

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21176 of 2019

1. M/s Maa Vindhyawashini Rice Mill Pvt. Ltd. represented through its Director Shatrudhan Sharan Sharma, aged about 57 years (Male), Son of Late Keshav Sharma, Resident of Village-Arai, P.O.-Birai, P.S. Daudnagar, District-Aurangabad.
2. Shatrudhan Sharan Sharma, Son of Late Keshav Sharma, Resident of Village-Arai, P.O.-Birai, P.S. Daudnagar, District Aurangabad, Director of M/s Maa Vindhyawashini rice Mill Pvt. Ltd.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Aurangabad.
2. The District Magistrate, Aurangabad.
3. Andhra Bank, Zonal Office Patna, Ist floor, Aditya Arcade, Exhibition Road, Patna through its Authorized Officer.
4. The Authorized Officer, Andhra Bank, Zonal Office Patna, Ist Floor, Aditya Arcade, Exhibition Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Vikas Kumar, Advocate
For the Bank	:	Mr. Shivendra Kumar Roy, Advocate
For the State	:	Mr. Anuj Kumar, AC to GP-24

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date:04.09.2021

The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. The present writ petition has been filed for quashing the order dated 18.09.2019, contained in memo dated 19.09.2019, passed by the District Magistrate, Aurangabad, whereby and whereunder officers and police force have been deputed to seize the property of the petitioner and handover the possession of the same to the respondent Bank as also for quashing the letter dated 21.09.2019 issued by the Authorized



Officer of the respondent Bank, by which intimation has been given to take possession of the assets of the petitioners.

3. The brief facts of the case, according to the petitioners are that the petitioner no. 2 is one of the Director of the petitioner no. 1 and he had extended his personal guarantee to obtain term loan and Cash Credit loan from the respondent bank. The bank had earlier sanctioned term loan to the tune of Rs. 2.66 crores with interest @ 12.5 % per annum repayable in 72 monthly installments, commencing from the month of July, 2016 onwards. Thereafter, cash credit loan to the tune of Rs. 1.40 crores was sanctioned by the bank. It is the case of the petitioners that on account of unforeseen events, the rice mill of the petitioners could not ever operate in full swing resulting in the respondent bank issuing a demand notice dated 01.08.2017 under Section 13(2) of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') to the petitioners and a demand of a sum of Rs. 3,97,55,305/- was made whereupon the petitioners had replied stating therein that the entire loan amount would be cleared within a period of one year. The petitioners had also filed a writ petition challenging the aforesaid demand notice dated 01.08.2017 bearing CWJC



No. 14252 of 2017, however, the same had stood dismissed inasmuch as the Debt Recovery Tribunal, Patna, before whom also the petitioners had challenged the aforesaid notice dated 01.08.2017, by way of S.A. No. 88 of 2018, though initially by an order dated 16.11.2018, had directed the parties to maintain status quo upon payment of a sum of Rs. 50 lacs, but then by a judgment dated 20.12.2018, had dismissed the said S.A. No. 88 of 2018. Thereafter, the respondent Bank had filed OA No. 91 of 2019 before the Debt Recovery Tribunal, Patna for recovery of the outstanding dues to the tune of Rs. 4,32,30,526/- which was disposed off by the learned Debt Recovery Tribunal by an order dated 05.09.2019 with a direction to pay a sum of Rs. 4,32,30,526/- with simple interest @ 10% per annum. Thereafter, on 26.09.2019, the Executive Magistrate and the local police, along with the officials of the respondent Bank had taken possession of the entire movable and immovable properties, including the mortgaged assets of the borrowers and a notice was put upon the house and mill of the petitioners regarding the property having been taken over by the Authorized Officer of the respondent Bank under the SARFAESI Act under Section 14 read with Rule 8 and upon enquiry the local administration had handed over the order dated



18/19.09.2019, by which direction had been issued to take over possession of the entire movable and immovable properties of the borrowers.

