

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	11.07.2019
DELIVERED ON	19.07.2019

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CORAM:**THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU****and****THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.(MD)Nos.11986, 13006, 13654,
13726,15507 of 2019 & 24785 of 2018
and

W.M.P.(MD) Nos.9036, 9037, 9700, 9701, 10228, 10229, 10277 & 22477
of 2019

C.Bright,
Managing Trustee,
K.S.M.Educational & Charitable Trust,
Melpalai, Edaicode Post,
Kanyakumari District 629 152. ... Petitioner in W.P.(MD) No.11986
of 2019

P.Rammohan, Petitioner in WP(MD). 13006/ 2019

E.Easai Petitioner in WP(MD). 13654/ 2019

Lakshmi Vilas Bank, Rep.By its Manager,
Uthamarkoil Branch, 64/3c, No.1,
Tollgate, Ns Complex, Chennai Main Rd,
Uthamarkoil, Bikshandar Kovil,
Trichy ..Petitioner in WP(MD). 13726/ 2019

M/s.Asian Motors , Rep. by its Partner,
P.Padmanabhan. ..Petitioner in WP(MD). 15507/ 2019

M/s.Shree Moorthy Textiles,
Rep. by its Partner,
Krishna Moorthy, ..Petitioner in WP(MD). 24785/ 2018



1) The District Collector,
Nagercoil,
Kanyakumari District.

2) The Authorized Officer,
Central Bank of India,
Puliyoor Salai Branch,
Kanyakumari District.

3) The Tashildhar,
Vilavancode Taluk,
Kanyakumari District. ... Respondent in W.P.(MD) No.11986
of 2019

1. The District Collector,
Madurai.

2. The Tahsildar,
Madurai North Taluk, Madurai.

3. The Authorized Officer,
Sundaram Bnp Paribas Home Finance Ltd.,
No.21, Pattulos Road, Chennai

4. The Branch Manager,
M/s.Sundaram Bnp Paribas Home Finance Ltd.,
No.131,Kallalazhar Shopping Complex,
Azhagar Kovil Main Road, Tallakulam, Madurai.

... Respondents in WP(MD). 13006/ 2019

1. The District Collector
Nagercoil, Kanyakumari Dt

2. The Authorised Officer
Karur Vysya Bank Ltd., 47, 1st Floor,
Court Rd, Nagercoil, Kanyakumari Dt

3. The Tahsildar
Vilavancode Tk, Kanyakumari Dt

... Respondents in WP(MD). 13654/ 2019

The District Collector
Trichy District.

... Respondent in WP(MD). 13726/ 2019



1. The Dist. Collector/district Magistrate,
O/o the District Collector, Madurai
2. The Tahsildar
Madurai North Taluk, Madurai District
3. The Manager
Syndicate Bank, Kamarajar Salai Branch, Madurai
4. S.Sumathi
W/o.M.A.Senthilvel, No.27/15, South Street,
Tallakulam Post, Madurai - 625 002

... Respondents in WP(MD). 15507/ 2019

1. The District Collector Cum District Magistrate,
Namakkal Dist, Namakkal.
2. The Authorized Officer,
HDFC Bank Limited, 590, Sri Sai Towers,
D.B.Road, R.S.Puram, Coimbatore.
3. The Debt Recovery Tribunal.
Uthangudi, Madurai Dist.

... Respondents in WP(MD). 24785/ 2018

PRAYER in W.P.(MD) No.11986 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for records relating to the impugned order made by the 1st respondent on K.Dis.No.C4/40773/2018 dated 08.03.2019 and quash the same as illegal.

Prayer in WP(MD). 13006/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for records relating to the impugned notice issued by the 2nd respondent in his proceedings in Na.Ka.No.1643/19/A3 dated 28/05/2019 which was served on this petitioner only on 06/06/2019 and quash the same.

Prayer in WP(MD). 13654/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for records relating to the impugned order made by the 1st respondent in K.Dis. No.C4/4525/2018, dated June 2018 signed on 23.08.2018 and quash the same as illegal.

Prayer in WP(MD). 13726/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondent to pass suitable orders in C.M.P.No.G5/7032/2019 submitted by the petitioner U/S 14 of the SARFAESI Act for taking



physical possession of the mortgaged property as prayed in the said petition.

Prayer in WP(MD). 24785/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records relating to the impugned order made by the 1st respondent in Roc.7669/2018-M14 dated 23.11.2018 and quash the same as illegal.

Prayer in WP(MD). 15507/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the impugned order Roc.No.C6/47377/2018, dated 30.05.2019 issued by the Respondent and to quash the same as illegal

For Petitioner : Mr.Ajmal Khan,
Senior Counsel for
Mr.Mahaboob Athiff
in WP(MD)Nos.11986,13654 of 2019
and 24785 of 2018.

