

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1961 OF 2017

Capital First Ltd.
a company incorporated under the
provisions of the Companies Act, 1956,
having its registered office at One Indiabulls,
Tower 2A & 2B, 10th Floor,
Senapati Bapat Marg, Lower Parel,
Mumbai-400 013
And also having office at Technopolis
Knowledge Park, Unit No.401-407,
4th Floor, A-Wing, Mahakali Caves
Road, Andheri (E),
Mumbai 400 093

.....Petitioner

V/s.

1 The State of Maharashtra
Through the Government Pleader,
High Court, Bombay.

2 The Ld. Chief Metropolitan Magistrate
Esplanade Court, Mumbai

.....Respondents

Dr. Birendra Saraf with Ms. Anuja Jhunjhunwala and Madhu
Gadodia i/by Naik Naik and Company, Advocates for
Petitioner.

Mr. H.S.Venegavkar , Additional Government Pleader for
Respondent No.1-State.

Mr. Rajesh S. Datar, Advocate for Respondent No.2.

**CORAM : B.R.GAVAI &
SANDEEP K. SHINDE, JJ.**

RESERVED ON : November 15, 2017.

PRONOUNCED ON : December 22, 2017

JUDGMENT : [Per Shri Sandeep K. Shinde, J.]

Rule. Rule made returnable forthwith. Heard by consent.

2 The Petitioner, who is the secured creditor within the meaning of Section 2(1)(zd) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (In short '**SARFAESI**' Act) has prayed for appropriate writ, order or direction including writ in the nature of mandamus, directing the Chief Metropolitan Magistrate, Esplanade Court, Mumbai to dispose of its application filed under Section 14 of the SARFAESI Act in time bound manner, within reasonable period as this Court may deem fit and proper.

3 The Petitioner would assert his right to get its applications decided within a time bound period in view of amended provisions of Section 14 of the SARFAESI Act whereby the Chief Metropolitan Magistrate or District Magistrate is required to pass suitable orders within 30 days from the date of application, which period could be extended not exceeding in aggregate 60 days.

4 This Court vide order dated 23.1.2017 issued

directions to the Chief Metropolitan Magistrate to make endeavour to dispose of the pending application as expeditiously as possible and preferably within 30 days from the date of receipt of writ along with this order. The learned Chief Metropolitan Magistrate vide communication dated 14.8.2017 brought to our notice:

“7) Even though, the SARFAESI Act, 2002 provides for expeditious disposal of the applications filed under Section 14 of the said Act, there are as many as 924 cases pending under the said Act as on 09.08.2017 on the file of the Court of the Chief Metropolitan Magistrate, Esplanade, Mumbai. Out of 924 cases, 509 cases are filed in the year 2017. However, there are 27 cases of the year 2014, 96 cases of the year 2015 and 291 cases of the year 2016, still pending for disposal. As per the direction of the Hon’ble High Court, preference should be given to the old pending cases for disposing of the same. Therefore, the preference is being given to the pending old cases rather than fresh new cases.”

5 That upon considering the volume of applications filed under Section 14 of the said Act and pendency of such applications, we are of the clear opinion that the Chief Metropolitan Magistrate, Esplanade, Mumbai, who is a authority under Section 14 of the said Act cannot decide such

applications within time bound period in terms of the first and second proviso to Section 14(1) of the said Act. Thus, we have called upon the learned counsel for the Petitioner and Respondents to address the Court how to minimize the pendency and suggest measures within the framework of law for expeditious disposal of such applications.

6 The learned counsel for the Petitioner has taken us through the provisions of Section 14 of the said Act and relevant provisions of the Code of Criminal Procedure, 1973 (In short 'Cr.P.C.') to persuade us that, the Chief Metropolitan Magistrate and the Additional Chief Metropolitan Magistrate are Courts of same status, having the same and identical jurisdiction so far as the trial of criminal cases are concerned. The learned counsel also submitted that intention of Legislature providing speedy remedy for enforcement of security interest in time bound manner, can be best carried out by reading the expression “Chief Metropolitan Magistrate” to include also the “Additional Chief Metropolitan Magistrate”.

7 The learned counsel has also taken us through the provisions of Section 17(2) of the Cr.P.C. and submitted that provisions of sub-section (2) empower the High Court to appoint any, Metropolitan Magistrate to be an Additional Chief

Metropolitan Magistrate, and also empower such Additional Chief Metropolitan Magistrate with all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force.

