IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.28323 of 2017

M/s.Shriram Housing Finance Ltd.,
represented by its Authorised Officer
Ms.Asha Lukose ... Petitioner

versus

1.The Chief Judicial Magistrate
Tiruvallur District
Combined Court Complex
Tiruvallur

2.M.Harish
3.Mrs.Reshma Harish ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records and quash the order dated 22.05.2017 passed in Crl.M.P.Sr. No.1597 of 2017, on the file of the 1st respondent and consequently direct the 1st respondent to dispose of the petition in Crl.M.P.Sr. No.1597 of 2017, in terms of Section 14 of the SARFAESI Act, 2002.

For Petitioner : Mr.A.Ramesh, Senior Counsel for Mr.M.Ajmal Azzath

ORDER
(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition, is to an order order dated 22.05.2017 passed by the learned Chief Judicial Magistrate, Tiruvallur in Crl.M.P.Sr. No.1597 of 2017 and the order reads thus:

> "1. In view of the judgment of Hon'ble High Court, Madras (Bench) in W.P.(MD)Nos.11078/11, 7155 of 2012 & 4525, 9833/13 dt: 27.08.2013, how the

Chief Judicial Magistrate Court has got jurisdiction to try the case to be explained.

2. Authorities of Hon'ble Supreme Court if any that CJM court has got authority/jurisdiction to try the case to be produced."

2. Short facts leading to the filing of the writ petition is that the petitioner is a Non-Banking Financial Institution, registered under National Housing Bank Act, 1987 and is doing the business of providing loan facility against the property to their prospective customers. In the course of their business, they have sanctioned housing loan to the respondents 2 and 3 against the property situated at Sevapet village. Loan was repayable in 96 equated monthly installments at the rate of Rs.11,115/- at the interest rate of 15%, floating interest.

3. Material on record further discloses that since the respondents 2 and 3 were irregular in making monthly installments, loan was declaed as Non-Performing Asset (NPA). Hence, on 17.10.2016, petitioner issued a demand notice under Section 13(2) of the SARFAESI Act, 2002, calling upon the respondents 2 and 3 to pay a total sum of Rs.16,33,763/- as on 17.10.2016, within 60 days from the date of receipt of the same. Even thereafter, there is no response from the respondents 2 and 3. The petitioner issued a symbolic possession notice dated 23.02.2017 under Section 13(4) of the Act.

4. Material on record further discloses that after taking symbolic possession, for taking physical possession of the property, the petitioner has filed a petition under Section 14 (1) of the SARFAESI Act, 2002 on the file of the learned Chief Judicial Magistrate, Tiruvallur, who is the statutory authority, as per the Act, to provide necessary assistance to take physical possession. The said petition was filed on 18.05.2017. The petitioner has complied with all relevant documents with statutory requirements for passing an order in their favour.

5. On 22.05.2017, the learned Chief Judicial Magistrate, Tiruvallur, passed an order stating that he has no jurisdiction to try the case and hence asked the petitioner to produce judgment of Hon'ble Supreme Court, if any, that Chief Judicial Magistrate Court has got authority/jurisdiction to try the case.

6. As against the said order, the present writ petition has been filed on the following grounds:

(i) Impugned order of the 1st respondent directing return of petitioner's application under Section 14 of the SARFAESI Act is unlawful, unsustainable and contrary to the mandate prescribed under the said Act.

(ii) "Chief Judicial Magistrate" has not been expressly incorporated in the wordings of Section 14 and only "Chief Metropolitan Magistrate" and "District Magistrate" are referred to, it is apparent from the reading of the relevant provisions of the Criminal Procedure Code that the terms "Chief Metropolitan Magistrate" and "Chief Judicial Magistrate" can be used interchangeably and reference to one will also include the other.

