IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7584 of 2017

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Sri Akhouri Gopal S/o Late Akhouri Banshidhar, R/o Mohalla-Chand Chaura, P.S.-Civil Lines. Gaya.

... ... Petitioner

Versus

1. The State of Bihar through Secretary, Department of Personnel and Administration, Government of Bihar, Patna.
2. District Magistrate, Gaya, Distt. Gaya, Bihar.
3. District Magistrate, Rohtas, Distt.-Rohtas, Bihar.
4. Authorized Officer, State Bank of India, Stressed Assets Management Branch, 5th Floor, SBI Patna, Zonal Office Building, J.C. Road, Patna.
5. The Branch Manager, State Bank of India, Dakbunglow Road, SBI Specialized Commercial Branch, Patna.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Arbind Kumar Jha, Advocate
For the Respondent/s	:	Mr.Manoj Kumar- A.C. to GP4
For the Bank	:	Mr. Santosh Kr. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 26-09-2019

This writ application has been preferred for a direction to respondent no. 2 & 3 not to deliver possession of the property mentioned in sale notice dated 30.04.2017 published in Times of India dated 1st May, 2017 in view of the order of the appellate authority i.e. Debts Recovery Tribunal, Patna in SA No. 101 of 2016 dated 06.09.2016.

2. It is stated that the order dated 06.09.2016 was passed after considering the application dated 19.07.2016 filed by respondent no. 3 for physical possession of the property mentioned in the sale notice dated 30.04.2017. A further prayer has been made for a direction to respondent no. 2 & 3 to examine the fact in compliance of statutory provision of Section 14(I)(IV) and 14(I)(V). It is submitted that respondent nos. 2 & 3 should examine as to whether the borrower has committed default in repayment and consequent upon such default the account of the borrower has been classified as NPA.

3. The petitioner has also prayed for quashing of the sale notice dated 30.04.2017 published in the newspaper on 01.05.2017 for sale of property mentioned therein. It is submitted that the sale notice suffers from non-compliance of statutory provision of the SARFAESI Act 2002 and the rules framed thereunder.

Submissions of the Petitioner

4. Learned counsel for the petitioner submits that the petitioner created a registered mortgage for securing the loan from respondent bank on 08.10.2014 for the credit facilities of aggregate limit of Rs. 40,38,00,000/- granted to M/s Ramanandi Automobiles Pvt. Ltd. on the terms and conditions mentioned in mortgage deed. A statutory notice dated 16.02.2015 was issued under the SARFAESI Act, 2002 wherein the loan account of the said M/s Ramanandi Automobiles Pvt. Ltd. was declared NPA on 30.09.2014. The registered mortgage deed no. 14661 dated 08.10.2014 registered with Registrar of Assurance at Gaya is the security shown in the notice dated 16.02.2015 for enforcing the recovery of loan which was declared NPA on 30.09.2014.

5. Learned counsel has relied upon the judgment of the Hon'ble Apex Court in the case of **Keshavlal Khemchand and Sons Vs. Union of India & ors.** reported in **(2015) 4 SCC 770** to demonstrate the definition of the words "Non-Performing Asset" as provided in the Act of 2002 originally and then after the amendments brought by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004. The petitioner challenged the classification of its account as NPA, as according to him, as per RBI Circular an account should be treated as "out of order" if the outstanding balance remains continuously in excess of sanction limit/drawing power for ninety days. The petitioner claimed that as per statement of account the outstanding limit between 01.07.2014 to 22.07.2014 is within the limit, therefore, the period of ninety days starts from 24.07.2014 but again on 06.08.2014, the account is within limit, it exceeds on 31.08.2014, but then account was within limit on 22.09.2014, but exceeds the limit on the same day and came within the limit on 16.09.2014 and continuously remained within limit upto 30.09.2014.

6. It is further stated that so far as C.C. (Book date) of Rs. Nine Crore is concerned, the statement of account for the period from 01.07.2014 to 30.09.2014 was showing that on 30.06.2014 the account exceeds the limit but then the petitioner claims that it was not continuously in excess of sanction limit for ninety days. About another credit facility of term loan amounting to Rs. 2.38 Crore, petitioner claimed that the payment was regular and outstanding balance was only Rs. 81,57,347/-.