4. The learned senior counsel for the petitioner Shri P.K. Shahi has assailed the aforesaid order dated 18/19.09.2019 on the ground that from the order itself it is apparent that the same has been passed in light of the order dated 28.08.2019 passed in CWJC No. 14252 of 2017 by this Court, however, there is no such direction of this Court. It is further submitted that a bare perusal of Section 14 of the SARFAESI Act would show that the District Magistrate has passed the aforesaid order dated 18/19.09.2019 in a perfunctory manner without following the procedure spelt therein as also without satisfying himself about the contents of the affidavit submitted by the Authorized Officer of the respondent bank. Lastly, it is submitted that the entire action of the District Magistrate under Section 14 of the SARFAESI Act is void inasmuch as though the requisite affidavit was filed by the respondent bank on 25.05.2018 before the District Magistrate, Aurangabad for passing suitable orders under Section 14 of the SARFAESI Act, however, the order was finally passed only on 18/19.09.2019 i.e. beyond the statutory period of 30 days/60 days as provided under second proviso to



Section 14 of the SARFAESI Act.

5. Per contra, the learned counsel for the respondent bank has at the outset raised a preliminary objection regarding the maintainability of the present writ petition inasmuch as the efficacious and statutory remedy for the petitioners against the impugned order dated 18.09.2019 is to file an appeal under Section 17 of the SARFAESI Act and not approaching this Court directly. In this connection, the learned counsel for the petitioner has relied on a judgment rendered by the Hon'ble Apex Court reported in **(2011) 2 SCC 782 (Kanaiyalal Lalchand Sachdev v. State of Maharashtra)**, paragraph nos. 18, 19, 22 and 23 whereof are reproduced herein below:-

“18. Section 14 of the Act provides that the secured creditor can file an application before the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction, the secured asset or other documents relating thereto are found for taking possession thereof. If any such request is made, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, is obliged to take possession of such asset or document and forward



the same to the secured creditor. (See United Bank of India v. Satyawati Tondon [(2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] .) Therefore, it follows that a secured creditor may, in order to enforce his rights under Section 13(4), in particular Section 13(4)(a), may take recourse to Section 14 of the Act.

19. *Section 17 of the Act which provides for an appeal to the DRT, reads as follows:*

“17. Right to appeal.—(1) *Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:*

Provided that different fees may be prescribed for making the



application by the borrower and the person other than the borrower.

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under [sub-section (1) of Section 17].

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the Rules made thereunder....”

22. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes



an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT.

23. *In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.* [(2003) 3 SCC 524 : 2003 SCC (Cri) 762] , *Surya Dev Rai v. Ram Chander Rai* [(2003) 6 SCC 675] and *SBI v. Allied Chemical Laboratories* [(2006) 9 SCC 252] .)”*

6. The learned counsel for the respondent bank has further submitted, on merits that the accounts of the petitioner was classified as NPA on 31.07.2017 at a sum of Rs.



2,43,06,390.00 for the term loan account and Rs. 1,54,48,915.00 for the Cash Credit account, totaling to a sum of Rs. 3,97,55,305.00, which was the total outstanding dues as on 31.07.2017. It is further submitted that the respondent Bank, being a secured creditor had accordingly issued a notice dated 01.08.2017 under Section 13(2) of the SARFAESI Act, demanding the aforesaid sum of Rs. 3,97,55,305.00 along with further interest w.e.f. 31.07.2017 and a request was made in the said notice to make re-payment of the entire amount within the statutory period of 60 days failing which the respondent bank would be constrained to proceed under Section 13(4) of the SARFAESI Act. The said notice dated 01.08.2017 was duly served upon all concerned, i.e. the company, its directors and guarantors. It is further submitted that in response to the aforesaid demand notice dated 01.08.2017, a representation was filed before the respondent Bank, which was considered and disposed of vide letter dated 09.08.2017, within the statutory period of 15 days, as provided under Section 13(3-A) of the SARFAESI Act. Since, even after passage of considerable time, the petitioners had taken no steps to make payment of the due amount, as stated in the Demand Notice, the Bank had proceeded to initiate further action to take possession of the



