hereby dismissed leaving the parties to bear their own cost (s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-