7. Further referring to Master Circular known as Master Circular – Prudential Norms on income recognition, asset classification and provisioning pertaining to advances which was revised on 01.07.2014. It is submitted that the

RBI Guidelines has categorized the NPAs in para '3' as "substandard asset, doubtful asset and loss asset". It is admitted in para '8' of the writ application that petitioner's case falls under substandard assets which is indicated in para 3.1.1. Para 3.1.1 to 3.2.5 which have been quoted in the writ application by the petitioner are reproduced hereunder:

> "3.1.1. Sub-Standard Assets with effect from March 31, 2005, a substandard asset would be one, which has remained NPA for a period less than or equal to 12 months. Such an asset will have well defined credit weaknesses that jeopardizes the liquidation of the debt and are characterized by the distinct possibility that the banks will sustain some loss, if deficiencies are not corrected.
>
> 3.1.2 'paragraph 3.2 provides guidelines of classification of assets. Classification of assets into above categories should be done after taking into account the degree of well defined credit weaknesses and the extent of dependence or collateral security for realization of dues.
>
> Para 3.2.4 provides for accounts with temporary 3 deficiencies as under:
> "the classification of an asset as NPA should be based on the record of recovery. Bank should not classify an advance account as NPA merely due to the existence of some deficiencies which are temporary in nature such as non-availability of adequate drawing power based on the latest available stock statement, balance outstanding exceeding the limit temporarily, non-submission of stock statements and non-renewal of the limits

on the due date, etc.”

Para 3.2.5 provides for upgradation of loan accounts classified as NPAs, which is extracted hereunder; “if arrears of interest and principal are paid by the borrower in the case of loan accounts classified as NPAs, the account should no longer be treated as non-performing and may be classified as ‘standard’ accounts. With regard to upgradation of a restructured/rescheduled account which is classified as NPA contents of paragraph 12.2 and 15.2 in the Part B of this circular will be applicable.”

8. Learned counsel submits that according to the judgment of the Hon’ble Allahabad High Court in the case of Rakesh Sharma in a case of sub-standard asset if the deficiency is removed or corrected by the borrower then the substandard asset would be upgraded to a standard account and as per RBI Guidelines if the arrears of interest and principal is paid by the borrower, the account would no longer be treated as non-performing and would be classified as standard account. In the said case, the Hon’ble Court having found that the petitioner had cleared the defaulted amount, the respondent bank was directed to regularize the account of the petitioner and upgrade it into a regular account. The possession notice under Section 13(4) of the SARFAESI Act, 2002 was quashed.

9. Learned counsel submits that action under section 14 of the Act of 2002 constitutes action taken after the stage of section section 13(4) of the Act of 2002, and therefore, the same would fall within the ambit of Section 17(1) of the Act. He has relied upon the judgment of the Hon'ble Apex Court in the case of **Kanaiyalal Lalchand Sachdev & another Vs. State of Maharashtra & Ors** reported in **(2011) 2 SCC 782**; **Standard Chartered Bank Vs. Nobel Kumar & Ors** reported in **(2013) 9 SCC 620**. Paragraph 22, 23, 25 and 27 from the judgment of the Standard Chartered Bank (supra) have been quoted in the writ application and those are being reproduced hereunder:

> "22 ….. Parliament inserted a proviso to Section 14(1) and also sub-section (1-A) by Act 1 of 2013.:
> 23 ….. these amendments are made to provide safeguards to the interest of the borrower. These provisions stipulate that a secured creditor who is seeking the intervention of the Magistrate under Section 14 is required to file an affidavit furnishing information contemplated under various sub-clause(i) to (ix) of the proviso and obligates the Magistrate to pass suitable orders regarding taking of the provision of the secured assets only after being satisfied with the contents of the affidavit.
> 25. The satisfaction of the Magistrate contemplated under the Second Proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness

> of the assertion made in such an affidavit but not the legal niceties of the transaction. It is only after recording his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of secured assets.
> 27. ……. We are of the opinion that whatever manner the secured creditor obtains possession either through process contemplated under Section 14 or without resorting to such process obtaining of the possession of a secured assets is always a measure against which remedy under Section 17 is available."