: Mr.B.Prahalad Ravi
in W.P. (MD) .No.13006/2019

: Mr.C.Jawahar Ravindran in W.P. (MD) .No.13726/2019

: Mr.M.Siddharthan in W.P. (MD) .No.15507/2019

For Respondents:

:Mr.VR.Shanmuganthan,
Special Government Pleader
assisted by
Mr.N.Shanmugaselvam AGP For RR 1 & 3
in WP(MD)Nos.11986, 13654 of 2019

:Mr.V.R.Shanmuganathan, Spl.G.P Assisted by
Mr.N.Shanmugaselvam AGP for R.1 and 2 in
W.P. (MD) .No.13006/2019,15507/2019

:Mr.V.R.Shanmuganathan, Spl.G.P Assisted by
Mr.N.Shanmugaselvam AGP Respt.
in W.P. (MD) .No.13726/2019

:Mr.V.R.Shanmuganathan, Spl.G.P Assisted by
Mr.N.Shanmugaselvam AGP for R.1
in W.P. (MD) .No.24785/2018

:Mr.N.Dilip Kumar for R2 in W.P. (MD) No.11986
of 2019

:Mr.Jerinmathew for R.3 and 4
in W.P. (MD) No.13006/2019



:Mr.Palaramasamy for R.2
in W.P. (MD).No.13654/2019
for R.3 in W.P. (MD).No.15507/2019
R.2 and 3. N.A. In W.P. (MD).No.24785/2018

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COMMON ORDER

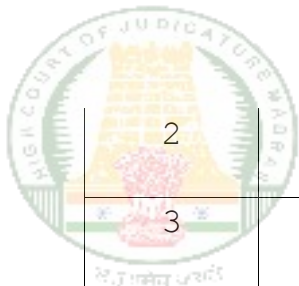
(Order of the Court was made by **SENTHILKUMAR RAMAMOORTHY, J.**)

1. Common issues arise for consideration in all these Writ Petitions and, therefore, they are disposed of by a common order.

2. In all these Writ Petitions, applications were filed before the District Collector/District Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act) and either orders were passed after the lapse of the outer limit of 60 days and the borrower concerned challenged the order before this Court or orders were not passed within the said time limit and the secured creditor concerned approached this Court for expeditious disposal of such applications. The said outer limit of 60 days comprising an initial period of 30 days and an extended period of a further 30 days was stipulated by an amendment effected through Act 44 of 2016 which came into force on 01.09.2016 and it is the admitted position that the said amendment applies in all these Writ Petitions. Therefore, the primary question that arises for consideration, in these Writ Petitions, is whether the said time limit is mandatory and, if so, whether the District Collector/District Collector is divested of jurisdiction to decide the application on expiry of 60 days. In addition, in certain cases, the borrower concerned challenges the order under Section 14 on the basis that the requirements of the amended Section 14 with regard to the filing of an affidavit with the requisite details was not satisfied by the respective secured creditor therein.

3. For the purposes of adjudicating these Writ Petitions, the relevant facts with regard to: the date of filing of the respective application under Section 14 of the SARFAESI Act and the date of pronouncement of the order, where applicable, in the respective application are set out in the table below. As regards the requirement of filing an affidavit with the requisite details along with the respective application, details are not available on record and the same is mentioned in the said table below:

Sl.No.	Writ Petition No.	S.14 Application Date	Date of Order	Whether affidavit filed
1	11986/2019	06.10.2018	08.03.2019	Details unavailable



2	13006/2019	Details unavailable	11.02.2019	Details unavailable
3	13654/2019	25.01.2018	June 2018/ 23.08.2018	Details unavailable
4	13726/2019	18.03.2019	No orders	Details unavailable
5	15507/2019	15.10.2018	30.05.2019	Details unavailable
6	24785/2018	01.03.2018	23.11.2018	Details unavailable

4. Mr.Ajmal Khan, the learned senior counsel, appeared for the borrower in several of these cases. He opened his submissions by pointing out that two questions arise for consideration in these writ petitions, namely, whether writ petitions are maintainable after the introduction of section 17 (4-A) of the SARFAESI Act and whether the District Magistrate has jurisdiction to pass orders after expiry of the outer limit of 60 days, which is prescribed by the amendment. With specific reference to WP 11986 of 2019, he submitted that the petition under Section 14 does not contain requisite details such as the amount outstanding, whether the notice under section 13 (2) was replied to and other details relating to the existence of security interest. In this regard, he referred to the proviso to Section 14 which stipulates that an affidavit should be filed wherein the above-mentioned details should be specified. He, thereafter, adverted to the amendment whereby a time limit was prescribed for deciding petitions that are filed under Section 14. In this connection, he emphasised that there was no time limit for deciding petitions under Section 14 until the amendment was introduced. By virtue of the amendment, he contended that an initial time limit of 30 days is stipulated and the said time limit may be extended by a further 30 days but the said aggregate time limit of 60 days cannot be extended. He further submitted that the relevant proviso uses both mandatory language, namely, "shall", and negative language thereby emphasising the mandatory character of the relevant amendment. He also referred to Section 14 (3) wherein it is specified that no act of the District Magistrate can be challenged before a court or authority and that, therefore, there is no statutory appeal against an order passed under Section 14. The said amended section 14 reads as under:

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset-(1) where the possession of any secured asset 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 asset, 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 the District Magistrate, as the case may be, shall, on such request being made to him-

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

(b) forward such assets and documents to the secured creditor: provided that any application filed 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 outstanding of the bank as on the date of filing the application;

(ii) the borrower has created security interest of 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 60 days notice as required by the provisions of subsection (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 is 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 subsection (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and rules made thereunder have 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 himself about the contents of the affidavit pass suitable orders for the purpose of



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taking possession of the secured assets within a period of 30 days from the date of application: provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of 30 days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such period not exceeding in the aggregate 60 days. (emphasis added).

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

5. He next referred to section 17 and, in particular, to sub-clause 4-A thereof which provides for an appeal by a lessee in respect of orders passed under section 14. In this regard, he pointed out that only a lessee can maintain an appeal under the aforesaid sub-clause.

6. The learned senior counsel, thereafter, referred to and relied upon the following authorities, which are set out below along with a brief description of the proposition laid down therein:

(a) **Harshad Govardhan Sondagar vs. International Assets Reconstruction Co. Ltd. 2014 (5) CTC 546 (SC)** wherein, at paragraph 29, the Supreme Court held that the Debts Recovery Tribunal does not have the power to restore possession of the secured asset to the lessee if an application is filed under section 17 of the SARFAESI Act. This judgement was referred to in order to establish the object and purpose of the introduction of section 17 (4-A) of the SARFAESI Act.

(b) **Veena Textiles Limited vs. The Authorised Officer, IFCI Limited 2014 (5) CTC 209** wherein, a Division Bench of this Court in which one of us was a party (KRCBJ) held that a writ petition is maintainable against the order made under section 14 (3) of the SARFAESI Act.

(c) **Dipak Babaria vs. State of Gujarat (2014) 3 SCC 502**, wherein, at paragraph 61, the Supreme Court held that "when a statute provides for a thing to be done in a particular manner, then it should be done in that manner and in no other manner." In order to reach this conclusion, the Supreme Court relied upon the rule in *Taylor versus Taylor* (1875) LR 1 Ch D 426 at 431

(d) **K. Arokiaaraj vs. The Chief Judicial Magistrate (2013) 6 MLJ 641 (FB)** wherein, at paragraph 32, a Full Bench of this Court held that "if the intention of the legislature is unambiguous, the Judge is expected not to give any different interpretation as the language used is clear and unambiguous."



(e) **G.P. Singh on Principles of Statutory Interpretation** wherein, the author cited Crawford to the following effect: "prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience". As observed by Subbarao J: "negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative".

(f) **Union of India vs. A.K. Pandey (2009) 10 SCC 552** wherein, the question was whether Rule 34 of the Army Rules, 1954 that specifies an interval of not less than 96 hours between the accused being informed of the charge for which he is to be tried and the arraignment is mandatory or not. At paragraph 15, after considering relevant judgments, the Supreme Court held, *inter alia*, as under:

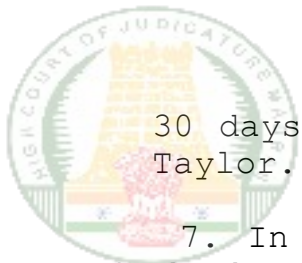
"The principle seems to be fairly settled that prohibitive or negative words are ordinarily indicative of mandatory nature of the provision; although not conclusive. The Court has to examine carefully the purpose of such provision and the consequences that may follow from non-observance thereof. If the context does not show nor demands otherwise, the text of a statutory provision couched in a negative form ordinarily has to be read in the form of command. When the word "shall" is followed by prohibitive or negative words, the legislative intention of making the provision absolute, peremptory and imperative becomes loud and clear and ordinarily has to be inferred as such...."

(g) **Vijay Narayan Thatte vs. State of Maharashtra (2009) 9 SCC 92** wherein, at paragraph 4, the principle of construction that statutes that are couched in negative language are ordinarily regarded as peremptory and mandatory was referred to and in paragraph 22, the Supreme Court upheld the proposition that when the language of the statute is plain and clear, literal interpretation should be adopted.

(h) **Lachmi Narain vs. Union of India (1976) 2 SCC 953** wherein, at paragraph 68, the Supreme Court held that the expression "not less than three months notice" in Section 6(2) of the Bengal Sales Tax Act, which deals with the power to amend the schedule of exempted goods, is mandatory and not directory.

(i) **Balasinor Nagrik Cooperative Bank Ltd. vs. Babubhai Shankerlal Pandya (1987) 1 SCC 606**, wherein, at paragraph 5, the time limit of three months for the Registrar to approve or disapprove of a resolution expelling a member under Section 36 of the Gujarat Cooperative Societies Act was held to be mandatory.

