BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **31.10.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)No.22945 of 2019

M/s.India Bulls Housing Finance Limited,
Rep. by its Authorised Officer Mr.K.Jayakrishnan,
Door No.20, Apex Chambers,
Third Floor, Thiyagaraya Road,
T.Nagar, Chennai-600 017. .. Petitioner

Vs.

1.The District Collector,
Pudukkottai.

2.K.Veliangiri

3.N.S.Devi Kabila .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 1st respondent to consider the application of the petitioner under Section 14 of the SARFAESI Act filed on 29.01.2018 for taking physical possession of the secured asset mortgaged by the 2nd respondent with the petitioner comprised in D.No.10, S.F.No.1/1, B1A1, New S.F.No.1/1B1A1, Lourde Nagar, Sikanthakurichi Taluk, Kumarmangalam Village, Pudukkottai District.

For Petitioner : Mr.T.Ponramkumar

For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader (for R1)

ORDER

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.T.Ponramkumar, learned counsel appearing for the petitioner, Mr.A.K.Baskarapandian, learned Special Government

Pleader appearing for the first respondent.

2. By consent of both parties, this writ petition is taken up for final disposal.

3. The writ petition has been filed by the petitioner, which is a non-banking financial company, to direct the first respondent to dispose of the petition filed under Section 14 of the SARFAESI Act, dated 21.03.2018. The issue, which falls for consideration before this Court as well as the other High Courts were whether the Chief Judicial Magistrate, who functions as the head of the criminal unit in the districts and the Chief Metropolitan Magistrate, who functions as the head of the criminal unit in Metropolitan cities are entitled to exercise powers under Section 14 of the SARFAESI Act. The Hon'ble Division Bench of this Court has held that it is only the District Magistrate, namely the District Collector, who can exercise jurisdiction and the Chief Judicial Magistrate cannot exercise jurisdiction under Section 14 of the SARFAESI Act. The other High Courts had taken a different view holding that the Chief Judicial Magistrates functioning in the Districts are entitled to exercise the jurisdiction under Section 14 of the SARFAESI Act. Very recently in the case of ***Indian Bank Vs. D.Visalakshi and another*** [reported in ***IV (2019) BC 41 (SC)],*** the Hon'ble Supreme Court had held that the view taken by the Hon'ble Division Bench of this Court is not correct and upheld the view taken by the other High Courts, which was held that the Chief Judicial Magistrate is entitled to exercise powers under Section 14 of the SARFAESI Act. The operative portion of the decision is as follows:

> "...43. The construction of this provision plainly indicates that the provisions of the Act will override any other law for the time being in force. The question is: does the provisions of 2002 Act override the provisions of the Cr. P.C., whereunder the functions to be discharged by the CMM are similar to that of the CJM. Further, the expressions "CMM and CJM" are used interchangeably in Cr.P.C. and are considered as synonymous to each other. Section 14, even if read literally, in no manner denotes that allocation of jurisdictions and powers to CMM and CJM under the Code of Criminal Procedure are modified by the 2002 Act. Thus understood, Section 14 of the 2002 Act, *stricto sensu*, cannot be construed as being inconsistent with the provisions of the Code of Criminal Procedure or vice versa in that regard. If so, the stipulation in Section 35 of the 2002 Act will have no impact on the expansive construction of Section 14 of the 2002 Act. Whereas, there is force in the submission canvassed by the secured creditors (Banks), that Section 37 of the 2002 Act answers the issue under consideration. The same reads thus:

"37 Application of other laws not barred. The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

The bare text of this provision predicates that the provisions of the 2002 Act or the Rules made thereunder shall be in addition to the stated enactments or "any other law for the time being in force". Having said that the provisions of the Section 14 of the 2002 Act are in no way inconsistent with the provisions of Code of Criminal Procedure, it must then follow that the provisions of the 2002 Act are in addition to, and not in derogation of the Code.

46. Applying the principle underlying this decision, it must follow that substitution of functionaries (CMM as CJM) qua the administrative and executive or so to say non judicial functions discharged by them in light of the provisions of Cr.P.C., would not be inconsistent with Section 14 of the 2002 Act; nay, it would be a permissible approach in the matter of interpretation thereof and would further the legislative intent having regard to the subject and object of the enactment. That would be a meaningful, purposive and contextual construction of Section 14 of the 2002 Act, to include CJM as being competent to assist the secured creditor to take possession of the secured asset.

48. To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (Banks)..."

4.In the light of the above, we direct the petitioner/India Bulls Housing Finance Limited to withdraw the application submitted to the first respondent and file the application before the concerned Court of the Chief Judicial Magistrate along with the copies of this order and if the same is filed, the Concerned Court is directed to take the same on file and dispose the same in accordance with law as expeditiously as possible. No costs.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar(CS)

sji/mrn

To

The District Collector,
Pudukkottai.

+1 CC to M/s.SPL GP (SR-95479[F] dated 01/11/2019)

W.P(MD)No.22945 of 2019
31.10.2019

_KK/SAR/22.11.2019/4P-3C/