Challenge to possession notice dated 10.05.2016 and sale notice dated 06.08.2016 in S.A. No.101/2016

10. It appears from the narration of the facts that the petitioner had earlier challenged the possession notice dated 10.05.2016 and the subsequent E-auction sale notice dated 06.08.2016 before the Debts Recovery Tribunal by filing of securitization application being SA No. 101/2016 which came to be disposed of on 06.09.2016 vide Annexure '9' to the writ application. The Tribunal examined the procedures followed by the bank in the matter of issuance of the possession notice and the E-auction sale notice and came to a conclusion that the mandatory procedures were not followed, hence the possession notice and E-Auction sale notice were quashed.

Fresh possession notice and sale notice

11. Subsequently, a fresh possession notice dated 03.12.2016 and sale notice dated 30.04.2017 have been issued by the respondent bank which are Annexure '10' and '11' respectively to the writ application.

12. Let it be recorded that in the present writ application while the petitioner has challenged the sale notice dated 30.04.2017 published in the newspaper on 01.05.2017, the possession notice dated 03.12.2016 as contained in Annexure '10' to the writ application is not under challenge. It has been brought to the notice of this court that the petitioner had filed another writ application being CWJC No. 1257/2017 assailing the possession notice dated 03.12.2016 but the said writ application has been dismissed as withdrawn on 09.08.2019. The borrowers had also filed a writ application being CWJC No. 4146/2017 challenging the judgment of the Debts Recovery Tribunal passed in OA No. 237/2015 in which a certificate of recovery for a sum of Rs. 39,38,51,118.99 paise only have been issued on contest. CWJC No. 4146/2017 has also been dismissed as withdrawn vide order dated 09.08.2019.

Stand of the Bank

13. In the aforementioned factual matrix of the case, learned counsel for the petitioner is praying for the aforesaid reliefs. The respondent bank has contested the writ application saying that the petitioner has no cause of action to invoke the extraordinary writ jurisdiction of this court. The Bank has relied upon the relevant provisions of the RBI Circular which permits the bank to declare an account NPA if there is threat of loss for the recoverability of the advances is in doubt. In their counter affidavit the respondent bank and it's authorities have given in detail the description of the loans and advances as also the security documents which have been furnished in support of those loans and advances.

14. As regards paragraph 3.1.1, 3.1.2, 3.2.4 & 3.2.5 of the Master Circular, it is submitted that the petitioner has wrongly quoted those provisions of the Master Circular. These provisions relate to classification of assets and they do not define NPA. Incidentally from paragraph 3.2.5 is not available in the said Master Circular. A copy of which has been brought on record as Annexure

'A/6' to the counter affidavit. The bank has relied upon the classification of an account to be NPA in terms of para 2.2 of the treatment of accounts (record of recovery).

15. It has been submitted that even if the borrowers have service the interest and installment it can be classified as NPA in terms of 2.2 – 2.2.1 (I) of the Master Circular of the RBI dated 01.07.2014 if there was a threat perception for the respondent bank that forced them to obtain registered mortgage of the whole property in place of equitable mortgage of the same. It is submitted that the petitioner has been trying to swallow the bank's money by fighting litigations.

16. By filing a supplementary counter affidavit the respondent bank has submitted that pursuant to the sale notice of the secured assets published in two local newspapers on 10.02.2017, the E-Auction sale of the secured assets was fixed on 15.03.2017. Altogether four lots of mortgage properties were put on auction sale out of which one lot has been auction sold in favour of Amit Kumar Baranwal on 15.03.2017. The property auction sold is "residential/commercial land and building, area – 1243 sq. Ft., situated – Mohalla – Chand Choura, Thana – Civil Lines, District – Gaya, new survey plot no. 106 & 107, municipal plot no. 19022 & 19023 in the name of Ramanandi Automobiles Pvt. Ltd. Bearing sale deed no. 14746 dated 17.10.2017 ....”

Affidavit filed by Bank in terms of Section 14 of the SARFAESI Act 2002

17. The bank thereafter submitted an affidavited application dated 23.07.2017 before the District Magistrate, Gaya, Sasaram and Nawada respectively. The District Magistrate, Gaya vide it’s letter dated 11.07.2017 directed the Sub-Divisional Officer, Gaya to assist the secured creditor bank in taking possession of the mortgaged property referring to the records produced before this Court, it is submitted that after receipt of an objection from M/s Ramanandi Automobiles Pvt. Ltd. the District Magistrate, Gaya examined the same for some time action was stayed but later on being satisfied with the information furnished by the bank the stay was lifted and thereafter the Sub-Divisional Officer issued a letter dated 14.09.2017 to depute a Magistrate for taking over possession. Respondent bank submits that the District Magistrate has no power of adjudication under the Act to decide whether the borrower has committed default or not and Bank should take possession of the asset or not and the SARFAESI Act does not contemplate holding any inquiry by the District Magistrate for purpose of adjudication. In the present case, according to learned counsel for the Bank as well as the State, the District Magistrate has passed order only after being satisfied with the correctness of the information furnished by the Bank. It is submitted that even objections of the said M/s Ramanandi was considered and upon satisfaction the direction was issued to the Sub-Divisional Magistrate.