8 The learned counsel for the Petitioner has also taken us through the provisions of Section 19(2) of the Cr.P.C.

9 The learned counsel for the Petitioner would, therefore, submit that it is possible to achieve expeditious disposal of applications filed under Section 14 of the said Act by directing the High Court to issue appropriate Notification in exercise of its powers under Section 17(2) of the Cr.P.C.

10 The learned counsel for the Petitioner would also submit that powers exercised by the Chief Metropolitan Magistrate or District Magistrate under Section 14 of the said Act are purely executory in nature and not adjudicatory and thus there is no impediment in law, if the Chief Metropolitan Magistrate or the District Magistrate delegate the powers to other officers. In other words, he would submit that while disposing of the applications under Section 14 of the said Act, no element of quasi-judicial function or application of mind would require and, therefore, the Chief Metropolitan Magistrate/District Magistrate is not *persona designata* and

as such, he can delegate his powers to other officers. The learned counsel for the Petitioner would also submit that inclusion of words 'after satisfying' in second proviso to Section 14(1)(a) has not changed the character of the application to be made by secured creditor. He would, therefore, submit that Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. He would, therefore, submit that Section 14 does not involve adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets. He thus relied on

(1) **P.M.Automobiles v. Sub Divisional Magistrate 2009 (6) Mah.L.J.977.**

(2) **Trade Well and Anr. v. Indian Bank 2007 Cr.L.J.2544 and**

(3) **Kamal Jajoo and Anr. v. Oriental Bank of Commerce in Writ Petition No.11459 of 2014 (Unreported).**

11 The learned counsel would also submit that the character of an application under Section 14 of the said Act after amendment has not changed and would further submit that there was no change in the situation with introduction of

amendment in Section 14 if such applications are filed by borrowers.

12 The learned counsel, therefore, would submit that it is possible to dispose of the applications within time bound manner and speedy disposal thereof is possible in two ways;

1) By directing the High Court administration to issue appropriate Notifications under Section 17(2) of the Cr.P.C. and empowering the Additional Chief Metropolitan Magistrate with all powers that of Chief Metropolitan Magistrate including the power to dispose of the application under Section 14 of the said Act.

2) That process of deciding the application being not adjudicatory but executory, the Chief Metropolitan Magistrate/District Magistrate can empower the other officers to exercise the powers under Section 14 of the said Act.

13 The first question that arises for consideration is whether the Chief Metropolitan Magistrate and the Additional Chief Metropolitan Magistrate are of the same status having the same and identical jurisdiction so far as the trial of criminal cases is concerned ?

14 Section 16 of the Cr.P.C. deals with metropolitan

area and the establishment of as many Courts of Metropolitan Magistrates at such places as the State Government may decide after consultation with the High Court. Jurisdiction and powers of every Metropolitan Magistrate extends throughout metropolitan area. Section 17 deals with appointment of Chief Metropolitan Magistrate as well as Additional Chief Metropolitan Magistrate. Sub-section (1) imposes duty upon the High Court to appoint Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area. Under Sub-section (2) the High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate who shall have all or any of the powers of Chief Metropolitan Magistrate under this Code or under any other law for the time being in force (*emphasis supplied*)

Thus, in our view it is this sub-section, i.e., 17(2) leads to creation of Additional Chief Metropolitan Magistrate and their jurisdiction in terms of the High Court Notifications.

15 We have perused Section 19 of the Cr.P.C. Sub-section (1) of Section 19 lays down that the Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions

Judge; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate. Sub-section (2) empowers High Court to define the extent of subordination , if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate.

16 That so far as the powers of above Courts are concerned, we may refer to Section 29 of the Cr.P.C. Under Section 29(1) the Chief Judicial Magistrate is empowered to pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years. Sub-section (4) makes it clear that the Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.

17 That on the very same issue, the Division Bench of this Court in the case of **State of Maharashtra v. Shanti Prasad Jain** in Criminal Reference No.9 of 1977 decided on 29.9.1977 has held:

“19 A survey of the above provisions shows that the Chief Judicial Magistrate in the Distrits has been

equated with the Chief Metropolitan Magistrate in the metropolitan area. What precisely is the position of an Additional Chief Metropolitan Magistrate. It has to be remembered that the only expression used in the various provisions of the section is Chief Judicial Magistrate. Section 3, which deals with the construction of references lays down in Clause (d) of Sub-section (7) that any reference to the Chief Judicial Magistrate shall, in relation to a metropolitan area, be construed as a reference to the Chief Metropolitan Magistrate exercising jurisdiction in that area. It is, therefore, clear that for the purposes of convenience of reference the designation particularly used is Chief Judicial Magistrate and wherever, that expression is used it is to be construed as the Chief Metropolitan Magistrate so far as the metropolitan area is concerned. In reference to a Magistrate, the reference is to a Metropolitan Magistrate in a metropolitan area and to a Judicial Magistrate, first class, in any other area. This is the provision of Clause (c) of Sub-section (1) of Section 3.