properties mentioned in the Demand Notice, which are the mortgaged properties of the respondent bank, by resorting to measures under Section 13(4) & 14 of the SARFAESI Act. It is submitted that in compliance of the provisions contained in proviso to Section 14 of the SARFAESI Act, the respondent bank had filed an affidavit before the District Magistrate, Aurangabad stating all the facts as is required to be stated under the said proviso. It is stated that separate affidavits were filed for separate properties and since the present case relates to the properties as stated at sl. no. 7 & 9 of Demand Notice, hence, two affidavits, for the said two properties, were filed. It is stated that both the affidavits were filed on 24.05.2018. While the afore-said SARFAESI Appeal was pending, the respondent Bank was also pursuing its remedies before the District Magistrate and consequentially an order dated 02.11.2018 was passed, wherein direction was issued for taking necessary steps to hand over the possession of the properties to the respondent Bank on 17.11.2018. In the meantime, the pending SARFAESI Appeal filed by the petitioners was taken up for hearing by the Ld. D.R.T. on 16.11.2018 and after noticing the submission of the petitioner no. 2 that he is ready to settle the account, if an opportunity is given to him, status quo order was passed by the



Ld. D.R.T., Patna and accordingly, the possession of the properties could not be taken on 17.11.2018, as directed by the District Magistrate, Aurangabad. The learned D.R.T., Patna, in its order dated 16.11.2018, had recorded the statement of the petitioner no. 2, regarding his offer to pay a sum of Rs. 60.00 lacs through post dated cheques and three cheques totaling to a sum of Rs. 60,00,000/- were handed over to the respondent bank, whereupon the Ld. DRT had recorded in its order that in case of dishonor of any of the cheques, the bank shall be free to proceed in accordance with law. It is a matter of record that only the first cheque of Rs. 5.00 lacs could be encashed, however, the other two cheques were dishonoured, resulting in the status quo order being rendered inoperative. Subsequently, the aforesaid SARFAESI Appeal was also considered on merits and vide order dated 20.12.2018, the same was dismissed and it was held that the actions of the bank are in accordance with law, inasmuch as the bank has followed all the mandatory provisions of law.

7. The Ld. Counsel for the respondent Bank has contended that in order to delay the proceedings, the petitioner no. 2, after the dismissal of the SARFAESI Appeal, had sent a letter dated 10.01.2019 to the District Magistrate, Aurangabad.



In fact, the respondent Bank had also filed an affidavit on 03.04.2019 for early disposal of the application filed by the Bank under Section 14 of the SARFAESI Act and in the said application the respondent Bank had informed the office of the District Magistrate about all the subsequent developments. It is further stated that the petitioner no. 2, on the pretext of pendency of CWJC No. 14252 of 2017, which had already been rendered infructuous, was trying to delay the proceedings before the District Magistrate and the same is apparent from the letter dated 26.06.2019, submitted by Government Advocate in the office of the respondent no. 2. The aforesaid facts clearly establish that the petitioners, firstly in the garb of offering a compromise had obtained an order of status quo from the Ld. D.R.T., Patna and had then breached their own commitment before the Ld. D.R.T., Patna and secondly, the petitioners had tried to delay the Section 14 proceedings on the ground of pendency of the SARFAESI Appeal and after the dismissal of the same on 20.12.2018, the petitioners, on the ground of subsidy etc. had tried to delay the proceedings and then lastly, on the ground of pendency of an infructuous writ bearing CWJC No. 14252 of 2017, the petitioners had tried to prolong the proceedings before the District Magistrate. It is submitted



that the writ application bearing CWJC No. 14252 of 2017 was dismissed as infructuous by the Hon'ble High Court on 28.08.2019 and the petitioners had not even pressed the said writ petition.

