**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

## WPC No. 794 of 2016

Syed Rajjab Ali S/o Late Syed Yusuf Ali, Aged About 49 Years Occupation Business, R/o A- 67, Agyeya Nagar, Bilaspur, Distt. Bilaspur, (Chhattisgarh)

**---- Petitioner**

**Versus**

1. Branch Manager, Oriental Bank Of Commerce Jarha Bhata, Bilaspur, Distt. Bilaspur, (Chhattisgarh)

2. Regional Manager, Oriental Bank Of Commerce, Opp. Rajkumar College, Raipur, Distt. Raipur, (Chhattisgarh)

3. District Magistrate, Bilaspur, (Chhattisgarh)

**---- Respondents**

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Shri Adil Minhaj, counsel for the petitioner/s.
Shri Ashok Kumar Dubey, counsel for respondents 1 and 2.
Shri Chandresh Shrivastava, Panel Lawyer for the State / respondent No.3.

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**Hon'ble Shri Justice Manindra Mohan Shrivastava**

**Order On Board**

**22/03/2017**

By this petition, the petitioner has assailed the proceedings of recovery by adopting a coercive method taking assistance of the administration and police machinery towards realisation of loan advance to the petitioner.

2. Learned counsel for the petitioner submits that for the purposes of recovery of loan advance by the Bank to the petitioner, coercive process, with the aid and assistance of police machinery and administration, could not be resorted to by the respondent / bank without there being an order passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (For short 'the SARFAESI Act'). It is emphatically stated before the Court that without there being an order passed under Section 14 of the SARFAESI Act, the Additional District Magistrate, without any authority of law and

only as an executive fiat, issued a memo dated 28/01/2011 filed as Annexure P/4 by the petitioner. He submits that in the absence of there being any order under Section 14 of the SARFAESI Act, the Additional District Magistrate or even the Collector could not have acted by mere executive fiat to provide police force to the bank authorities to dispossess the petitioner. He submits that on issuance of memo dated 28/01/2011, administrative and police machinery had arrived in the house of the petitioner and he was thrown out of the house by police force. Therefore, prayer is made for issuing appropriate order protecting the petitioner against any coercive process through the machinery of the administration and police towards recovery of loan.

3. Learned counsel for the respondent / bank submits that the petitioner is a defaulter and has not repaid the entire loan amount. Therefore, the respondent had requested the District Magistrate to provide necessary assistance to take possession of the house of the petitioner towards recovery of loan. It is stated that the house was mortgaged with the bank as security towards repayment of loan and as the petitioner failed to clear the loan, respondent / bank was justified to take appropriate steps towards recovery of loan by taking possession of the mortgaged property to sell it off towards recovery of loan amount.

4. Learned State counsel submits that as the bank had informed the Collector and as is shown from the letter dated 28/01/2011, the Additional District Magistrate provided police assistance as also support of the administration to the bank to take appropriate steps towards recovery of loan by taking possession of the house.

5. Right from the beginning, in the present case, the petitioner has come out with an emphatic allegation that the Collector has not passed any order under Section 14 of the SARFAESI Act and without any order of the Collector, the bank had taken assistance of police and administration to dispossess the petitioner from the house by show of force. This Court granted ample opportunity to the respondents to satisfy the Court by placing on record order, if any, passed by the District Magistrate as required under Section 14 of the SARFAESI Act so as to justify their action. However, despite repeated opportunities, followed by last opportunity, no such order was placed before this Court, obviously for the reason that their exists no such order.

6. Present is a case of complete abuse and misuse of the police administration

and machinery at the command of the Additional District Magistrate, who sent a memo on 28/01/2011 to the Superintendent of Police, Bilaspur, Sub-Divisional Officer, Bilaspur, Tahsildar, Bilaspur and Station House Officer, Civil Lines, Bilaspur to provide necessary police and administrative assistance to the Bank. Memo dated 28/01/2011 of the Additional District Magistrate contains an endorsement that it was as per the directions of the District Magistrate. However, the respondents in the return have not filed any order in writing of the District Magistrate, Bilaspur, much less an order as contemplated under Section 14 of the SARFAESI Act.

7. Facts of the case are floating on the surface to reach to the conclusion that without there being any order under Section 14 of the SARFAESI Act, the Additional Magistrate provided administrative and police assistance to the Bank to use police force to dispossess the petitioner from his property. While the bank has all the right to recover the loan from the petitioner, nevertheless, if the police assistance is required for taking possession of the mortgage property, there has to be an order passed by the Collector as required under Section 14 of the SARFAESI Act and if there is no such order, the bank can well take recourse to ordinary remedy by seeking recovery by approaching Debt Recovery Tribunal or any remedy available to it under the law. However, that was not done.

8. Present case is classic example of misuse of public power and authority by the administration and the police. Merely because the petitioner was a defaulter of loan, the action could not be justified.

9. Initially, this Court had passed an interim order that attachment proceedings shall be subject to the order that may be passed by the Court. Later on, on 31/03/2016, when a categoric stand was taken by the petitioner that no order under Section 14 of the SARFAESI Act was passed by the Collector, this Court directed that attachment proceedings shall not be drawn and the petitioner was continuing with the possession. However, that order was subject to certain directions. Later on, the condition imposed on the petitioner, having not been fulfilled, the interim order was vacated. In the meantime, possession was re-delivered to the petitioner and at present, the petitioner is in possession of the property.

10. From the aforesaid consideration, it is apparent that the assistance provided by the administration and the police to the Bank was without there being any order by the Collector under Section 14 of the SARFAESI Act. The concerned Additional

District Judge, by issuing letter on 28/01/2011, has mechanically used its public power without there being any order of the Collector issuing direction to the police machinery to provide assistance to the Bank.

11. In the result, this petition is allowed. Respondent No.3 and its subordinate officials are restrained from providing any kind of assistance to the Bank for taking possession towards recovery of loan without there being any order passed under Section 14 of the SARFAESI Act. This order shall not come in the way of the Bank in taking recourse to remedy under the law towards recovery of loan from the petitioner.

12. This is an appropriate case where this Court thinks it fit to provide appropriate compensation to the petitioner against misuse and abuse of the public power without the authority of law. The petitioner is provided with compensation of Rs.1 lakh payable by all the respondents in equal proportions.

In addition, learned State Government is directed to take appropriate disciplinary action against the concerned Additional District Magistrate who issued memo 28/01/2011 without there being any order of the District Magistrate under Section 14 of the SARFAESI Act.

**Sd/-**
**(Manindra Mohan Shrivastava)**
**Judge**

Deepti