20 *In addition to the above provisions, one must take into account the notifications issued by the High Court under Sections 17 and 19 of the Code. Both the notifications have been issued on August 27, 1975. The notification under Section 17(2) says that the Additional Chief Metropolitan Magistrate shall exercise all the powers of the Chief Metropolitan Magistrate Bombay under the Code of Criminal Procedure, 1973 except the powers under Sub-*

section (3) of Section 19 and Section 410 of the Code which shall be exercisable by the senior most Additional Chief Metropolitan Magistrate only during the absence on leave or for other cause of the Chief Metropolitan Magistrate when no appointment to the post of the Chief Metropolitan Magistrate for the period of such absence has been made. It is therefore clear that barring the two exceptions, the Additional Chief Metropolitan Magistrate has been vested with all the powers of the Chief Metropolitan Magistrate under the Code.”

18 In the aforesaid Court Reference following points were referred for the decision of the High Court;

1 Additional Chief Metropolitan Magistrate, Bombay, being invested with all the judicial powers of Chief Metropolitan Magistrate, whether Additional Chief Metropolitan Magistrate can be considered on par with the Chief Metropolitan Magistrate for the purpose of Section 306 of the Cr.P.C. ?

2 Whether in sub-clause (i) of Clause (a) of Sub-section (5) of Section 306 if the Magistrate taking cognizance is the Chief Judicial Magistrate, the expression Chief Judicial Magistrate (Chief Metropolitan Magistrate in Mumbai) includes Additional Chief Metropolitan Magistrate.

19 That while answering the said reference, the Division Bench has held that so far as the exercise of judicial powers are concerned, the Chief Metropolitan Magistrate and the Additional Chief Metropolitan Magistrate stand on the same footing and one cannot be said to be either inferior or subordinate to the other. In paragraph 29 of the said judgment while answering the reference it was held the administrative subordination for certain other purposes does not affect the status or the judicial powers of the Additional Court vis-a-vis the principal. (*emphasis supplied*) The same type of litigation can be handled by both and the power to impose punishment are identical. The appeals from orders lie to the same Court. It was further held that an Additional Chief Metropolitan Magistrate, who has all the powers of the Chief Metropolitan Magistrate so far as the judicial functions are concerned, thus cannot be treated in any different way. It was held in fact the permissive provisions of the Code which authorise the High Court to appoint one or more Additional Chief Metropolitan Magistrate, assume that more Courts may be required due to the increase of the litigation which require infliction of punishment upto seven years. In other words it was held and concluded that more Courts of that jurisdiction

parallel to that of the Chief Metropolitan Magistrate are required by the state of litigation and enough number of such Magistrates are to be provided by the High Court for disposal of business. The Division Bench thus concluded that the Chief Metropolitan Magistrate and the Additional Chief Metropolitan Magistrate are thus Courts of the same status having the same and identical jurisdiction so far as the trial of criminal cases is concerned. (*emphasis supplied*)

20 Thus, after taking survey of various provisions of the Cr.P.C. and after perusing the points of reference, then, answered by the Division Bench of this Court in the Criminal Reference No.9 of 1977, we hold that the Chief Metropolitan Magistrate and the Additional Chief Metropolitan Magistrate are the Courts of the same status having same and identical jurisdiction so far as the trial of criminal cases is concerned.

21 Now the question is, having held status of Chief Metropolitan Magistrate and the Additional Chief Metropolitan Magistrate is same and identical, whether Additional Chief Metropolitan Magistrate can exercise powers under Section 14 of the SARFAESI Act.

22 That after taking survey of provisions of Cr.P.C. and upon reading the findings recorded in the judgment of

Division Bench in Criminal Reference No.9 of 1977, we have every reason to read the expression 'Chief Metropolitan Magistrate' as employed under Section 14 of the said Act would include and includes Additional Chief Metropolitan Magistrate. We, therefore, hold expression 'Chief Metropolitan Magistrate' under Section 14 also includes 'Additional Chief Metropolitan Magistrate'.

23 Though the Court of Additional Chief Metropolitan Magistrate is subordinate to the Court of Chief Metropolitan Magistrate on administrative count and for certain purposes, it does not affect status or judicial power of additional Court vis-a-vis the principle. It may be stated that the Court of Additional Chief Metropolitan Magistrate handles the similar kind of litigation which is handled by the Court of Chief Metropolitan Magistrate and, therefore, we hold that the Court of Additional Chief Metropolitan Magistrate so far as the judicial functions are concerned has all powers of Chief Metropolitan Magistrate.