8. It is further pointed out that conversely, the original application bearing O.A. No. 91 of 2019, filed by the respondent Bank under the D.R.T. Act was also allowed vide order dated 5.9.2019 and accordingly a Certificate of Recovery of a sum of Rs. 4,32,30,526.00 along with pendent lite and future interest w.e.f. 1.1.2019 till the date of realization was issued by the D.R.T., Patna whereafter, the said developments were brought to the Notice of the District Magistrate by the respondent Bank by filing an application, in extension of its earlier application and had requested therein to hand over the possession of the properties to the respondent Bank. In the backdrop of all the aforesaid facts, the impugned order dated 18.09.2019 has been passed by the District Magistrate, Aurangabad wherein the learned District Magistrate has taken note of the final disposal of the writ petition, on account of pendency whereof, the petitioners were delaying the proceedings. It is stated that the physical possession of the two secured assets i.e the residential house and the factory land and



building were taken by the respondent bank with the help of the police and district administration on the scheduled date i.e. on 26.09.2019, after following all the due process of law.

9. Thus, it is submitted by the Ld. Counsel for the respondent Bank that there is no illegality or irregularity in the procedure adopted either by the respondent bank or by the District Magistrate and for that matter in the order dated 18.09.2019, passed by the District Magistrate, Aurangabad.

10. At this juncture, the learned counsel for the respondent bank has relied on a judgment rendered by a three Judges' Bench of the Hon'ble Apex Court, reported in **(2021) 2 SCC 392 (C. Bright vs. District Collector & Ors.)** to contend that section 14 of the SARFAESI Act is not to be interpreted literally without considering the object and purpose of the Act and the time limit provided therein is to instill a confidence in the creditor that the District Magistrate will make an attempt to deliver possession as well as to impose a duty on the District Magistrate to make an earnest effort to comply with the mandate of the statutes to deliver possession within 30 days and for reasons to be recorded within 60 days, hence the order of the District Magistrate, passed after the mandated 30/60 days under Section 14 of the SARFAESI Act shall not be rendered



redundant if no order is passed within the aforesaid time frame and in fact the District Magistrate would also not become *functus officio* and would still be empowered to pass appropriate orders under section 14 of the SARFAESI Act. In this connection it would be useful to reproduce paragraph nos. 13 to 21 of the aforesaid judgment rendered in the case of **C. Bright (Supra)**.

“13. This Court distinguished between failure of an individual to act in a given time-frame and the time-frame provided to a public authority, for the purposes of determining whether a provision was mandatory or directory, when this Court held that it is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified [Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577] .

14. In P.T. Rajan v. T.P.M. Sahir [P.T.



Rajan v. T.P.M. Sahir, (2003) 8 SCC 498] , this Court examined the effect of non-publication of final electoral rolls before the time of acceptance of nomination papers. The Court held as under : (SCC p. 516, para 48)

“48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a 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. (See *Shiveshwar Prasad Sinha v. District Magistrate [Shiveshwar Prasad Sinha v. District Magistrate, 1965 SCC OnLine Pat 43 : AIR 1966 Pat 144 : ILR 45 Pat 436]* , *Nomita Chowdhury v. State of W.B. [Nomita Chowdhury v. State of W.B., 1999 SCC OnLine Cal 235 : (1999) 2 Cal LJ 21]* and *Garbari Union Coop. Agricultural Credit*



Society Ltd. v. Swapan Kumar Jana [Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana, 1996 SCC OnLine Cal 209 : (1997) 1 CHN 189] .)”

15. A recent Constitution Bench held that the provisions of the Consumer Protection Act granting 30 days' time to file response by the opposite party or such extended period not exceeding 15 days is mandatory as the object of the statute is for the benefit and protection of the consumer. It observed that such Act had been enacted to provide expeditious disposal of consumer disputes. In this case, an individual was called upon to file his written statement in contradiction for a public authority to decide the issue before it [New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., (2020) 5 SCC 757 : (2020) 3 SCC (Civ) 338] .