(iii) The 1st respondent has failed to note that the Full Bench of the Hon'ble High Court at Hyderabad, in the case of T.R.Jewellery and others versus State Bank of India and others, reported in AIR 2016 AP 125, has considered the above provisions of Cr.P.c. in interpreting Section 14 of the SARFAESI Act and had categorically held that a Chief Judicial Magistrate is competent to exercise the powers conferred under Section 14 of SARFAESI Act. The relevant portion of the said judgment is extracted hereunder for ready reference,

"39. For the aforesaid reasons, we answer the reference holding that the nomenclature Chief Metropolitan Magistrate referred to in Section 14 is inclusive of Chief Judicial Magistrate in non-metropolitan area and as such the Chief Judicial Magistrate in a non- metropolitan area gets jurisdiction to entertain an application under Section 14 of the SARFAESI Act, 2002."

(iv) Although the Full Bench of this Hon'ble Court, in the case of K.Arockiyaraj versus The Chief Judicial Magistrate, Srivilliputhur and another, reported in AIR 2013 Mad 206, has held that Chief Judicial Magistrates are not included within the scope of Section 14 of the SARFAESI Act, the said finding has been arrived at without considering Section 37 of the SARFAESI Act, which runs as follows:

"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."

(v) The error incurred in the aforesaid judgment of the Full Bench of this Court has been pointed out by the Full Bench of the Hon'ble High Court at Hyderabad in the case of T.R.Jewellery and others versus State Bank of India and others, reported in AIR 2016 AP 125, in the following words:

"23. The Full Bench judgment of the Madras High Court (Madurai Bench) in K.Arockiyaraj v. The Chief Judicial Magistrate, Srivilliputhur and another, while observing that for the purpose of convenience the High Court is empowered to appoint the Chief Judicial Magistrate to perform the functions akin to Chief Metropolitan Magistrate in Metropolitan area which include judicial and administrative function. held that the phraseology used in Section 14(1) should be given its true meaning without any assistance from the Criminal Procedure Code, particularly in the light of Section 35 read with Section 2 (2) of the SARFAESI Act 2002. While dealing with Section 35 of the Act, the Full Bench held that the SARFAESI Act will override other laws including the provisions of Criminal Procedure Code. The Full Bench also held that since the language used in Section 14 is clear and unambiguous and when secured creditor is provided with a Forum to seek assistance even in non-metropolitan area, there is no necessity to add something and interpret the same in a different manner which the Legislature never contemplated. It was also held that when there is no casus omissus and when the SARFAESI Act is a complete code by itself, there is no need to import Section 3 of Criminal Procedure Code.

24. But it is to be noted that none of the judgments referred to above, dealt with Section 37 of the 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."

25. A reading of Section 37 discloses that the provisions of SARF AESI Act or the Rules made there under are in addition to and not in derogation to any other law for the time being in force. The phrase any other law for the time being in force used in Section 37 would definitely be inclusive of the provisions of Code of Criminal Procedure ....

26. Therefore, the application of the provisions of Code of Criminal Procedure would be in addition to and not in derogation of the provisions of SARFAESI Act

and the provisions of Code cannot be excluded from consideration while dealing with the SARFAESI Act. Hence, the finding of the Full Bench of the Tamil Nadu High Court that in view of Section 35 of the Act the provisions of SARFAESI Act would override the provisions of Cr.PC, and the phraseology used in Section 14 should be given its true meaning without any assistance ofCr.P.C, in our view, may not be correct."

(vi) It is pertinent to note that the Division Bench of the Hon'b1e High Court, Allahabad, in its judgment dated 8th September 2016 passed in Civil Misc. Writ Petition No.17778 of 2016 (Abhishek Mishra versus State of U.P.), had considered the aforesaid judgments rendered by the Full Benches of this Hon'ble Court and the Hon'ble High Court at Hyderabad and had come to the following conclusion:

"The Full Bench of Madras High Court in the case of K. Arockiyaraj (supra) was of the view that phraseology used in Section 14 of the Act, 2002 should be given its true meaning without taking any assistance from Code of Criminal Procedure in view of Section 35 of Act, 2002, which provides that provisions of the Act will override all other laws which includes Code of Criminal Procedure. It was also held that when SARFAESI Act is a complete code. there is no need to take resort to Section 3 of CRPC. With respect to the learned Judges, we have been unable to persuade ourselves to agree to the view taken. The Full Bench failed to take notice of Section 37 of the Act, 2002 which provides that application of other laws is not barred ...