18. It is further submitted that the contention of learned counsel for the petitioner that the petitioner was required to be personally heard is against the statutory scheme. He is not a tenant in the premises and it is not a case of a lessee.

19. It is submitted that the SARFAESI Act 2002 contemplates a remedy in the form of petition/appeal to the 'DRT' to be preferred by the aggrieved person under

Section 17 of the Act against any action taken by the respondent bank, therefore, it cannot be argued by the petitioner that District Magistrate is empowered to pass any judicial order of adjudication.

20. Respondent bank has further informed that on receipt of the full bid amount of Rs. 55,50,000/- from the prospective purchaser a sale certificate dated 30.03.2017 has already been issued to the buyer Sri Amit Kumar Baranwal and Sri Manish Kumar Baranwal vide Annexure 'A/14' to the supplementary counter affidavit.

21. Let it be recorded that earlier the matter was heard on 16.08.2019 and judgment was reserved in this case. On 13.09.2019 when the matter was listed for judgment learned counsel for the parties made some submissions, therefore, the matter was heard under the same heading. The records in which the District Magistrate, Gaya had passed the order under Section 14 of the SARFAESI Act, 2002 was called for and perused by this court. On 24.09.2019, this court recorded the following orders:-

> "Heard learned counsel for the petitioner and learned counsel for the State as well as learned counsel for the Bank.
>
> Learned counsel for the State has filed an affidavit

enclosing therewith a judgment of the Hon'ble Division Bench of this court in LPA No. 1475/2014, the original records have also been produced. It has been submitted with reference to the records produced before this court that after receipt of the description of the assets and detail in application dated 27.05.2016, the file was opened and on receipt of the affidavit from the Bank the same was examined on 05.08.2016, thereafter, the further proceeding was stayed on 03.12.2016 in view of the letter received from Stressed Asset Management Branch, Patna. It has been further pointed out that during pendency of the writ application earlier the proceeding remained pending, but, thereafter, on consideration of the developments and further assessment of the facts and circumstances the file was moved and the Sub-Divisional Magistrate was directed to take steps towards taking over possession of the secured asset.

After the order to that effect was passed on 05.07.2017 by the District Magistrate, M/s Ramanandi Automobiles Private Limited submitted its objection dated 17th July 2017. The objection of M/s Ramanandi Automobiles Private Limited was made available to the Chief Manager of the Bank for his comment. The Bank submitted its comment thereon and then upon consideration of the entire materials, it was found that there was no need to keep stayed the further action towards recovery of the secured asset. Accordingly, a direction was issued to Sub-Divisional Officer, Sadar Gaya, to depute a Magistrate with adequate force to take possession of the assets.

Learned counsel for the State submits that the scheme of section 14 of the SARFAESI Act, 2002 does not provide for a hearing muchless a personal hearing to the borrower. In this case, it is submitted that admittedly the borrower is in possession of the asset. Learned counsel submits that in view of the Hon'ble Division Bench judgment of this court, copy of which has been enclosed with the counter affidavit of respondent no. 3, the role of District Magistrate is only administrative in nature and the proceeding under section 14 of the Act of 2002 cannot be taken as a judicial proceeding to adjudicate upon the rights of the parties.

Learned counsel for the Bank has also contested the submission of learned counsel for the petitioner, as according to the Bank, the fresh possession notice which was issued on 03.12.2016 and by which symbolic possession of the assets had been taken over, was never under challenge before the Debts Recovery Tribunal.

It is submitted that a writ application being CWJC No. 1257 of 2017 was filed before this court challenging the possession notice dated 03.12.2016, but the same was dismissed as withdrawn on 09.08.2019. Learned counsel submits that out of five properties on which the security interest was created, the petitioner has himself voluntarily handed-over one of the properties. It is submitted that the satisfaction of the District Magistrate in the present case to proceed with an action under section 14 of the Act of 2002 cannot be found fault with.