16. The Full Bench of the Patna High Court in Shiveshwar Prasad Sinha [Shiveshwar Prasad Sinha v. District Magistrate, 1965



SCC OnLine Pat 43 : AIR 1966 Pat 144 : ILR 45 Pat 436] was examining the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 which permitted a government servant in occupation of a building as a tenant to serve a notice of 15 days on the landlord and the District Magistrate of his intention to vacate the premises. The High Court held that the government servant to whom the house was allotted had no control over the District Magistrate, therefore, the time-limit required by the provision was not mandatory.

17. A Single Bench of the Madhya Pradesh High Court [Manish Makhija v. Central Bank of India, 2018 SCC OnLine MP 553] examined the provisions of Section 14 of the Act as amended. The Court held that the second proviso to sub-section (1) of Section 14 was inserted in order to ensure that Chief Metropolitan Magistrate or District Magistrate pass the order within a stipulated time. The bank/secured creditor has no control over the District Magistrate. After filing an application under sub-



section (1) of Section 14, the bank had no authority to compel the Chief Metropolitan Magistrate or District Magistrate to pass orders within reasonable time. The legislature, in order to bind the said authorities, inserted the said proviso. Thus, the basic object and purpose was to fix a time-limit for the Magistrate concerned to pass an order and not to give a clean chit to an unscrupulous borrower/guarantor, who had not repaid the debts.

18. Now, coming to the judgments referred to by Mr Khan. In A.K. Pandey [Union of India v. A.K. Pandey, (2009) 10 SCC 552 : (2010) 1 SCC (L&S) 68] , the respondent was not provided 96 hours of interval time as contemplated by the relevant rules, before commencing a trial by the court martial. This Court held that such proceedings were vitiated as the purpose of the time-limit was 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.

*19.Harshad Govardhan
Sondagar [Harshad Govardhan
Sondagar v. International Assets
Reconstruction Co. Ltd., (2014) 6
SCC 1 : (2014) 3 SCC (Civ) 1] was a
case where the person in possession
claimed tenancy rights in the premises
as well as a protected tenancy, being a
tenant prior to creation of a mortgage.
It was held that the remedy of an
aggrieved person against a decision of
Chief Metropolitan Magistrate or a
District Magistrate lay only before the
High Court. However, after the
aforesaid judgment was rendered on
3-4-2014, the Act had been amended
and sub-section (4-A) was inserted in
Section 17 with effect from 1-9-2016.
This provided a right to move an
application to the Debts Recovery
Tribunal by a person who claimed
tenancy or leasehold rights.*



20.Dipak Babaria [Dipak Babaria v. State of Gujarat, (2014) 3 SCC 502] was a case wherein agricultural land was sold by an agriculturist to another person for industrial purposes. Permission was to be granted by the Collector for the same. In these circumstances, it was held that when a statute provides for a thing to be done in a particular manner then it should be done in that manner itself. Such proposition does not arise for consideration in the present case.

21. The Act was enacted to provide a machinery for empowering banks and financial institutions, so that they may have the power to take possession of secured assets and to sell them. The DRT Act was first enacted to streamline the recovery of public dues but the proceedings under the said Act have not given desirous results. Therefore, the Act in question was enacted. This Court in Mardia Chemicals [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] , Transcore [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1



SCC (Civ) 116] and Hindon Forge (P) Ltd. [Hindon Forge (P) Ltd. v. State of U.P., (2019) 2 SCC 198 : (2019) 1 SCC (Civ) 551] has held that the purpose of the Act pertains to the speedy recovery of dues, by banks and financial institutions. The true intention of the legislature is a determining factor herein. Keeping the objective of the Act in mind, the time-limit to take action by the District Magistrate has been fixed to impress upon the authority to take possession of the secured assets. However, inability to take possession within time-limit does not render the District Magistrate functus officio. The secured creditor has no control over the District Magistrate who is exercising jurisdiction under Section 14 of the Act for public good to facilitate recovery of public dues. Therefore, Section 14 of the Act is not to be interpreted literally without considering the object and purpose of the Act. If any other interpretation is placed upon the language of Section 14, it would be contrary to the purpose of the Act. The time-limit is to instil a confidence in creditors that the