There can be no manner of doubt that words "any other law for time being in force" used in Section 37 would also include Code of Criminal Procedure within its ambit and the application of provisions of Cr.P.C cannot be excluded from consideration while dealing with the provisions of Act, 2002. Hence, the view taken by Full Bench of Madras High Court that in view of Section 35 of Act, 2002, the provisions of said Act would override the provisions of Cr.P. C and the words 'Chief Metropolitan Magistrate' used in Section 14 should be given literal interpretation without taking any aid or assistance of Cr.P. C does not, to us, appear to be correct.

For the aforesaid facts and discussions, we are of the considered view that nomenclature 'Chief Metropolitan Magistrate' used in Section 14 of Act, 2002 is inclusive of 'Chief Judicial Magistrate' functioning in a non-metropolitan area and shall have jurisdiction to entertain an application made by a secured creditor under Section 14 of Act, 2002."

(vii) Since, it is patent that the aforesaid judgment of the Full Bench of this Hon'ble Court has been rendered without taking into account section 37 of the SARF AESI Act, the said ruling has to be considered per incuriam.

(viii) The object of the SARFAESI Act is to achieve speedier recovery of the dues declared as NPAs without the intervention of Tribunals or the Courts and for quick resolution of disputes arising out of the action taken for recovery of such dues apart from making better availability of capital liquidity and resources to help growth of economy and welfare of the people. Thus, a purposive interpretation to Section 14 of the SARF AESI Act, in view of the underlying object of the legislation, would denote that Chief Judicial Magistrates are not excluded from the scope of Section 14.

(ix) Exercise of jurisdiction under Section 14 by the Chief Judicial Magistrates in non-metropolitan area, who are exercising the same functions as that of Chief Metropolitan Magistrates in metropolitan areas, would not in any way abrogate or contradict the words used in Section 14 of the SARFAESI Act, thereby causing prejudice to any of the parties. On the other hand, it would hasten the process of rendering assistance to the secured creditors to recover possession of their assets thereby achieving the object for which the SARFAESI Act has been introduced.

(x) A Chief Judicial Magistrate working in a non-metropolitan area, if posted in a metropolitan area, will be discharging the functions of a Chief Metropolitan Magistrate and similarly, if a Chief Metropolitan Magistrate working in a metropolitan area is posted in a non-metropolitan area, he will be discharging his duties as Chief Judicial Magistrate. Therefore, the nomenclature gets changed depending upon the place of work. The powers of Chief Judicial Magistrate in non-metropolitan area and powers of Chief Metropolitan Magistrate working in metropolitan area are one and the same; their functions are same and one is synonym to the other depending upon the area under their jurisdiction. While so, excluding Chief Judicial Magistrates from the purview of Section 14 of SARFAESI Act defies logic and reasoning and contradicts the object of the statute.

(xi) Ignoring the provisions of the Criminal Procedure Code for construing the ambit of Section 14 of the SARFAESI Act citing Section 35 of the SARFAESI Act is unsustainable in as much as there is no inconsistency between the provisions of SARFAESI Act and Criminal Procedure Code and as such Section 35 of the SARFAESI Act does not have any relevance to the present issue.

Heard Mr.A.Ramesh, learned senior counsel appearing for the petitioner and perused the materials available on record.

7. Before adverting to the case on hand, Section 3 of the Criminal Procedure Code, 1908, is extracted hereunder:

"3. Construction of references.--(1) In this Code-

(a) any reference, without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires,-

(i) in relation to an area outside a Metropolitan area, as a reference to a Judicial Magistrate;

(ii) in relation to a Metropolitan area, as a reference to a Metropolitan Magistrate;

(b) any reference to a Magistrate of the Second Class shall, in relation to an area outside a Metropolitan area, be construed as a reference to a Judicial Magistrate of the Second Class, and, in relation to a Metropolitan area, as a reference to a Metropolitan Magistrate;

(c) any reference to a Magistrate of the First Class shall,-

(i) in relation to a Metropolitan area, be construed as a reference to a Metropolitan Magistrate exercising jurisdiction in that area;

(ii) in relation to any other area, be construed as a reference to a Judicial Magistrate of the first class exercising jurisdiction in that area;

(d) 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.

