

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 936 OF 2018

(Housing Development Finance Corporation Ltd. (HDFC Ltd.), Nagpur Vs. Sh. Sanjay s/o
Nandlal Agrawal & Anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A.T. Purohit, Advocate for the petitioner.
Mr. R.H. Agrawal, Advocate for the respondents.

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**CORAM : DIPANKAR DATTA, C.J. &
PUSHPA V. GANEDIWALA, J.
FEBRUARY 05, 2021.**

PC :-

The petitioner before us is a secured creditor within the meaning of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter “the Act”, for short). It challenges an order dated November 29, 2017 passed by the Debts Recovery Tribunal, Nagpur (hereafter “the DRT”, for short) in Securitisation Application No. 77/2017. By the impugned order, the DRT granted interim stay on the prayer of the borrowers, the respondents herein, on condition that they deposit not less than 30% of the dues mentioned in the demand notice issued under Section 13(2) of the Act by December 06, 2017; in default thereof, the interim order of stay would stand vacated.

2. The impugned order is assailed by the secured creditor primarily on the ground that the order of the District Magistrate, Amravati, passed under Section 14 of the Act could not have been challenged in an application under Section 17 of the Act in view of the decision of the Supreme Court reported in **(2014) 6 SCC 1 (Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited And Others)**. It is also challenged on the ground that the DRT mechanically passed the order of stay without considering that none of the factors on the fulfilment whereof an interim stay could be granted existed in the present case.

3. We record the fairness of Mr. Purohit, learned Advocate for the secured creditor in placing before us a decision of the Supreme Court earlier in point of time than **Harshad Govardhan Sondagar** (supra), reported in **(2011) 2 SCC 782 (Kanaiyalal Lalchand Sachdev And Others Vs. State of Maharashtra And Others)** where the Supreme Court took a view that an action under Section 14 of the Act constitutes an action taken after the stage contemplated by Section 13(4) is reached and, therefore, the same would fall within the ambit of Section 17(1) of the Act.

4. We also place on record the submission of Mr. Agrawal, learned Advocate for the

respondents, that the Supreme Court in its decision reported in **AIR 2010 SC 3413 (United Bank of India Vs. Satyawati Tondon and Ors.)** also took the view that after an action is taken under Section 14 of the Act, the borrower could avail his remedy by filing an application under Section 17(1) of the Act.

5. On reading the decisions of the Supreme Court referred to above, there is seemingly a conflict in views. While **Harshad Govardhan Sondagar** (supra) says that an order of the District Magistrate under Section 14 of the Act cannot be challenged in an application under Section 17 of the Act in view of the bar created by sub-section (3) of Section 14 thereof, the decisions in **Satyawati Tondon** and **Kanaiyalal Sachdev** (supra) are authorities for the proposition that once an order is passed under Section 14 of the Act, it constitutes a measure contemplated within the meaning of Section 13(4) of the Act giving right to the borrower to invoke the remedy provided by Section 17 of the Act. However, the decisions can be reconciled and the seeming conflict done away with.

6. A plain and literal reading of sub-section (3) of Section 14 of the Act, i.e., an order passed under sub-section (1) is also included in the verb “act”, produces an absurd result and looking to the object that the Act seeks to achieve, a contextual and purposive rather than a strict literal approach to

interpretation is necessary and ought to be adopted while reading Section 14. After all, it is the context in which the words are used that is of significance and relevance for deciding an issue. One cannot lose sight of the law authorising the Chief Metropolitan Magistrate/District Magistrate to make a choice of the subordinate officer to whom the power of taking possession may be delegated, as well as the choice of the Chief Metropolitan Magistrate/District Magistrate or the officer authorised to take such “steps” or to employ such “force” as may be considered necessary on facts and in the circumstances for taking possession. The phrase “in pursuance of” in sub-section (3) assumes significance here. The dictionary meaning of the word “pursuance” which follows from the verb “pursue”, is carrying out or following out’ (see Chambers Dictionary). What it suggests is that any act aimed at taking possession either in terms of Section 14(1-A) or Section 14(2), in pursuance of an order passed under Section 14(1), would not be open to challenge except before the High Court under Article 226 or before the Supreme Court under Article 32. The Chief Metropolitan Magistrate/District Magistrate has been given absolute discretion to choose his subordinate officer, who would execute the order and take possession of the secured asset. In terms of sub-section (2), the Chief Metropolitan Magistrate/District Magistrate is also authorised to take or may cause such steps to be