In the aforesaid background of the facts and circumstances, this court has to examine the contention of learned counsel for the petitioner as to whether in the facts and circumstances of the present case a notice of hearing was required to be issued to the borrower (the petitioner) and he was required to be heard before passing an order under section 14 of the Act of 2002 by the District Magistrate.

Learned counsel for the petitioner has in this connection relied upon the judgment of the Hon'ble Supreme Court in the case of **Standard Chartered Bank Vs. Nobel Kumar & Ors** reported in **(2013) 9 SCC 620**.

Hearing in this case is concluded.

Let the matter be listed under the same heading day after tomorrow (26.09.2019).

The original records are being returned to the learned counsel for the State."

Consideration

22. After hearing learned counsel for the parties and on perusal of the records, it appears to this court that the reliefs prayed by the petitioner are not fit to be granted by this court in it's writ jurisdiction. Earlier in first round of litigation when a sale notice was issued by the respondent bank the petitioner had availed his remedy under Section 17 of the SARFAESI Act, 2002, this time instead of availing the adequate and equally efficacious alternative remedy of filing a securitization application in terms of Section 17 (1) of the Act of 2002 the petitioner chose to file the present writ application challenging the sale notice. In the case of **United Bank of India Vs. Satyawati Tondon** reported in **2010(8) SCC 110**. In paragraph '43' the Hon'ble Supreme Court has held as under:

> "43.Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain

> comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

23. In the aforesaid view of the matter since the petitioner has not exhausted the adequate and equally efficacious remedy available to him, this court finds no reason to entertain the present writ application. It has already been noticed hereinabove that the borrowers had challenged the possession notice but the said writ application has been dismissed as withdrawn leaving it open for the borrowers to seek their statutory remedy in accordance with law. The prayer for quashment of the sale notice is, thus, refused.

24. It appears that during pendency of the writ application the application preferred by the respondent bank before the District Magistrate, Gaya was taken up for consideration. The respondent bank has asserted that they had filed an affidavited application before the District

Magistrate, Gaya and the District Magistrate, Gaya has directed the Sub-Divisional Officer to assist the secured creditor bank in taking possession of the mortgaged property. The petitioner has not challenged the direction issued by the District Magistrate but in his rejoinder to the counter affidavit the petitioner has submitted that in the present case the District Magistrate did not bring on record the order of satisfaction as required under second proviso to section 14 and without complying the aforesaid statutory requirement the direction was issued to the Sub-Divisional Officer to handover possession of the secured asset to the bank. The petitioner has attempted to agitate certain issues with regard to the statements made in the affidavit submitted by the authorized officer.

25. This Court, however, finds that in the rejoinder to the counter affidavit the petitioner had not disclosed that after the judgment of the DRT in S.A. No.101/2016, the District Magistrate, Gaya had stayed further action and only when the bank issued fresh possession notice on 03.12.2016 and sale notice dated 30.04.2017 and an affidavit was filed on behalf of the Bank the borrower M/s Ramanandi had also submitted an objection before the District Magistrate, Gaya and the same was duly considered. There is nothing to show that in the affidavit filed before the District Magistrate, the authorized officer had not correctly given the declaration as required.

26. So far as the contention of the petitioner that the authorized officer of the bank had given a false statement saying that the account had become irregular and classified NPA on 29.11.2014 has no basis to stand. Such issues could not be a subject matter of adjudication before the District Magistrate. This court has gone through the contents of the application supported by affidavit of the secured creditor under section 14 of the Act of 2002, submitted before the District Magistrate, Gaya. There is no stipulation in the said application that the loan account of the first respondent became irregular and classified NPA on 29.11.2014, rather in paragraph 3(VI) of the affidavit it is stated as under:

"Consequent upon such default in repayment of financial assistance the account of borrower has been classified as non-performing asset on 30.09.2014."

27. This court is fully satisfied that the bank had filed an application duly affidavited in terms of requirement of section 14 of the Act of 2002 before the District Magistrate, Gaya and on being satisfied with the affidavit the District Magistrate, Gaya has issued direction to the Sub-Divisional Officer, Sadar Gaya and consequent action has been taken by the Sub-Divisional Officer, Sadar Gaya vide Annexure '13' to the supplementary counter affidavit, no infirmity may be found with the same. In view of the judgment of the Hon'ble Supreme Court in the case of **Standard Chartered Bank (supra)** the District Magistrate has to satisfy itself with the correctness of the assertions made in the affidavit and not the legal niceties.