24 Mr. Saraf the learned counsel for the Petitioner has brought to our notice Notification No.A(Cri.) 2122/75 dated 27.8.1975 issued by the High Court of Judicature Appellate Side, Mumbai issued in exercise of the powers under

Section 17(2) of the Cr.P.C. whereby authorised Additional Chief Metropolitan Magistrate to exercise all the powers of the Chief Metropolitan Magistrate except the power under Sub-section (3) of Section 19 and Section 410 of the Cr.P.C. only during the absence on leave of the Chief Metropolitan Magistrate. Yet another Notification is issued by the High Court on 21.10.2015 bearing No.A-3902/2015 whereby the Additional Chief Metropolitan Magistrate has been authorised to hold the charge of Chief Metropolitan Magistrate in absence of Chief Metropolitan Magistrate to entertain and decide the applications filed under Section 14 of the **SARFAESI** Act

Thus, there is no dispute that the High Court in exercise of the powers under Section 17(2) can empower the Additional Chief Metropolitan Magistrate to discharge the functions of Chief Metropolitan Magistrate under Section 14 of the **SARFAESI** Act. By Notification dated 21.10.2015, the Additional Chief Metropolitan Magistrate has been empowered to exercise such powers only in the absence of Chief Metropolitan Magistrate, however, there is no impediment to empower all Additional Chief Metropolitan Magistrates to entertain and decide all the applications filed under Section 14 of the **SARFAESI** Act.

25 We have already held hereinabove that status and powers of the Additional Chief Metropolitan Magistrate and/or of the Chief Metropolitan Magistrate are at par under the Code enjoining the similar status qua exercise of judicial powers though there may be some administrative subordination for certain other purposes. We have held that under the permissive jurisdiction under Section 17(2) of the Cr.P.C., the High Court is empowered to authorise the Additional Chief Metropolitan Magistrate with all powers that of Chief Metropolitan Magistrate which are exercised by him under any other law for the time being in force. We have held and concluded that the High Court infact by issuing Notification on 21.10.2015 empowered the Court of Additional Chief Metropolitan Magistrate to exercise all the powers of Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act in absence of Chief Metropolitan Magistrate.

26 The powers exercised by the District Magistrate and Chief Metropolitan Magistrate are purely executionary in nature. The Division Bench of this Court in the case of **Puran Maharashtra Automobiles, Aurangabad and Another v. Sub Divisional Magistrate, Aurangabad and Others**

reported in **2009(6) Mh.L.J. 977**, has held

“17 Taking into consideration that the nature of powers that are exercised by the District Magistrate or Chief Metropolitan Magistrate under section 14 of the said Act are purely executionary in nature and particularly when no element of quasi-judicial functions or application of mind is required while exercising the said powers. We are unable to accept the contention of the appellants, that the District Magistrate is a persona designata and that he cannot delegate the powers to other officer. In any case, sub-section (2) of section 14 of the said Act permits the District Magistrate or Chief Metropolitan Magistrate to take steps for giving effect to the provisions of sub-section (1) of section 14 of the said Act.”

27 Thus, in terms of the judgment in **Puran Maharashtra Automobiles (Supra)** neither District Magistrate nor Chief Metropolitan Magistrate is persona designata. We have held so far as exercise of judicial powers are concerned, the Chief Metropolitan Magistrate and the Additional Chief Metropolitan Magistrate stand on the same footing. Further in terms of provisions of Section 20(2) of Cr.P.C., Additional District Magistrate shall have such powers of District Magistrate. Thus, since neither Chief Metropolitan Magistrate nor District Magistrate is persona designata, the expression 'District Magistrate' and 'Chief Metropolitan Magistrate' as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional Chief Metropolitan

Magistrate and Additional District Magistrate for the purposes of Section 14 of the SARFAESI Act.

28 Thus, in view of the aforesaid conclusion drawn by us, application under Section 14 of the SARFAESI Act could be disposed of in time bound period as intended by the Legislature.

29 In view of facts and for the reasons as stated hereinabove, we hold that

(I) The District Magistrate, Chief Metropolitan Magistrate is not a persona designata for the purposes of Section 14 of the SARFAESI Act.

(II) The expression 'District Magistrate' and the 'Chief Metropolitan Magistrate' as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act.

30 Rule is made absolute in the aforesaid terms.

(SANDEEP K. SHINDE, J)

(B.R.GAVAI, J)