District Magistrate will make an attempt to deliver possession as well as to impose a duty on the District Magistrate to make an earnest effort to comply with the mandate of the statute to deliver the possession within 30 days and for reasons to be recorded within 60 days. In this light, the remedy under Section 14 of the Act is not rendered redundant if the District Magistrate is unable to handover the possession. The District Magistrate will still be enjoined upon, the duty to facilitate delivery of possession at the earliest.”

11. Per contra, the learned counsel for the respondent-State has submitted that in pursuance to the directions of this Court to demonstrate the procedure followed by the District Magistrate, a counter affidavit has been filed on behalf of the respondent no. 2 wherein the detailed procedure adopted by the District Magistrate has been stated. It is submitted that while the petitioners had failed to pay the dues of the respondent Andhra Bank, the account was classified as N.P.A. on 31.07.2017 and then the demand notice dated 01.08.2017 was issued by the respondent Andhra bank under Section 13(2) of SARFAESI Act. Thereafter, in compliance of the provisions contained in proviso



to Section 14 of the SARFAESI Act, the respondent Andhra bank had filed two affidavits on 24.05.2018, with an application before the respondent no. 2 i.e. the District Magistrate, Aurangabad, mentioning therein, all the fact that is required to be stated under the said proviso. In the meantime, the respondent Andhra Bank had also issued a possession notice dated 03.05.2018, by which symbolic possession of the property in question was taken, however the same was challenged by the petitioner no. 2 by filing a SARFAESI Appeal bearing SA No. 88 of 2018, before the Ld. Debt Recovery Tribunal, Patna. On the other hand, during the pendency of the said SARFAESI Appeal, the respondent Andhra bank was also pursuing its remedy before the District Magistrate, Aurangabad by having filed two affidavits dated 24.05.2018, requesting therein to pass suitable orders under Section 14 of the SARFAESI Act, regarding taking possession of the secured assets detailed in the schedule of both the affidavits dated 24.05.2018 and hand over the same to the Authorized Officer of the Andhra Bank. Thereafter, the entire facts and evidences detailed in the affidavit dated 24.05.2018 of the Authorized Officer, Andhra Bank and the request made therein was carefully and thoroughly considered by the answering respondent no. 2 i.e. the District



Magistrate, Aurangabad and after considering the entire facts and evidence, the District Magistrate, Aurangabad, upon being satisfied with the request of the respondent Andhra Bank, passed an order dated 02.11.2018 directing therein to take necessary steps for handing over the possession of the properties in question to the respondent Andhra bank on 17.11.2018.

12. Thus, it is submitted by the Ld. Counsel for the respondent State that the provisions of SARFAESI Act and Rules had been duly complied with. However, in the meantime, the pending SARFAESI Appeal of the petitioner No. 2 was taken up for hearing by the D.R.T. on 16.11.2018 and after noticing the submission of the petitioner no. 2, that he is ready to settle the account, if an opportunity is given to him, status-quo order was passed by the D.R.T. Patna, thus the possession of the properties could not be taken on 17.11.2018, as had been directed by the District Magistrate, Aurangabad. It is stated that under the aforesaid order dated 16.11.2018, the learned D.R.T. Patna had recorded the statement of the petitioner no. 2 regarding his offer to pay a sum of Rs. 60 lacs through post dated cheques and even three cheques were handed over to the respondent Bank, whereupon, the learned D.R.T., Patna had also categorically recorded in its order that if any of the cheques are



