

Amk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5047 OF 2018

Mrs. Jaya Suresh Gangar & Ors. .. Petitioners
Vs.
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 4826 OF 2018**

Mr. Rachit Suresh Gangar .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

Mr. Vishwas Shah a/w. Masoom Shah, Mr. Nirman Sharma, Mr. Munaf Virjee, Ms. Etika Srivastava and Mr. Nishith Sharma i/b ABH Law LLP for the Petitioners.

Mr. Simil Purohit a/w Ms. Priyanka Fadia i/b Mr. Shashank Fadia for the Respondent Nos.2 & 3.

Mr. A. A. Alaspurkar, AGP for the Respondent-State.

**CORAM : A. A. SAYED &
RAVINDRA V. GHUGE, JJ.**
DATE : 27th APRIL, 2018.

ORDER (*Per Ravindra V. Ghuge, J.*)

1. The learned Counsel for Petitioners in both these Petitions have submitted that these two petitions can be heard together as these Petitioners are challenging the same order. By consent, the second Petition which was not on board, was called for and we have heard the learned Advocates on behalf of the litigating sides.

2. The Petitioners, in the first Petition, seek to challenge the order dated 6th March, 2018 passed by the Chief Metropolitan Magistrate (CMM) by which the Application filed by the Respondent-Bank seeking an order under Section 14 (1) and (3) was transferred to the Additional CMM. The Petitioners have also sought the quashing of the order dated 28.03.2018 passed by the Additional CMM granting the physical possession of the secured asset, under Section 14(3) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), to the Bank.

3. These Petitioners have put forth the following prayers in paragraph 55(a) & (b):-

“55(a) Be pleased to quash and set aside Office Order dated 6th March 2018 of Hon'ble Chief Metropolitan Magistrate, Mumbai.

55(b) Be pleased to quash and set aside impugned order dated 28th March 2018 passed under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (Act No. 54 of 2002) by Hon'ble Additional Chief Metropolitan Magistrate in 786/SA/2017.”

4. In the second Writ Petition No. 4826 of 2018, Rachit Suresh Gangar who is the son of Petitioner Nos.1 & 2 and the husband of Petitioner No.3 in the first Petition, has also challenged the same order of the Additional CMM dated 28.03.2018 passed under Section 14(1)(3) of the SARFAESI

Act. He has also put forth an identical prayer as like the Petitioner in the first Petition and has prayed for quashing the impugned order of the Additional CMM.

5. We have heard the learned Counsel for the Petitioners and the Respondents at length.

6. The learned Counsel for the Petitioners has relied upon the following Judgments:

- (1) Harshad Govardhan Sondagar Vs. International Assets Reconstruction Co. Ltd. & Ors. (2014) 6 SCC 1.
- (2) Standard Chartered Bank Vs. V. Noble Kumar & Ors. (2013) 9 SCC 620.
- (3) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors. (1998) 8 SCC 1
- (4) Manju Devi R. Somani Vs. Union of India & Ors. AIR 2013 Gujarat 242.

7. The learned Counsel for the Respondent-Bank has relied upon the following Judgments:

- (1) United Bank of India Vs. Satyavati Tondan & Ors. 2010 (8) SCC 110
- (2) Jagdish Singh Vs. Heeralal & Ors. 2014 (1) SCC 479

(3) M/s. Hari Trading Corporation Vs. Bank of Baroda

WP No. 11459 of 2014 decided on 23.01.2015

(Bombay Division Bench)

(4) Capital First Ltd. Vs. The State of Maharashtra

2018 (1) Bom.C.R. 505

8. The Petitioners are primarily aggrieved by the order dated 6th March, 2018 passed by the CMM by which the SARFAESI Application in Case No. 786/SA/2017 was transferred to the Additional CMM. Contention is that, if the order of the CMM transferring the proceedings to the Additional CMM is held to be unsustainable, the subsequent order passed by the Additional CMM dated 28.03.2018 granting physical possession to the bank, would be rendered a nullity.

9. It has been vehemently contended by the learned Advocate for the Petitioners that the CMM could not have transferred the SARFAESI Application of the bank to the Additional CMM for the reason that, when the CMM was available for considering such Application, the matter could not have been transferred to the Additional CMM. Reliance is placed upon the Notification issued by the High Court of Judicature at Bombay dated 21.10.2015, under Section 17(2) of the Code of Criminal Procedure, by which the Additional CMM has been empowered to hold the charge of and exercise the powers of the CMM during the absence of the latter and

entertain and decide applications filed under Section 14 of the SARFAESI Act.

10. In the above backdrop, the sole contention on behalf of the Petitioners urged before us is that the impugned order passed by the Additional CMM is without jurisdiction. The Additional CMM can exercise powers only during the absence of the CMM. The impugned order dated 06.03.2018 indicates that the CMM was available and he had, in fact, illegally delegated his powers to the Additional CMM. This is not permissible and hence the impugned order dated 06.03.2018 is illegal and unsustainable.

11. The learned Counsel appearing on behalf of the Respondent-Bank contends that the issued raised by the Petitioners is no longer “res-integra” in the light of the Judgment of the Division Bench of this Court delivered in the matter of **Capital First Ltd.** (supra).

12. Section 17 of the Cr.P.C. reads as under:

17. Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate- (1) *The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area.*

(2) *The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have 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 as the High Court may direct.

13. The contention of the Petitioners is that though Section 17 does not specifically prohibit an Additional CMM to exercise powers of the CMM, the Notification issued by the Bombay High Court dated 21.10.2015 specifically provides for the Additional CMM exercising jurisdiction under Section 14 only in the absence of the CMM. It is, therefore, strenuously canvassed that the Bombay High Court has specifically provided for the Additional CMM exercising powers under Section 14 only if the CMM is not available. There has not been any further Notification issued by the Bombay High Court permitting the Additional CMM to exercise delegated powers of the CMM under Section 14, even during the availability of the CMM.

14. We are unable to accept the contentions of the Petitioners in the light of the view taken by this Court in **Capital First Ltd.** (supra) and it would be apposite to reproduce paragraph Nos.13 to 27 as under:

“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. Subsection (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 Districts 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 Subsection (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.”

15. In the light of the view taken by this Court in **Capital First Ltd.** (supra), it is thus settled that the CMM/DM mentioned in Section 14 of the SARFAESI Act would mean and include Additional CMM and Additional

District Magistrate for the purposes of Section 14.

16. As such, as we are in agreement with the view taken by this Court in **Capital First Ltd.** (supra). The Additional CMM or the Additional DM, as the case may be, would be competent to entertain a SARFAESI Application filed under Section 14(1) and would have the jurisdiction to pass a suitable order under Section 14(3). Consequentially, the delegation of authority by the CMM to the Additional CMM in this case, cannot be faulted. These two Petitions, therefore, fail with respect to the impugned order dated 06.03.2018.

17. In light of the above discussion, both these Petitions are dismissed.

[RAVINDRA V. GHUGE, J.]

[A. A. SAYED, J.]