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C.O. 2053 of 2021
(Via Video Conference)

The Authorized Officer DCB Bank Limited & Anr.
-Vs-
Sri Biswajit Mukherjee & Ors.

Mr. Shubhankar Nag,
Mr. Sayak Ranjan Ganguly,
Mr. Asha Nehta,
... for the petitioner

Assailing the order passed by the learned CJM, Alipore, in complaint case no. 2055 of 2021 on 27.09.2021 and whereby the learned CJM, Alipore, has been pleased to return the application under Section 14 of the SARFAESI Act, 2002 and for presenting the same before the appropriate authority.

It is the case of the petitioner, that the opposite party no. 1 was accommodated with a loan of Rs. 40,00,000/- lakh by creating equitable mortgaging in respect of a two storied building along with the land on which it is situated and appertaining to Plot No. 239 and 240/ 984 of LR Khatian No. 1028 in Mouza- Paschim Barisha owned by opposite party no. 3. Borrower opposite party no. 1 failed to repay the loan as per terms and conditions and even after due service of legal notice. The account of the principal borrower has been declared non-performing assets. Therefore, in order to enforce the security interest created in favour of petitioner in respect of the said secured asset and after complying all the legal formalities the petitioner presented an application before the CJM, Alipore, under Section 14 of the SARFAESI Act, 2002 to assist the secured creditor/petitioner in taking possession of the secured assets that is the mortgage property.

Unfortunately, after hearing the learned CJM, Alipore, has been pleased to reject the application on the findings that District Magistrate, South 24 Parganas and Chief Metropolitan Magistrate are also the other appropriate statutory authorities under Section 14 of the Act, 2002 and before whom the petitioner could have moved the application for recovery of possession of the mortgaged property. There is no compulsion or binding direction for exercising power by the Chief Judicial Magistrate, Alipore, under Section 14 of the Act, 2002. That only in times of exigency and not in ordinary course the CJM can exercise the power under Section 14 of the Act, 2002. Learned CJM has based his such decisions relying on The Authorized Officer Indian Bank Vs. Visalakshi & Anr.

The learned Advocate for the petitioners referred to Authorised Officer, Indian Bank vs. D. Visalakshi & Anr. With P.M. Kelukutty & Ors. vs. Young Mens

Christian Association & Ors reported in (2019) 20 SCC 47.

Prima facie the impugned order shows that learned CJM, Alipore has acknowledged it is also one of the statutory authorities who can assist secured creditor in taking possession of the secured asset, but held only in exigency. He/she has tried to avoid its statutory responsibility alleging that there is District Magistrate, South 24 Parganas and Chief Metropolitan Magistrate, Kolkata to handle the matter under Section 14 of the Act of 2002, for recovery of possession of the secured asset, when the secured asset is located within Mouza- Barisha under Police Station- Behala in the District of South 24 Parganas. It is not known how the Court could avoid its responsibility by shifting the same to the Chief Metropolitan Magistrate, Kolkata when the secured assets and as well the Registered Office of the secured creditor are located outside the jurisdiction of CMM. In fact, the secured assets as well as the office of secured creditor are located within the jurisdiction of South 24 parganas.

More so, Hon'ble Supreme Court in the above referred decision and on which learned CJM appears to have relied on, in para 44 has observed –" *Be it noted that Section 14 of the 2002 Act is not a provision dealing with the jurisdiction of the Court as such. It is a remedial measure available to the secured creditor, who intends to* *take assistance of the authorised officer for taking possession of the secured asset in furtherance of enforcement of security furnished by the borrower. The authorised officer essentially exercises administrative or executive functions, to provide assistance to the secured creditor in terms of the State's coercive power to effectuate the underlying legislative intent of speeding the recovery of the outstanding dues receivable by the secured creditor. At best, the exercise of power by the authorised officer may partake the colour of quasi-judicial function, which can be discharged even by the Executive Magistrate. The authorised officer is not expected to adjudicate the contentious issues raised by the parties concerned but only verify the compliances referred to in the first proviso of Section 14; and being satisfied in that behalf, proceed to pass an order to facilitate taking over possession of the secured assets*".

The Hon'ble Supreme Court after taking into consideration divergent decisions passed by the different High Courts of the Country on the question whether the Chief Judicial Magistrate is competent to deal with the application moved by the secured creditor under Section 14 of the 2002, Act has been pleased to hold in para 52 in the above mentioned decision-"*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* *the Code of Criminal Procedure, 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".*

Therefore, Hon'ble Supreme Court has put in rest the divergent views of the different High Courts on the issue about the responsibility of CJM under Section 14 of the Act of 2002 and held CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act.

In view of the above findings of Hon'ble Supreme Court, the CJM, Alipore is equally competent to deal with the application under Section 14 of the Act of 2002 and which is also admitted by learned CJM, Alipore, in the impugned order but he has tried to avoid his statutory responsibility by returning the application and which is totally improper.

The order impugned being improper not in accordance with the law the same is set aside.

Accordingly **C.O. 2053 of 2021 is allowed**.

Connected applications are disposed of. Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J**.)