(2) In this Code, unless the context otherwise requires, any reference to the Court of a Judicial Magistrate shall, in relation to a Metropolitan area, be construed as a reference to the Court of the Metropolitan Magistrate for that area.

(3) Unless the context otherwise requires, any reference In any enactment passed before the commencement of this Code -

(a) to a Magistrate of the First Class, shall be construed as a reference to a Judicial Magistrate of the First Class;

(b) to a Magistrate of the Second Class or of the Third Class, shall be construed as a reference to a Judicial Magistrate of the Second Class;

(c) to a Presidency Magistrate or Chief Presidency

Magistrate, shall be construed as a reference, respectively, to a Metropolitan Magistrate or the Chief Metropolitan Magistrate;

(d) to any area which is included in a Metropolitan area, as a reference to such Metropolitan area, and any reference to a Magistrate of the First Class or of the Second Class in relation to such area, shall be construed as a reference to the Metropolitan Magistrate exercising jurisdiction in such area.

(4) Where, under any law, other than this Code, the functions exercisable by a Magistrate relate to matters-

(a) which involve the appreciation or shifting of evidence or the formulation of any decision. which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Code, be exercisable by a Judicial Magistrate; or

(b) which are administrative or executive In nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate."

8. Section 14 of the SARFAESI Act, 2002, deals with the power of the Chief Metropolitan Magistrate or District Magistrate, as the case may be, to assist the secured creditor, in taking possession of secured asset and is extracted hereunder:

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset:- (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, 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 thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him,

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset 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.-

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

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:

Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty 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 sixty days.

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

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

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

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

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

9. Section 35 of the SARFAESI Act, deals with the provisions of the SARFAESI Act to override other laws and the same reads as follows:

"The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

Section 37 of the SARFAESI Act, deals with the application of other laws not barred and the said Section reads as follows:

"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."

10. Code of Criminal Procedure, 1973, is to act to consolidate and amend the law, relating to criminal procedure. Section 3 Cr.P.C., dealing with construction of references, starts with an opening sentence, "In this code". Scrutiny of 3 (1)(d) of the Code, makes it clear that in the Code of Criminal Procedure, "unless the context otherwise required", any reference to the Court of a Chief Judicial Magistrate shall be construed as a reference to the Court of the Chief Metropolitan Magistrate for that area.

11. Words, "In this code" meaning thereby, the Code of Civil Procedure, enacted with an object to consolidate and amend the law, relating to the Criminal Procedure Code, cannot be mutatis mutandis be applied to SARFAESI Act, 2002, which is enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.

12. As per Section 14 of the SARFAESI Act, 2002, for the purpose of taking possession of the secured assets, the secured creditor, may request, in writing, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof. Authority conferred with the power to assist the secured creditor for taking possession is the Chief Metropolitan Magistrate, within whose jurisdiction, the secured asset is situated or found.

13. Role of the Chief Metropolitan Magistrate/District Magistrate, as the case may be, as envisaged under Section 14 of the SARFAESI Act, is only to provide assistance to the secured creditor to take possession of the property. Sub-Section (2) to Section 14 states that for the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

14. Object of the Criminal Procedure Code, 1973, is to enact to consolidate and amend the law, relating to criminal procedure. Object of SARFAESI Act, 2002, is to regulate, securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interests created on property rights and for matters connected therewith or incidental thereto. Purpose of both laws is distinct.

15. As per Section 35 of the SARFAESI Act, the provisions of SARFAESI Act, 2002, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

16. After considering Sections 34 and 35 of the SARFAESI Act, 2002, Section 8 of the Criminal Procedure Code, 1973 and the decisions on the interpretation of statutes and while answering reference, a Hon'ble Full Bench of this Court in K.Arockiyaraj versus The Chief Judicial Magistrate, Srivilliputhur and another, reported in AIR 2013 Mad 206, at Paragraphs 19, 24 to 32, 34 and 35, held as follows:

> "19. At this juncture, it is relevant to note, Section 34 of the Act, ousts the jurisdiction of the Civil Court in respect of any matter, which the Debt Recovery Tribunal or Appellate Tribunal is empowered to deal with. The said Section 34 of the Act reads as follows:
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> "34. Civil court not to have jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."
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> Section 35 of the Act states that the provisions of the SARFAESI Act, 2002, should override other laws, which reads as follows:
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> "35. The provisions of this Act to override other laws.-The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."
>
> ....
>
> 24. 'The Executive Magistrate' is mentioned in Section 20, which reads as follows:
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> "20. Executive Magistrates.- (1) In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.
>
> (2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have such of the

powers of a District Magistrate under this Code or under any other law for the time being in force, as may be directed by the State Government.

(3) Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

(4) The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub- Divisional Magistrate.

(4-A) The State Government may, by general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub-section (4) to the District Magistrate.

(5) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area."

The local jurisdiction of the Executive Magistrate is mentioned in Section 22.

25. On a perusal of the above referred provisions of the Code of Criminal Procedure, Chief Metropolitan Magistrate, Chief Judicial Magistrate and District Magistrate are separately dealt with and only for the purpose of convenience, the High Court is empowered to appoint the Chief Judicial Magistrate to perform the functions akin to Chief Metropolitan Magistrate in metropolitan areas, which includes judicial functions and administrative functions. When Crl.P.C. itself is dealing with District Magistrates and their jurisdiction, the phraseology used in section 14(1) should be given its true meaning without any assistance from the Criminal Procedure Code, particularly in the light of section 35 read with Section 2(2) of the SARFAESI Act, 2002.

26. Section 14 of the Act is very clear and unambiguous. It states that the Chief Metropolitan Magistrate or the District Magistrate can assist the secured creditors in taking possession of the secured assets. It means, in metropolitan areas, the secured creditors can approach either the Chief Metropolitan Magistrate or the District Magistrate and in non-

metropolitan areas, where there is no Chief Metropolitan Magistrate, the secured creditors can seek the assistance of the District Magistrate alone, as no power is vested on the Chief Judicial Magistrate to give assistance to the secured creditors in non-metropolitan areas. There is no omission in the said section as contended by the learned Senior Counsel for the respondents. If there is no authority mentioned to assist the secured creditor in non-metropolitan areas, the secured creditors may be justified in contending that in case of omission, the meaning given in Crl.P.C. can be imported for the effective implementation of the SARFAESI Act. The said situation being not there, the learned Senior Counsel for the respondent is not justified in contending that wherever there is no Chief Metropolitan Magistrate, the Chief Judicial Magistrate will automatically get the powers to assist the secured creditors. If such an interpretation is accepted, the phraseology used in section 14 that Chief Metropolitan Magistrate or District Magistrate will have no meaning.

27. It is a well settled principle of law that while interpreting the words used in a legislation or parliamentary enactment, the intention of the legislature is to be borne-in-mind. The Act was enacted in the year 2002. The legislature was aware of the fact that in non-metropolitan areas, the Chief Judicial Magistrates function like Chief Metropolitan Magistrates in Metropolitan areas. If the intention of the Parliament is to confer power to the Chief Judicial Magistrate in non-metropolitan areas also, the same should have been specifically stated in section 14 itself. The legislature purposely not included the Chief Judicial Magistrate in section 14 to give assistance to the secured creditors in non-metropolitan areas. The said view was taken by the Aurangabad Bench of the Bombay High Court in the decision reported in CDJ 2008 BHC 520. Section 14 (1) clearly states that Chief Metropolitan Magistrate or District Magistrate may on such request being made to assist taking of possession of such assets and documents to the secured creditors, which the secured creditor is entitled to take possession, referable to section 13(4). In the said judgment it is held that the legislature does not seem to have entrusted the functions to the Chief Judicial Magistrate in non-Metropolitan Areas, although such function has been entrusted to the Chief Metropolitan Magistrate, a Judicial Officer in metropolitan areas.