<https://hcservices.courts.gov.in/hcservices/>
(j) **Om Prakash Singh vs. State of UP 2003 SCC online All 1161** wherein, at paragraph 12, a Division Bench of the Allahabad High Court held that a provision requiring a meeting to be held within



30 days is mandatory and also reiterated the rule in Taylor vs. Taylor.

7. In response to a question as to how the substantive rights of the borrower/guarantor/lessee is affected if the time limit of 60 days is not adhered to, the learned senior counsel concluded his submissions by pointing out that the property rights of the Petitioner are at stake and such rights are protected by Article 300 A of the Constitution and that a person cannot be deprived of such rights except strictly in accordance with the procedure established by law.

8. In reply, arguments were advanced by the learned Additional Government Pleader on behalf of the official Respondents, namely, the respective District Collector and Tahsildar. In a nutshell, his contentions were as under:

(a) the words "shall" and "May" are not determinative or conclusive and the object and context in which the said words are used should be examined in order to determine whether the said words are mandatory or directory.

(b) Section 14 of the SARFAESI Act is ancillary to Section 13 (4) and is intended to assist secured creditors in accomplishing what they are entitled to do as per Section 13 (4).

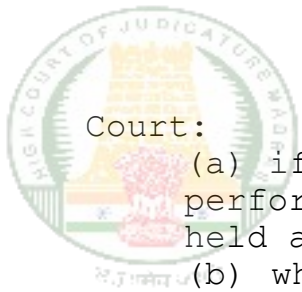
(c) the object of Act 44 of 2016 is to expedite orders under Section 14 and cannot be interpreted to defeat the object of the main statute. If the time limit in Section 14 is construed as mandatory, it would result in delay in obtaining physical possession by secured creditors and would thereby be directly contrary to the object and purpose of the amendment to Section 14.

(d) Therefore, a purposive interpretation should be given to the proviso to Section 14 so as to be in consonance with the object and purpose thereof.

(e) He relied upon the judgment of the Supreme Court in **Jaswantsingh Mathurasingh vs. Ahmedabad Municipal Corporation 1992 Supp. (1) SCC 5**, wherein, at paragraphs 12 and 13, the Supreme Court held that the test to ascertain whether a provision is intended to be directory or mandatory is to examine the consequence of non-compliance. If the consequence of non-compliance affects the substantive right of a party, the provision would be construed as mandatory and, if not, it would be construed as directory.

(f) the use of negative language raises a rebuttable presumption that the provision in question is mandatory. However, such presumption is certainly not conclusive.

9. Each of the counsel for the banks that are parties to these Writ Petitions, thereafter, made submissions. The said submissions are summarised herein. Mr. Pala Ramasamy, the learned counsel for the respective Banks in W.P. No. 13654 of 2019 and 15507 of 2019, formulated the following propositions for the consideration of the



Court:

(a) if a provision in a statute prescribes a procedure for performance and employs the word shall, it would not be held as mandatory.

(b) whether a statute is directory or mandatory would not depend on the usage of the words "shall" or "may" but would depend on the object and purpose it seeks to achieve.

(c) if the statute prescribes the consequence of non-compliance, the provision in question is mandatory but if no consequences are prescribed, it is directory. In order to substantiate this proposition, he adverted to Rule 9 (3) of the Security Interest (Enforcement) Rules, wherein sub-rule's 4 and 5 prescribe the consequence of non-compliance.

10. In addition, he referred to the Minutes of the State-Level Bankers Committee Meeting so as to emphasise that about 1143 applications under Section 14 of the SARFAESI Act are pending before the District Magistrates and that the amendment fixing the time limit was introduced in this factual context and for the purpose of expediting disposal of such applications. He referred to a judgment of the Full Bench of the Patna High Court in **Shiveshwar Prasad Sinha vs. The District Magistrate of Monghyr MANU/BH/0030/1966**, where, in paragraph 9, the Court adverted to the factors that should be considered in order to decide whether a provision is directory or mandatory and held as under:

"Following the aforesaid authorities it appears that the under mentioned factors have to be considered in deciding whether the time limit provided in clause (a) of sub-section (2) of Section 11 of the Act is directory or mandatory:

(1) The general scheme of the Act and the context of the other provisions.

(2) Whether the time limit is insisted upon, as a protection for safeguarding the right of property of a person.

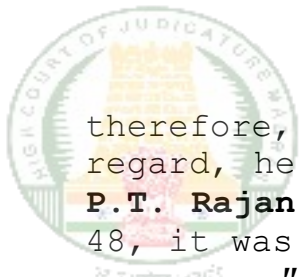
(3) Whether the statute relates to the performance of a public duty by a public officer.

(4) Whether serious general inconvenience or injustice to persons who have no control over those entrusted with the duty would arise if the provision is held mandatory and not directory.

