

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1322 of 2017**

1. Shyamal Kumar Mitra, S/o Shri Nandulal Mitra (wrongly mentioned Nandla), aged about 59 years
2. Smt. Pushpa Mitra, W/o Shri Shymal Kumar Mitra, Aged about 50 years, Both R/o E-9, Adarsh Nagar, Near Chopda Palace, Durg, Tahsil & District – (C.G.)

---- Petitioner**Versus**

1. Gruh Finance Limited through its Authorized Officer/Area Incharge, Raipur, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 'Gruh' Netaji Marg, Near Mithakhali Six Roads, Ellisbridge, Ahmedabad-380006 and a branch office at Durg (C.G.)
2. District Magistrate, District Durg (C.G.)

---- Respondents

For Petitioner	: Mr. Anand Shukla, Advocate.
For Respondent No. 1	: Mr. Anish Tiwari, Advocate.
For Respondent No. 2/State	: Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****09/04/2018**

- (1) This petition is directed against the impugned order dated 25.04.2017 passed by District Magistrate, District Durg under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth SARFAESI Act, 2002).
- (2) Mr. Anand Shukla, learned counsel appearing of the petitioner would submit a singular ground that respondent No. 1-Bank has not followed the first proviso to Section 14 (1) of the SARFAESI Act, 2002, therefore, the order is vulnerable and deserves to be

set aside.

(3) Mr. Anish Tiwari, learned counsel appearing for the respondent No.1-Bank would submit that such a ground was neither placed in writ petition nor it has been taken before the District Magistrate by filing reply and for the first time before this Court at the time of final hearing, such a plea is being taken by the petitioner, which is impermissible in law.

(4) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(5) A plain reading of writ petition would show that petitioner has not taken any such plea by filing affidavit as provided in proviso to Section 14(1) of the SARFAESI Act, 2002 and, therefore, the respondents had no opportunity to file counter affidavit with such a new ground invented by the petitioner at the time of hearing of this petitioner.

(6) It is well settled law that the new point cannot be permitted to be raised in the writ petition by the petitioner without there being any foundation in the writ petition, as the other side cannot be taken by surprise because of being deprived of opportunity to reply suitably to the point raised during the argument.

(7) In the matter of Rani Laxmibai Kshetriya, Gramin Bank Vs. Chand Behari Kapoor¹, the Supreme Court has held that writ petitioner must fully aver facts and rights flowing therefrom to enable the respondents to meet the petitioner's case and made the following proposition of law:-

“8.... It is too well settled that the petitioner who approaches the court invoking the extraordinary jurisdiction of the court under Article 226 must fully aver and establish his rights flowing from the bundle of facts thereby requiring the respondent to indicate its stand either by denial or by positive assertions. But in the absence of any averments in the writ petition or even in the

1 (1998) 7 SCC 469

rejoinder-affidavit, it is not permissible for a court to arrive at a conclusion on a factual position merely on the basis of submissions made in the course of hearing.”

(8) Similarly, in the matter of **B.S.N. Joshi & Sons Ltd. Vs. Nair Coal Services Ltd. and others**², the Supreme Court has held that the point not raised in the writ application cannot be permitted to be urged during hearing of the writ petition.

(9) Reverting to the facts of the present case, it appears that petitioner has no-where pleaded in his petition, as to what is infirmity in application and affidavit filed by the respondent No. 1-Bank under Section 14 of the SARFAESI Act, 2002. A bold statement is made that necessary information as required in the proviso has not been furnished. The petitioner is unable to establish that said proviso is violated. If there was any such violation, it should have been pleaded with accuracy and precision. The petitioner has also not shown as to what prejudice is caused to him, if any such violation has taken place.

(10) On the basis of above-stated analysis, I find no valid ground to interfere with the order of learned District Magistrate. The writ petition deserves to be and accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-