28. The Bombay High Court in the decision

reported in 2009 (2) D.R.T.C. 431 (supra) also interpreted section 14 to the effect that in non-metropolitan areas the District Magistrate alone can be approached for getting assistance by the secured creditor as section 14 do not contemplate adjudication of any issue and is intended only to render assistance to recover possession including the support of force. The judgment of the Kerala High Court in AIR 2009 Kerala 14 (supra) was also rendered on the basis of the wordings used in Crl.P.C. As we have already held that the SARFAESI Act being a complete Act by itself, the provisions of the Crl.P.C. cannot be imported viz., section 3. There is no Casus omissus in the enactment. Therefore, giving interpretation in the context of the definition given in Crl.P.C. does not arise.

29. The Hon'ble Supreme Court in the decision reported in (2013) 4 SCC 381 (Official Liquidator v. Allahabad Bank) considered the question of law as to whether the Company Judge under the Companies Act, 1956, has jurisdiction at the instance of the Official Liquidator to set aside the auction or sale held by the Recovery Officer under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short RDB Act), or whether the Official Liquidator is required to follow the route as engrafted under the RDB Act by filing an appeal assailing the auction and the resultant confirmation of sale. The Supreme Court held that the RDB Act, which was enacted for speedy and summary remedy for recovery of the amount, which was due to the Banks and Financial Institutions and special procedures having been stated therein must be given preference, which will override the provisions of the Companies Act, 1956, to the extent if there is anomalies, inconsistency between the Acts.

30. Applying the said principles to the facts of this case, the SARFAESI Act, 2002, being a special enactment, intended for the benefit of the secured creditors for speedy recovery of NPA amount, will have preference over any other Act.

31. In the decision reported in AIR 1976 SC 331 (Nasiruddin v. State Transport Appellate Tribunal) the Supreme Court held that the Court has to adopt 'just, reasonable and sensible' interpretation, by referring the observations of Lord Justice Denning.M.R. in Seaford Court Estates Ltd. v. Ashar, reported in (1949) 2 All ER 155, wherein the learned Lord observed:

"When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

32. From the above referred observations of Lord Denning, it is clear that a Judge must not alter the material of which the Act is woven, but he can and should iron out the creases, which means, if the intention of the legislature is clear and unambiguous, the Judge is expected not to give any different interpretation as the language used is clear and unambiguous.

....

34. The literal interpretation is to be given if the words in the statute are clear and unambiguous and the object of the enactment should be borne-in-mind while interpreting the statute. This was emphasised by the Hon'ble Supreme Court in its following decisions:

(a) In Bhudan Singh v. Nabi Bux, ((1969) 2 SCC 481), the Hon'ble Supreme Court held thus, "The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on "Statutory Constructions" that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every peace of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instance, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent."

(b) In K.P.Varghese v. Income Tax Officer, Ernakulam, ((1981) 4 SCC 173) it is held thus, "......... The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he laid:

"..... it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."

"..... the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create."

(c) In Atma Ram Mittal v. Ishwar Singh Punia ((1988) 4 SCC 284) in paragraph 9 the Supreme Court held thus, "9. Judicial time and energy is more often than not consumed in finding what is the intention of Parliament or in other words, the will of the people. Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law."

(d) In 1993 Supp (1) SCC 730 (Indian Administrative Service (S.C.S.) Association v. Union of India)the Apex Court in paragraph 9 held thus, "9. .... where the intention of statutory amendment is clear and expressive, words cannot be interpolated. In the first place they are not, in the case, needed. If they should be added, the statute would more than likely fail to carry out the legislative intent. The words are the skin of the language which the Legislature intended to convey. Where the meaning of the statute is clear and sensible, either with or without omitting the words or adding one, interpolation is improper, since the primary purpose of the legislative intent is what the statute says to be so. If the language is plain, clear and explicit, it must be given effect and the question of interpretation does not arise. If found ambiguous or unintended, the court can at best iron out the creases. Any wrong order or defective legislation cannot be righted merely because it is wrong. At best the court can quash it, if it violates the fundamental rights or is ultra vires the power or manifestly illegal vitiated by fundamental laws or gross miscarriage of justice. ...."

(e) In the case of Nasiruddin v. Sita Ram Agarwal, ((2003) 2 SCC 577), in paragraphs 35 and 37, the Apex Court held as follows:

"35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom."