returned dishonoured, then the Bank shall be free to proceed in accordance with law. Nonetheless, only the first cheque of Rs. 5,00,000/- could be encashed, however, the other two cheques got dishonoured, thus the status quo order became inoperative and the Bank became free to proceed. Subsequently, the afore said SARFAESI Appeal was also dismissed vide order dated 20.12.2018 and it was held that the actions of the bank are in accordance with law and the bank had followed all the mandatory provision of law. The respondent Andhra bank had then filed an affidavit for early disposal of its application, filed under section 14 of the SARFAESI Act, on 3.04.2019, wherein the District Magistrate, Aurangabad was informed about all the aforesaid subsequent developments. In the meantime, the earlier writ application filed by the petitioners, bearing CWJC No. 14252 of 2017 was also dismissed as having become infructuous, by this Court, by an order dated 28.08.2019. In fact, the original application, bearing O.A. No. 91 of 2019, filed by the respondent Andhra Bank under the D.R.T. Act was also allowed, vide order dated 05.09.2019 and a certificate of Recovery of a sum of Rs. 4,32,30,526/- along with pendente lite and future interest w.e.f. 01.01.2019 till the date of realization, was issued by the Ld. D.R.T., Patna.



13. It is further contended by the Ld. Counsel for the respondent State that the respondent Andhra Bank had then again filed an application, in extension of its earlier application and requested for handing over of the possession of the properties to the respondent Bank. Under the aforesaid facts and circumstances, the District Magistrate, Aurangabad, after considering the entire facts and evidences available on record as well as being satisfied with the request of the Authorized Officer, Andhra Bank, had passed an order dated 18.09.2019 contained in Memo No. 4012, by which it was directed that the possession of the properties in question be handed over to the respondent Andhra Bank on 26.09.2019. Thus it is submitted that there is neither any infirmity in the actions of the respondent Andhra Bank in invoking section 14 of the SARFAESI Act nor there is any infirmity in the action of the respondent District Magistrate, Aurangabad in granting the physical possession of the properties in question to the respondent Andhra Bank as all the mandatory provisions as laid down under Section 14 of the SARFAESI Act has been followed by the respondent District Magistrate, Aurangabad.

14. I have heard the learned counsel for the parties and perused the materials on record. This Court, at the



inception, finds that the petitioners have got an alternative and efficacious remedy of filing an appeal under Section 17 of the SARFAESI Act against the order passed by the District Magistrate under Section 14 of the SARFAESI Act. In this regard, it would be apt to reproduce Section 14 and 17 of the SARFAESI Act herein below:-

"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: 1 [Provided that any application 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 claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over 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 sixty days notice as required by the provisions of sub-section (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 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 sub-section (4) of section 13 read with section 14 of the principal Act; (ix) that the provisions of this Act and the rules made thereunder had 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 the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets1 [within a period of thirty days from the date of



application]: 1

[Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.]

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.] 2
[(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

(i) to take possession of such assets and documents relating thereto; and



(ii) to forward such assets 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 [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority.

17. 2 [Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures



referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,] [may make an application along with such fee, as may be prescribed,]to the Debts Recovery Tribunal having jurisdiction in the matter within fortyfive days from the date on which such measure had been taken:

2 [Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

3 [Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasonsto the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

4 [(1A) An application under sub-section (1) shall be filed before the



Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

5 [(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder....."]

15. Thus, considering the provisions contained in section 17 of the SARFAESI Act and taking into account the law laid down by the Hon'ble Apex Court in the case of **Kanaiyalal Lalchand Sachdev** (supra), this Court is of the view that the present writ petition is not maintainable, hence is



dismissed.