28. Learned counsel for the petitioner has also relied upon a Division Bench judgment of the Hon'ble Allahabad High Court in Writ-C No. 38578 of 2018 **(Kumkum Tentiwal Vs. State of U.P. and Others)** decided on 11.12.2018 to submit that in the said case the Hon'ble Division Bench has taken a view that while passing orders under Section 14 of the Act of 2002, the District Magistrate has to give an opportunity of hearing to borrower to file an objection against the application of the Bank seeking the possession and on filing of the said objections, the District Magistrate has to hear and decide the matter afresh by following the principles of natural justice.

29. In the supplementary affidavit the petitioner has taken a stand that he was not aware that an application was filed on behalf of the Bank on 17th March, 2017. He has submitted that neither any notice was issued to the petitioner nor any opportunity of hearing was given, therefore it is a case of violation of principles of natural justice.

30. The aforesaid contention of the petitioner is liable to be rejected. The petitioner has not only concealed the material facts that on 17th July, 2017 the Ramanandi Automobiles which is represented through this petitioner as a director had filed an objection before the District Magistrate, he has also failed to state that after receipt of the objection for some time the further action was stayed, but thereafter, upon consideration of the objection the District Magistrate felt satisfied with information furnished in the affidavit by the Bank, and, thereafter direction was issued to the Sub-Divisional Magistrate to proceed with the matter. The counter affidavit filed on behalf of the respondent no. 3 has placed on record a Division Bench judgment of this Hon'ble court passed in LPA No. 1475 of 2014 (Syndicate Bank and Others Vs. Rajesh Kumar and Another) decided on 11.05.2017, in which while dealing with the action taken by the District Magistrate under Section 14(1) of the SARFAESI Act, 2002, the Hon'ble Division Bench took a view that the District Magistrate was not an adjudicatory authority and it's role was limited to "assist" by providing police force and taking possession of the secured asset. Recently, in the case of the Authorized Officer, Indian Bank Vs. D. Visalakshi and Anr. (Civil Appeal No(S). 6295 of 2015) decided on 23rd September, 2019, in paragraph '40' the Hon'ble Supreme Court observed as under:

> "40. Be it noted that Section 14 of the 2002 Act is not a provision dealing with the jurisdiction of the Court as such. It is a remedial measure available to the secured creditor, who intends to take assistance of the authorised officer for taking possession of the secured asset in furtherance of enforcement of security furnished by the borrower. The authorised officer essentially exercises administrative or executive

functions, to provide assistance to the secured creditor in terms of State's coercive power to effectuate the underlying legislative intent of speeding the recovery of the outstanding dues receivable by the secured creditor. At best, the exercise of power by the authorised officer may partake the colour of quasi-judicial function, which can be discharged even by the Executive Magistrate. The authorised officer is not expected to adjudicate the contentious issues raised by the concerned parties but only verify the compliances referred to in the first proviso of Section 14; and being satisfied in that behalf, proceed to pass an order to facilitate taking over possession of the secured assets."

31. The judgment of the Hon'ble Apex Court delivered on 23rd September, 2019 has been pointed out and discussed in course of hearing in this case.

32. In the facts and circumstances stated hereinabove, this court is of the considered opinion that in the scheme of Section 14 of the SARFAESI Act 2002 the legislatures have not provided for giving a personal hearing to the borrower hence reading of any such requirement in the statute would amount to adding words to the statute which would not be in consonance with the intention of the legislatures. It would appear from the scheme of the whole SARFAESI Act of 2002 that the legislatures thought it just and proper to leave to the wisdom of the Chief Metropolitan

Magistrate and District Magistrate to be satisfied with the factual information furnished in the affidavit by the authorised officer of the Bank. In order to satisfy himself the District Magistrate shall in consonance with the principles of natural justice be obliged to give opportunity to the person in possession of the asset or the borrower as the case may be to submit his objection to the affidavit limited to the factual aspects stated in the affidavit.