(5) whether such a decision would not promote the main object of the legislature.

(6) Where the statute itself provides for the result of non-compliance with the statutory provision, what can reasonably be held to be the intention of the legislature."

By relying upon the above relevant factors, he submitted that the secured creditors have no control over the time taken by the District Magistrate in the performance of a statutory function in aid of the exercise of rights by a secured creditor and that,



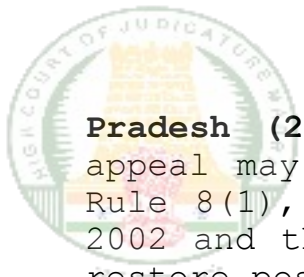
therefore, the time limit should be construed as directory. In this regard, he referred to the judgment of the Hon'ble Supreme Court in **P.T. Rajan vs. T.P.M. Sahir (2003) 8 SCC 498**, wherein, at paragraph 48, it was held, *inter alia*, as follows:

"It is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory..."

He concluded by referring to the judgment of the High Court of Madhya Pradesh (Jabalpur Bench) in **Manish Makhija vs. Central Bank of India (2018) 2 DRTC 289**, wherein, the time limit in the proviso to Section 14 of the SARFAESI Act was held to be directory. Paragraph 19 of said judgment reads as under:

"19. Thus, in the considered opinion of this Court, the aforesaid proviso was not inserted to give the benefit to a borrower or guarantor, who has not paid the debts. In other words, if the Chief Metropolitan Magistrate or District Magistrate failed to pass the order within stipulated time, the legislature never intended to give free hand to the borrower/guarantor. Putting it differently, the intention of law makers while inserting the said proviso was to compel the said Magistrates to pass orders within a statutory time frame."

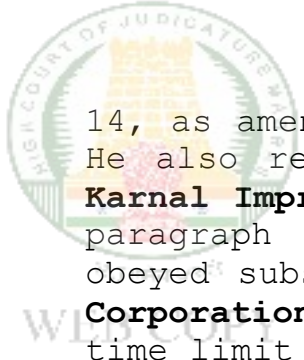
11. Mr. N. Dilip Kumar, the learned counsel for the Bank in W.P. No. 11986 of 2019, opened his submissions by pointing out that Section 13 is the primary provision and that Section 14 is ancillary thereto. With regard to Section 14 (3), he submitted that it pertains to immunity to officers for acts done in order to secure physical possession for and on behalf of secured creditors. In other words, he submitted that the said sub-section does not deal with orders passed in an application under Section 14. By implication, he submitted that such orders are appealable under Section 17 of the SARFAESI Act. He further submitted that Heydon's "mischief rule" should be applied so as to ascertain the mischief that the amendment to Section 14 was intended to overcome. He further submitted that any person aggrieved is entitled to approach the DRT concerned under section 17 (3) of the SARFAESI Act and, in this regard, he referred to and relied upon the judgement of the Supreme Court in **Standard Chartered Bank vs. V. Noble Kumar (2013) 9 SCC 620** (the Standard Chartered Bank case) and, in particular, paragraph 27 thereof wherein it was held that an appeal under Section 17 of the SARFAESI Act is available against any measure under Section 13(4) thereof, including proceedings under Section 14 whereby the secured creditor takes possession of the secured asset. In conclusion, he relied upon the judgment in **Hindon Forge Private Limited vs. State of Uttar**



Pradesh (2019)2 SCC 198, wherein the Supreme Court held that an appeal may be filed under Section 17 if possession is taken under Rule 8(1), (2) or (3) of the Security Interest (Enforcement) Rules, 2002 and that Section 17(3) of the SARFAESI Act enables the DRT to restore possession.

12. Mr. Jerin Matthew, learned counsel for the Bank in W.P. No.13006 of 2019, referred to and relied upon the judgment reported in **United Bank of India vs. Satyawati Tandon (2010) 8 SCC 110** (the United Bank of India case) and, in particular, Paragraph 27 thereof, wherein the Supreme Court held that the High Court should keep in mind the effective alternative remedy available under the SARFAESI Act while considering cases filed under Article 226. He submitted that the expression "any person" in section 17 of the SARFAESI Act is very wide. He also referred to a judgment of the Karnataka High Court in **Vijaya Bank vs. Shameem Transport (2007) 137 Company Cases 428** wherein, at paragraph 8, it was held that the District Magistrate exercises ministerial functions under Section 14. He also referred to the judgment in the **Manish Makhija Case** (cited *supra*) in order to contend that where the consequences are not specified, the provision is directory and not mandatory. He concluded his submissions by referring to a Division Bench judgment of this Court in **S.V.K.Sahasramam vs. Deputy Registrar of Co-operative Societies, Tiruvannamalai Circle (2008) 8 MLJ 231** on section 81 (4) of the T.N. Cooperative Societies Act, which prescribes a time limit that "shall not exceed six months in the aggregate" for completing an inquiry was interpreted as being directory and not mandatory and it was held, in paragraph 12, that "...the members of general public who have been cheated have no control over those who hold the enquiry in respect of the time limit."