taken and use or cause to be used such force as may, in his opinion, be considered necessary. Take an instance, where even after an order under Section 14(1) is passed the resistance put up by the borrower turns the situation violent and use of force to maintain orderliness and to take possession of the secured asset leads to some casualty. Can the step/force that is taken or used by the officer authorised by the Chief Metropolitan Magistrate/District Magistrate be challenged before any ordinary court/tribunal? We are of the considered opinion that sub-section (3) of Section 14 should be read as intending to provide protection to persons acting in good faith to give effect to an order passed under sub-section (1), without their supposedly reasonable action being amenable to challenge before any court/tribunal, except the Supreme Court/High Court, and can never be read as foreclosing a challenge to such order, i.e., an order under Section 14(1) on merits, before the specified forum under Section 17. The Chief Metropolitan Magistrate/District Magistrate, upon receipt of a request of a secured creditor for assistance is required to apply his mind and ascertain whether all the factors have been satisfied by the secured creditor for taking over possession of the secured asset. If the order of the Chief Metropolitan Magistrate/District Magistrate is impeached on the ground that he has either not applied his mind or that the pre-conditions for grant of assistance are not

fulfilled, in a fit and proper case, we see no reason why the borrower may not have the right to approach the Tribunal under Section 17 of the Act questioning such order.

7. It is well known that judgments of courts are not to be read as statutes. Since the Chief Metropolitan Magistrate/District Magistrate under Section 14 upon being satisfied with the claim of the secured creditor may take possession of the secured asset and hand over the same with documents to the secured creditor, such act becomes a part of the measures that a secured creditor may take recourse to for the purpose of enforcing its security interest. If challenge is thrown, upon possession of the secured asset being taken, to the entire acts of the secured creditor commencing with issuance of notice under Section 13(2) upon declaration of an account as non-performing asset, there is no reason as to why an approach to the Debts Recovery Tribunal under Section 17(1) would be barred. If reading of the decision in **Harshad Govardhan Sondagar** (supra) in the manner Mr. Purohit wishes us to read is accepted, there can be no challenge to an action of a secured creditor seeking to enforce its security interest by taking recourse to Section 14. The cumulative effect of a combined reading of the relevant provisions of the Act in the light of the aforesaid three decisions of the Supreme Court leads us to the conclusion that although an act in

pursuance of an order under sub-section (1) of Section 14 of the Act passed by the District Magistrate may not be challenged before the Tribunal under Section 17, but if a borrower is dispossessed pursuant to an order passed by the District Magistrate under Section 14(1) of the Act, the same would nonetheless result in a measure that is comprehended within the meaning of Section 13(4) of the Act and, therefore, challenge to such an order under Section 14(1) of the Act would be maintainable in proceeding under Section 17 on the existence of circumstances as indicated above in the preceding paragraph.

8. In such view of the matter, once a measure is taken for taking possession of the secured asset in terms of the provisions of the Act, depending upon the facts and circumstances the borrower may approach the Tribunal and in a fit and proper case, the Tribunal may entertain the application and grant such relief, interim or final, as is warranted on facts and circumstances of the case.

9. In the application that was moved before the DRT under Section 17(1) of the Act, no doubt the order of the District Magistrate made in exercise of power under Section 14 was under challenge; but, apart from a prayer to set it aside, there were other prayers challenging the action of the secured creditor. In such circumstances, the proceedings

before the DRT cannot be held to be not maintainable on the primary ground raised by the petitioning creditor.

10. Insofar as the other ground of challenge is concerned, there appears to be substance in the contention of Mr. Purohit that the order is cryptic is evident on its face. However, having regard to the passage of time, we consider it appropriate to give direction to the respondents to clear their debt to the extent of their debt as mentioned in the notice under Section 13(2) of the Act. The respondents have enjoyed the benefit of the interim stay granted by the DRT for far too long. They have not paid the petitioning creditor 2/3rd of the amount claimed in the notice issued under Section 13(2) of the Act. Four years from the date of the DRT's order and six years from the date of the notice under Section 13(2) is sufficient time for the respondents to pay up.

11. We, accordingly, direct that the respondents shall be entitled to the benefit of the interim stay granted by the DRT unconditionally for a period of a fortnight from date. In the event, the respondents pay Rs.2,65,000/- (Rs. Two lakh sixty five thousand only) to the petitioning creditor within a fortnight from date, obviously without prejudice to the rights and contentions of the parties in the application pending before the DRT, the order granting interim stay shall continue till the end of

June, 2021. In the event, the respondents fail to pay Rs.2,65,000/- (Rs. Two lakh sixty five thousand) to the petitioner within a fortnight from date, the order passed by the Tribunal shall stand vacated, and it shall be open to the petitioner to seek assistance for implementing the order passed by the District Magistrate under Section 14 of the Act.

12. Before June 30, 2021, the DRT shall make earnest endeavour to dispose of the application under Section 17 of the Act finally.

13. If the DRT is presently not functional for any reason, the Tribunal in-charge of the matters of the DRT shall comply with this order.

14. All other contentions are left open for the parties to urge before the DRT.

15. With the aforesaid directions, this writ petition stands disposed of. There shall be no order for costs.

(PUSHPA V. GANEDIWALA, J.) (CHIEF JUSTICE)