33. Giving an opportunity to the person in possession or the borrower, as the case may be, to submit their objection and consideration thereof within the limited scope of examining the correctness of the facts stated in the affidavit, in my opinion, the principles of natural justice would be satisfied. The principles of natural justice is, no doubt like a brooding omnipresence which prevails everywhere but at the same time it is also well-said that the principle cannot be applied like a straight jacket formula. It is not a judicial proceeding and the District Magistrate is not required to adjudicate the dispute between the Bank on the one hand and the borrowers on the other. In the garb of exercising power under Section 14 of the SARFAESI Act, 2002 the District Magistrate is not to assume upon itself any power of adjudication because any such approach will be circumventing the aims and objects of the Act of 2002.NPA Act.

34. The satisfaction of the District Magistrate has to satisfy itself with the contents of the affidavit and pass a suitable order thereon for purpose of taking possession of the secured asset. For example, one of the declarations to be made in the affidavit is as to whether *"the borrower has committed default in repayment of the financial assistance and "consequent upon such default in repayment of financial assistance the account of the borrower has been classified as Non-Performing Asset".* To satisfy himself with the contents of the affidavit the District Magistrate shall look into the facts stated in the application duly supported by the documents and the affidavit but once those statement and documents supported by affidavit are found to be in consonance with each other, the District Magistrate cannot assume upon himself a jurisdiction to decide as to whether the bank has rightly declared the account in default or has rightly classified the same has

Non-Performing Asset. It is to be kept in mind that an application under section 14 of the Act is filed only when the possession of the secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred.

35. For the purpose of taking possession, the bank has to comply with the requirement of section 13(4) of the Act of 2002. Any action of the bank under Section 13(4) of the Act of 2002 may be challenged before the Debts Recovery Tribunal under Section 17(I) of the said Act and the order passed by the Debts Recovery Tribunal is appealable before the Debts Recovery Appellate Tribunal. Similar is the position in case of an action taken for E-Auction sale by the bank. Thus, at the stage of section 14 the District Magistrate shall not either assume the power of the Debts Recovery Tribunal or the appellate tribunal and shall not by any stretch of imagination be taken as a forum available to the borrower or guarantor in addition to the Debts Recovery Tribunal and the Appellate Tribunal. The principles of natural justice has to be complied with sole intention to satisfy with the contents of the affidavit and not the legality of the action taken by the bank.

36. For example if an action under Section 13(4) of the Act of 2002 has already been subjected to a challenge under Section 17 of the Act before the Debts Recovery Tribunal and the Tribunal could not find any fault with the action of the Authorised Officer of the Bank in taking any of the measures provided under Section 13(4) of the Act of 2002, it would not be open for the District Magistrate to look into the correctness of the action initiated by the Bank for taking possession of the secured asset.

37. As stated above, the scheme of SARFAESI Act, 2002 has to be looked into considering the aims and objects of the Act and any attempt to delay the recovery proceeding by taking a plea that a personal hearing is required to be given by the District Magistrate to the borrower at the stage of Section 14 Application is not acceptable. The principle of natural justice would stand satisfied if the District Magistrate in order to satisfy himself with the correctness of the information furnished in the affidavit of the Bank call upon the borrower or the person in possession to submit his objection within stipulated period and then upon consideration thereof the District Magistrate proceeds to pass an order under Section 14 of the Act of 2002. Personal hearing is not necessarily an incident of the rules of natural justice, reference in this regard may be made to the judgments of the Hon'ble Supreme Court in the cases of (i) **Union of India Vs. Jyoti Prakash Mitter** reported in **AIR 1971 SC 1093,** (ii) **J. A. Naikastam Vs. Prothonotary and Senior master, High Court of Bombay and Ors.** reported in **AIR 2005 SC 1218** and (iii) **D.R.A.R.M. Educational Institution Vs. The Educational Appellate Tribunal and Others**. reported in **AIR 1999 SC 3219** where the concept of natural justice has been discussed in the contest of a demand of personal hearing.

38. In this case, since the court is satisfied that the application under section 14 of the Act of 2002 contained the declaration required in terms thereof and that the objection of M/s Ramanandi Automobiles the borrower of which the petitioner is a director was also considered by the District Magistrate, it cannot be accepted that he was not given an opportunity to be heard. This court finds no reason to interfere with the action for deputation of Magistrate and police force for purpose of taking over possession of the secured assets.

39. This Writ Application is, therefore, dismissed.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	24.09.2019
Uploading Date	26.09.2019
Transmission Date	