13. Mr C. Jawahar Ravindran, learned counsel for the Bank in W.P. No. 13726 of 2019, thereafter, made submissions. Once again, he submitted that orders passed under Section 14 are ministerial and not judicial. He referred to and relied upon the judgment reported in **Bachahan Devi vs. Nagar Nigam, Gorakhpur (2008) 12 SCC 372** and, in particular, paragraph 17 and 18 thereof with regard to the principle that the words "shall" and "may" are not conclusive as to whether a provision is directory or mandatory. He further submitted that the bank has no control over the district magistrate and that, therefore, great prejudice would be caused to secured creditors if the time limit is construed as mandatory and not directory. He further submitted that no substantive rights are affected as regards the borrower, guarantor or lessee if the specified time limit is exceeded. He also referred to the order in the Arockiaraj case (cited *supra*) wherein, a Full Bench of this Court, at paragraph 16 and 18, held that there is no adjudication of rights in a proceeding under Section 14. He also referred to and relied upon the judgments of the Hon'ble Supreme Court in **Sharif-ud-Din vs. Abdul Gani Lone AIR 1980 SC 303**, at paragraph 9, and in **State of Mysore vs. Narasimha Ram Naik AIR 1975 SC 2190**, at paragraph 10, in order to contend that provisions such as section



14, as amended, should be construed as directory and not mandatory. He also referred to and relied upon the judgement is reported in **Karnal Improvement Trust vs. Parwash Wanti** wherein it was held, at paragraph 11, that it is sufficient if a directory enactment be obeyed substantially. He also referred to **Topline Shoes Ltd. vs. Corporation Bank (2002) 6 SCC 33**, at paragraph 7 and 8, wherein the time limit for filing the version under the Consumer Protection Act, 1986 was held to be directory and the judgement in **Salem Advocate Bar Association vs. Union of India (2005) 6 SCC 344**, at paragraph 14, where the time limit for filing the written statement under Order VIII Rule 1 of CPC was held to be directory.

14. By way of rejoinder, the learned senior counsel, Mr. Ajmal Khan, submitted as follows:

(a) section 14 not only uses the word "shall" but also uses negative language. When viewed in totality, it is clear that it is intended to be mandatory.

(b) if section 14, as amended, is construed as mandatory, it would not defeat the object and purpose of the Act because it would merely entail a second application for taking physical possession if the time limit of 60 days is exceeded.

(c) public interest is relevant only if the words are ambiguous; otherwise, the provision should be construed literally.

(d) the statistics regarding pendency of Section 14 applications do not constitute a legal argument but could be the basis for seeking legislative reform.

(e) the judgments that were relied upon with regard to the directory nature of provisions that deal with the performance of statutory duties or obligations are distinguishable because Section 14, by contrast, deals with the exercise of jurisdiction under a statute and not the mere performance of statutory duties.

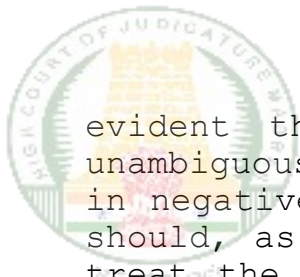
(f) the decision of the Madhya Pradesh High Court in the Manish Makhija case is not correct because such interpretation is unwarranted when the language of the provision is unambiguous.

(g) Section 17 (5) of the SARFAESI Act is different because the word preferably is used in the context of the time limit.

(h) the exercise of jurisdiction under Section 14 is not ministerial but quasi-judicial.

(i) the judgments relating to the directory nature of provisions in the CPC are distinguishable because the said provisions deal with obligations imposed on the defendant in a litigation and not with the exercise of jurisdiction by a quasi-judicial authority.

15. We carefully considered the pleadings, documents, oral submissions and the authorities relied upon by all the parties. On examining Section 14, as amended by Act 44 of 2016, it is clear that the amendment relating to the imposition of time limits uses words such as "shall" and "not exceeding 60 days". Therefore, it is self-

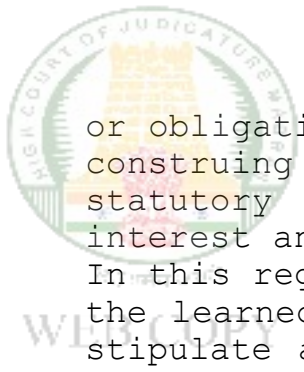


evident that the time limit is unambiguous. In light of such unambiguous language, which is both peremptory in form and couched in negative language, the question that arises is whether the Court should, as contended by the learned senior counsel, Mr. Ajmal Khan, treat the time limit as mandatory and not examine the object and purpose of the provision and other factors such as the consequence of non-compliance. In this regard, the judgment of the Supreme Court, which was relied upon by the learned senior counsel and is reported in (2009) 10 SCC 552, is illuminating and the Court therein also held as follows in paragraph 15:

"....There being nothing in the context otherwise, in our judgment, there has to be a clear ninety six hours' interval between the accused being charged for which he is to be tried and his arraignment and interval time in Rule 34 must be read as absolute. There is a purpose behind this provision: that purpose is that before the accused is called upon for trial, he must be given adequate time to give a cool thought to the charge or charges for which he is to be tried, decide about his defence and ask the authorities, if necessary, to take reasonable steps in procuring the attendance of his witnesses. He may even decide not to defend the charge(s) but before he decides his line of action, he must be given clear ninety-six hours."

