**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.3301 OF 2020

IIFL Home Finance Limited,
Through its Authorized Officer,
Gopal s/o Shantaram Kurle,
Age 39 years, Occu. Service as
Collection Manager,
R/o C/o 3rd Floor, Oberai Tower,
Opp. Government Milk Dairy,
Jalna road, Aurangabad,
Taluka and District Aurangabad .. Petitioner

Versus

1. The State of Maharashtra,
through Secretary of Finance
Department, Mantralaya,
Mumbai

2. The District Magistrate/Collector,
Collector Office, Aurangabad
District Aurangabad .. Respondents

- WITH -

WRIT PETITION NO.3302 OF 2020

RBL Bank Ltd.,
through its Authorized Officer,
Pankaj s/o Subhash Bhagat,
Age 40 yearsw, Occu. Service as
Deputy Vice-President -
Regional Litigation Manager &
Authorized Officer of
RBL Bank Ltd., r/o Mumbai ..Petitioner

Versus

1. The State of Maharashtra,
through Secretary of Finance
Department, Mantralaya,
Mumbai

2. The District Magistrate/Collector,
Collector Office, Aurangabad
District Aurangabad .. Respondents

Mr S.G. Chapalgaonkar, Advocate for petitioners
Mrs V.S. Choudhary, A.G.P. for respondents

CORAM : S.V. GANGAPURWALA AND SHRIKANT D. KULKARNI, JJ.

DATE : 5th March 2020

ORAL JUDGMENT (Per S.V. Gangapurwala, J.)

1. Rule. Rule returnable forthwith. By consent of parties, petitions are taken up for final disposal at admission stage.

2. Mr Chapalgaonkar, learned Counsel for petitioners submits that the petitioners are financial institutions. The petitioners had submitted applications under Section 14 of the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act” for brevity) before the District Magistrate, Aurangabad. The District Magistrate, Aurangabad refused to accept the applications on the ground that he does not possess the authority under Section 14 of the SARFAESI Act and the authority vests with Chief Judicial Magistrate. Mr Chapalgaonkar submits that the said interpretation of the District Magistrate is contrary to Section 14 of the SARFAESI Act.

3. We have also heard learned Assistant Government Pleader. It would be appropriate to reproduce the provision of Section 14 of the SARFAESI Act.

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

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

(b) forward such asset and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub- section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

4. Section 14 of the SARFAESI Act is an enabling provision for taking the physical possession of the secured assets. The secured creditor is required to apply in writing to the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction the secured asset is situated to take possession.

5. The provision is unambiguous. The literal interpretation of the provision is clear and does not admit of any other interpretation than the one that the secured creditor can make application either to the Chief Metropolitan Magistrate or the District Magistrate. The word, “or” signifies that the Chief Metropolitan Magistrate and the District Magistrate both can exercise powers under Section 14 of the SARFAESI Act. The jurisdiction does not vest solely with the Chief Judicial Magistrate. The District Magistrate cannot absolve his responsibilities cast by Section Section 14 of the SARFAESI Act and contend that the petitioners should approach the Chief Judicial Magistrate only.

6. The jurisdiction of the Chief Metropolitan Magistrate and/or District Magistrate is concurrent.

7. Mr Chapalgaonkar, learned Counsel for petitioners submits that the District Magistrate is interpreting the judgment of the Apex Court in case of **Authorised Officer, Indian Bank Vs. D. Visalakshi and anr.,** reported in **2019 SCC OnLine SC 1242,** erroneously.

8. We have gone through the said judgment.

9. Paragraph 56 of the said judgment reads thus :

> "56. To sup 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)."

10. The Apex Court has nowhere held that the District Magistrate does not possess the jurisdiction to entertain the application under Section 14 of the SARFAESI Act. The Apex Court observed 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.

11. Going through the plain language of Section 14 of the SARFAESI Act, the District Magistrate possesses the powers to entertain the application under Section 14 of the SARFAESI Act on behalf of the secured creditor and proceed to deal with the same as per the procedure prescribed under Section 14 of the SARF\ESI Act.

12. In light of that, District Magistrate could not have refused to accept the applications filed by the petitioners under Section 14 of the SARFAESI Act on the ground that he does not possess the jurisdiction.

13. Writ Petitions are allowed accordingly.

14. Rule made absolute in above terms.

(SHRIKANT D. KULKARNI, J.) **(S.V. GANGAPURWALA, J.)**

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