"37. The Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluos words. It is well settled that the real intention of the legislation must be gathered from the language used. ....."

(f) In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat ((2003) 4 SCC 712) in paragraphs 33 and 38 the Supreme Court held as follows: "33. In United Bank of India v. Abhijit Tea Co.(P) Ltd., this Court noticed: (SCC p.366, paras 25-26) "25. In regard to purposive interpretation, Justice Frankfurter observed as follows: 'Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose.' ***

38. In the Interpretation and Application of Statutes by Reed Dickerson, the author at p.135 has discussed the subject while dealing with the importance of context of the statute in the following terms:

"... The essence of the language is to reflect, express, and perhaps even affect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called 'conceptual map of human experience'."

(g) In Prakash Kumar v. State of Gujarat, ((2005) 5 SCC 409), in paragraphs 14 and 20 the Apex Court held thus,

"14. The more stringent the law, the less is the discretion of the court. Stringent laws are made for the purpose of achieving its objectives. This being the intendment of the legislature the duty of the court is to see that the intention of the legislature is not frustrated. ...."

"20. .... The court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. ...."

(h) In the case of New India Assurance Company Ltd. v. Nusli Neville Wadia, ((2008) 3 SCC 279), in paragraph 52 the Supreme Court held as follows: "52. Barak in his exhaustive work on "Purposive Construction" explains various meanings attributed to the terms "purpose". It would be in the fitness of discussion to refer to Purposive Construction in Barak's words: "Hart and Sachs also appear to treat 'purpose' as a subjective concept. I say 'appear' because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non- rebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."

35. From the perusal of the above judgments as well as the statutory provisions contained in Section 14 of the SARFAESI Act, 2002, in its independent existence, we are of the firm view that Section 14 does not contemplate the secured creditors to approach the Chief Judicial Magistrates for assistance to secure their assets and the secured creditors can approach the Chief Metropolitan Magistrate in Metropolitan areas and in non-metropolitan areas, the

secured creditors has to approach the District Magistrate, and not the Chief Judicial Magistrate."

17. Whereas, a Hon'ble Full Bench of the High Court at Hyderabad in the case of T.R.Jewellery and others versus State Bank of India and others, reported in AIR 2016 AP 125, at Paragraphs 25 and 26, observed and held as follows:

> "25. A reading of Section 37 discloses that the provisions of SARF AESI Act or the Rules made there under are in addition to and not in derogation to any other law for the time being in force. The phrase any other law for the time being in force used in Section 37 would definitely be inclusive of the provisions of Code of Criminal Procedure ....
>
> 26. Therefore, the application of the provisions of Code of Criminal Procedure would be in addition to and not in derogation of the provisions of SARFAESI Act and the provisions of Code cannot be excluded from consideration while dealing with the SARFAESI Act. Hence, the finding of the Full Bench of the Tamil Nadu High Court that in view of Section 35 of the Act the provisions of SARFAESI Act would override the provisions of Cr.PC, and the phraseology used in Section 14 should be given its true meaning without any assistance of Cr.P.C, in our view, may not be correct."

18. Though the Hon'ble Full Bench of the High Court at Hyderabad has observed that in K.Arockiyaraj's case (cited supra), there is no reference to Section 37 of the SARFAESI Act, which states that, "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" and therefore, application of Section 3 of the Criminal Procedure Code, would be in addition to, and not in derogation of SARFAESI Act, 2002 and that the Code of Criminal Procedure cannot be excluded when an application, under Section 14 of the SARFAESI Act, 2002, is considered, with due respect, we are are not inclined to accept the said view.

19. The Hon'ble Andhra Pradesh High Court has observed that there is no casus omissus and resorted to the purpose of purposive construction. We have already distinguished the objects behind the two enactments.

20. In the light of the above discussion and decisions, we

are not inclined to accept the contentions of the learned Senior Counsel to quash the impugned order. Hence, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

asr

To

The Chief Judicial Magistrate
Tiruvallur

+1cc to Mr.M.Ajmal Azzath, Advocate, S.R.No.79496

W.P.No.28323 of 2017

GJ II(CO)
RRK(27/02/2018)