Therefore, the use of words such as "shall", which are peremptory in form, and negative language such as "not exceeding 60 days in the aggregate" do not foreclose the necessity to examine the object and purpose or the consequences of non-compliance so as to determine whether the provision is directory or mandatory, and the contention to that effect is not tenable. For the purpose of understanding the object and purpose of the time limit, it is pertinent to examine the Statement of Objects and Reasons of Act 44 of 2016. The said Statement of Objects and Reasons specifies that the purpose of introducing the time limit is to ensure a specific time line for taking possession. In other words, it is intended to benefit secured creditors who require the assistance of the district magistrate or chief judicial magistrate concerned in order to take possession of secured assets. When the stipulated time limit is examined in the context of the object and purpose of the amendment to Section 14, it is also evident that it is intended to ensure that the district magistrate or chief metropolitan magistrate, as the case may be, disposes of such applications expeditiously so as to ensure that secured creditors are in a position to take possession of secured assets quickly. It is further evident that the amended Section 14 does not stipulate any consequence if the time limit is not observed. More importantly, it is abundantly clear that the said time limits are not intended to be used as a weapon by borrowers or guarantors, or even lessees in mortgaged properties, to defeat or delay attempts by a secured creditor to take physical possession of assets in which it has security interest.

16. As correctly contended by Mr. Pala Ramasamy, provisions that prescribe a time limit for the performance of statutory duties



or obligations are largely construed as directory. The reason for so construing such provisions is that the non-performance of such statutory duties or obligations would affect or prejudice public interest and not the person who fails to perform the statutory duty. In this regard, we are unable to countenance the distinction made by the learned senior counsel, Mr. Ajmal Khan, between provisions that stipulate a time limit for the performance of statutory duties and provisions, such as Section 14, that fix a time limit for the exercise of jurisdiction under a statute especially when substantive rights of the borrowers, guarantors or lessees are not adversely affected if the time limit is not adhered to. Moreover, as correctly contended by the learned Additional Government Pleader, the words "shall" and "may" are not determinative and one needs to examine the object and purpose of the provision in question so as to determine whether it should be construed as directory or mandatory. The further contention of the learned Additional Government Pleader that the object of Act 44 of 2016 is to expedite orders under Section 14 and that it should not be interpreted so as to defeat the object and purpose of the statute in question is well-founded and liable to be accepted.

17. From the foregoing discussion and on examining the relevant provisions and authorities cited by various counsel, the following illustrative principles may be gleaned and applied in order to determine if a provision is mandatory or directory:

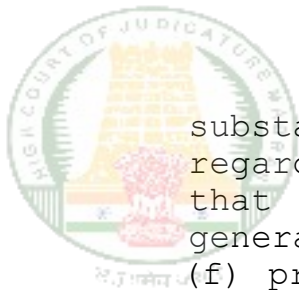
(a) the use of the word "Shall" or "may" raises a rebuttable but not conclusive or determinative presumption that the provision in question is mandatory or directory, respectively. Nevertheless, the provision should be examined holistically by keeping in mind the context and object so as to determine whether it is intended to be mandatory or directory.

(b) the use of negative language in the provision in question is also not conclusive or determinative. However, it is indicative that the provision in question is mandatory provided such conclusion is corroborated by the context and the object and purpose of the provision.

(c) the use of words such as "shall", which are peremptory in form, and negative language such as "not exceeding 60 days in the aggregate" do not obviate or foreclose the necessity to examine the object and purpose or the consequences of non-compliance so as to determine whether the provision is directory or mandatory. Such object and purpose should be discerned by examining the statute concerned or its statement of objects and purposes, including amending acts where appropriate.

(d) The stipulation of consequences in the event of non-compliance of a provision is a relevant factor to be borne in mind while deciding whether the said provision is directory or mandatory and the non-stipulation thereof is indicative, albeit not conclusive, that the provision is directory.

(e) Another dimension of the "consequences of non-compliance" test is that provisions that are intended to protect or further

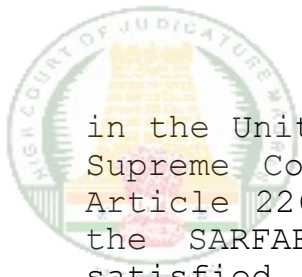


substantive rights of a party, including time limits in that regard, are generally construed as mandatory whereas provisions that do not impact the substantive rights of a party are generally construed as directory and not mandatory.