16. Now coming to the arguments advanced by the learned senior counsel for the petitioner, firstly it is apparent from the records as also the order passed by the District Magistrate, Aurangabad dated 18.09.2019, that no infirmity can be found in the procedure adopted by the District Magistrate, Aurangabad and in fact the petitioners, on the contrary, had resorted to initiation of various cases/proceedings, in order to delay the proceeding pending before the District Magistrate, Aurangabad, although the aforesaid SA No. 88 of 2018, filed by the petitioner no. 2 had stood dismissed by an order dated 20.12.2018, passed by the Ld. Debt Recovery Tribunal, Patna and it was held that the bank had followed the mandatory procedure as laid down under the SARFAESI Act and Rules, while taking symbolic possession of the properties and secondly, the aforesaid OA No. 91 of 2019, filed by the respondent bank, before the learned Debt Recovery Tribunal, Patna, against the petitioners was also allowed vide order dated 05.09.2019 and a certificate of recovery of a sum of Rs. 4,32,30,526/- along with *pendente lite* and future interest w.e.f. 01.01.2019 till the date of realization was also issued by the Ld. Debt Recovery Tribunal, Patna. In fact on 28.08.2019, the writ petition filed by the



petitioners before this Court bearing CWJC No. 14252 of 2007 was also dismissed. Thus, this Court finds that all the interim orders which were existing in favour of the petitioners had come to an end by passing of the aforesaid final orders, either by this Court or by the Ld. Debt Recovery Tribunal, Patna and immediately thereafter, when the District Magistrate, Aurangabad was apprised of the said developments, by the respondent bank by filing an application dated 16.09.2019, in extension of its earlier application, requesting for handing over the possession of the properties in question to the respondent bank, the District Magistrate, Aurangabad, after considering the entire facts and evidences available on record as well as upon being satisfied with the request of the Authorized Officer of the respondent Bank had passed the impugned order dated 18.09.2019, by which it was directed that the possession of the properties in question be handed over to the respondent bank on 26.09.2019. Thus, this Court, even on merits is satisfied that the procedure provided for under section 14 of the SARFAESI Act has been followed by the District Magistrate, Aurangabad, hence, the petitioners do not have any case on merits as well. As regards the submission made by the Ld. Sr. Counsel for the petitioner to the effect that any order passed by the District



Magistrate under Section 14 of the SARFAESI Act after expiry of 30/60 days of the written request by the respondent bank for taking possession or control of the secured assets of the petitioners is void and bad in law is also not sustainable in the eyes of law in view of the judgment rendered by the Hon'ble Apex Court in the case of *C. Bright* (supra).

17. As regards the last submission advanced by the learned senior counsel for the petitioners, to the effect that the impugned order dated 18/19.09.2019 has purportedly been stated to have been passed in compliance of the order dated 28.08.2019 passed in CWJC No. 14252 of 2017 whereas there was no such order of this Court, therefore, the District Magistrate, Aurangabad has erred in mis-stating the factual aspect of the matter, thus on this ground also, the impugned order dated 18.09.2019 is fit to be set aside, it would suffice to state that the petitioners had filed the aforesaid writ petition bearing CWJC No. 14252 of 2017 against the demand notice dated 01.08.2017, issued by the respondent bank under section 13(2) of the SARFAESI Act and on the ground of pendency of the said writ petition, the petitioners had tried to prolong and stall the proceedings before the District Magistrate, Aurangabad under section 14 of the SARFAESI Act, whereupon, even the



Government Advocate, Aurangabad, in this regard, by his letter dated 26.06.2019 had opined that till final order is passed in the said writ petition bearing CWJC No. 14252 of 2017, by the Hon'ble High Court, no action should be taken under Section 14 of the SARFAESI Act and the proceedings regarding passing of suitable orders for the purposes of handing over the possession of the secured assets to the respondent bank should be postponed, as such the District Magistrate, Aurangabad, in the impugned order dated 18.09.2019, has taken note of the dismissal of the said writ petition, pendency whereof was being used as a ploy by the petitioners to delay the proceedings, hence this Court does not find anything wrong if the District Magistrate, Aurangabad has mentioned about the aforesaid writ petition in its order dated 18.09.2019.

18. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	10.08.2021
Uploading Date	30.09.2021
Transmission Date	