(f) provisions that stipulate a time limit for the performance of statutory duties and obligations, including time limits for exercise of jurisdiction under a statute, are generally construed as directory because it is public interest and not the interest of the officer or authority concerned that is affected in the event of non-compliance with the stipulated time limit. In addition, the affected persons or members of the public are not in a position to control the exercise or performance of statutory duties and obligations by the public official or authority concerned.

18. The primary question in these Writ Petitions, namely, whether the time limits in section 14 of the SARFAESI Act are mandatory or directory should be answered in light of the principles enumerated above. As stated above, the object and purpose of the said time limit is to ensure that such applications are decided expeditiously so as to enable secured creditors to take physical possession quickly and realise their dues. Moreover, as stated earlier, the consequences of non-compliance with the time limit are not specified and the sequitur thereof would be that the district collector/district magistrate concerned would not be divested of jurisdiction upon expiry of the time limit. In this connection, it is also pertinent to bear in mind that if the "consequences of non-compliance" test is applied, the borrower, guarantor or lessee, as the case may be, is not adversely affected or prejudiced, in any manner, whether such applications are decided in 60, 70 or 80 days. On the other hand, the secured creditor is adversely affected if the provision is construed as mandatory and not directory in as much as it would delay the process of taking physical possession of assets instead of expediting such process by entailing the filing of another application for such purpose. For all these reasons, the time limit stipulation in the amended Section 14 of the SARFAESI Act is directory and not mandatory.

19. Notwithstanding the foregoing conclusion with regard to substantive rights of the borrower, guarantor or lessee concerned not being affected by non-adherence to the specified time limits, their substantive rights may well be affected if the requirement of filing an affidavit with the requisite details is not fulfilled by the secured creditor concerned. In this context, it is pertinent to bear in mind that the Hon'ble Supreme Court held in the Standard Chartered Bank case (cited *supra*), in paragraph 27, that an appeal under Section 17 of the SARFAESI Act may be filed against all measures under Section 13(4) thereof and that "by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available." In addition,



in the United Bank of India case (cited *supra*), at paragraph 27, the Supreme Court cautioned against the High Court interfering under Article 226 when an effective alternative remedy is available under the SARFAESI Act. Therefore, if the said requirement was not satisfied in any of these cases, it is open to the counter-party concerned to initiate proceedings before the DRT provided symbolic/constructive or physical possession was taken so as to challenge the measure under section 13 (4) of the SARFAESI Act by filing an appeal under Section 17 thereof.

20. In conclusion, we hold as follows:

(a) all the Writ Petitions filed by borrowers, namely, W.P.(MD)Nos.11986, 13006, 13654, 15507 of 2019 and 24785 of 2018, challenging orders passed in Section 14 applications on the ground that the time limit prescribed by the amended Section 14 was exceeded are disposed of in the above terms by granting liberty to challenge the taking of possession by filing an appeal before the DRT concerned under Section 17 of the SARFAESI Act within two weeks from the date of receipt of a copy of the order;

(b) the Writ Petition filed by the secured creditor seeking expeditious disposal of the Section 14 application, namely, W.P. No.13726 of 2019, is allowed and the District Collector concerned is directed to dispose of the application within a period of one month from the date of receipt of a copy of the order;

(c) there shall be no order as to costs in any of these Writ Petitions; and

(d) all connected miscellaneous petitions are closed as a consequence of the disposal of the Writ Petitions.

Sd/-

Assistant Registrar (C.O.)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The District Collector,
<https://hcservices.ecourts.gov.in/hcservices>

Nagercoil, Kanyakumari District.



2. The Tashildhar, Vilavancode Taluk,
Kanyakumari District.

3. The District Collector,
Madurai.

4. The Tahsildar,
Madurai North Taluk, Madurai.

5. The District Collector
Trichy District.

6. The District Collector Cum District Magistrate,
Namakkal Dist, Namakkal.

7. The Debt Recovery Tribunal.
Uthangudi, Madurai Dist.

1CC TO MR. M.E. ILANGO, ADVOCATE SR 76226

3CCs TO M/S.AJMAL ASSOCIATES, ADVOCATES SR 76555

1CC TO MR. C. JAWAHAR RAVINDRAN, ADVOCATE SR 76650

1CC TO MR. PALA.RAMASAMY, ADVOCATE SR 76485

1CC TO MR. M.SIDDHARTHAN, ADVOCATE SR 76824

1 CC TO MR.B.PRAHALAD RAVI,ADVOCATE, SR 76238

1CC TO THE SPL GOVT PLEADER SR 76283

KK

16/08/2019

19P/17C

Common Order made in
**W.P. (MD) Nos. 11986, 13006, 13654,
13726, 15507 of 2019 & 24785 of 2018**

Dated: 19.07.2019