

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.18174 of 2017 (O&M)

Date of Decision: April 23rd, 2021

Kotak Mahindra Bank Ltd.

....Petitioner

Versus

The District Magistrate, Ludhiana and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Ashwani Chopra, Senior Advocate
with Mr. Manish Jain, Advocate
for the petitioner.

Ms. Monica Chhibber Sharma, Sr. Deputy Advocate General,
Punjab.

Mr. Anand Chhibbar, Senior Advocate
with Mr. Aalok Jagga, Advocate
for respondent No.2.

(PROCEEDINGS THROUGH V.C.)

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 17.05.2017 (Annexure P-1) passed by the Additional District Magistrate, Ludhiana, exercising the powers of District Magistrate, rejecting the application of the petitioner filed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act").

2. Briefly the facts are that petitioner-Kotak Mahindra Bank Limited is a banking company under the provisions of the Banking Regulation Act, 1949 and incorporated under the Companies Act, 1956. Various credit facilities have been provided to M/s Oswal Spinning and Weaving Mills Limited

(the company) by way of financial assistance by UCO Bank, IFCI Limited, State Bank of Patiala, Life Insurance Corporation of India, General Insurance Corporation and United India Insurance Corporation. To secure the credit facilities sanction, the company credited security interest by way of creation of mortgage in favour of the lenders on its immovable and movable properties. These financial facilities were also secured by the personal guarantees of Mr. D.P. Oswal, Mr. Ashok Oswal, Mr. R.P. Oswal-respondent No.2 herein.

There were continuous defaults by the company and despite repeated requests to the company as well as the guarantors/mortgagers to discharge the dues, when they were unable to do so, the lenders in accordance with the directives and guidelines of the Reserve Bank of India (RBI), classified the account of the company as Non Performing Asset (NPA). Petitioner acquired the debts/debentures of the above-mentioned lenders by way of assignment/transfer on 16.11.2007. This assignment/transfer of debentures was confirmed by the company and guarantors vide letter of acceptance dated 26.12.2007. Petitioner, as a part of reconstructing, extended/rescheduled financial facilities to the company and the company created charge on the movable and immovable properties for securing the said financial/rescheduled facilities assigned in favour of the petitioner-bank. The said facilities were additionally secured by the personal guarantees of Mr. Ashok Oswal, Mr. R.P. Oswal-respondent No.2, Mr. Sambhav Oswal and additionally guaranteed by M/s. Oswal Industries Private Limited, M/s Oswal Vanaspati and General Industries and M/s Sidhant Investment P. Ltd. The financial facilities were also secured by pledge of shares aggregating to 1,35,93,900 shares of M/s Oswal Spinning and Weaving Mills Limited held by M/s Anant Portfolios Pvt. Ltd., M/s Oswal Cottex Exports Ltd. and M/s Sidhant Investment Pvt. Ltd.

3. Due to defaults of the company, the account became irregular and at the request of the company for revised statement of debts, a second letter of acceptance dated 30.09.2009 was signed by the company and its guarantors/pledgers. Further to secure the outstanding dues, charge was credited in favour of Kotak Mahindra Bank on the residential premises in favour of the petitioner. Despite all this, company again committed defaults in repayment of the agreed instalments and at their request, bank issued permissions from time to time for sale of charged properties subject to various terms and conditions. Company sold major portion of the charged properties and deposited aggregated amount of ₹49,82,00,000/- from time to time towards part payment of the dues. The company failed to adhere to the repayment schedule and, therefore, the account of the company, as per the directives and guidelines of the RBI was declared as NPA on 07.12.2013.

Demand notice under Section 13 (2) of the SARFAESI Act to the mortgagers and hypothecators of the movable and immovable properties were issued by the petitioner. Petitioner issued notice dated 04.04.2014 (Annexure P-2) amongst others to respondent No.2 under Section 13 (2) of the SARFAESI Act and called upon the said respondent to pay an aggregate sum of Rs.63,42,83,420.68 as on 04.04.2014 together with interest at contractual rates from 05.04.2014 till payment and/or realization. Representation under Section 13 (3-A) of the SARFAESI Act was forwarded vide letter dated 29.05.2014, to which reply was sent by the petitioner on 16.06.2014. In the light of the representation of the company regarding the outstanding dues, it was rejected and the dues outstanding, which were payable, revised to ₹63,37,21,410/- as on 04.04.2014 together with interest at contractual rates from 05.04.2014 till payment and/or realization. In this regard, communication was sent on

25.08.2014 by the petitioner to the guarantors as well as respondent No.2. The revised account statement was also appended along with the revised notice dated 25.08.2014 (Annexure P-5).

4. Notice under Section 13 (2) of the SARFAESI Act issued by the petitioner was challenged by the company by filing CWP No.10957 of 2014, which was dismissed as withdrawn on 23.03.2015 (Annexure P-6) with liberty to submit representation raising all pleas as considered appropriate, within 15 days from the date of the order. A Review Application No.160 of 2015 was preferred, which was dismissed vide order dated 01.04.2015 (Annexure P-7).

5. Company forwarded its representation as per the liberty given by the Writ Court vide order dated 23.03.2015 to the petitioner on 03.04.2015 and 11.04.2015, to which petitioner forwarded its detailed reply on 15.05.2015 (Annexure P-10). Company then filed CWP No.13888 of 2015 challenging the action initiated by the petitioner under the SARFAESI Act based upon the replies forwarded by the petitioner to the company. The High Court directed the company to deposit an amount of ₹1,57,45,000/- due and payable towards principal amount under export packing credit facility, which the company deposited with the Kotak Mahindra Bank. This writ petition was dismissed by the High Court vide order dated 11.04.2016 (Annexure P-11) by passing a detailed order.

Review Application No.256 of 2016 was preferred by the company, which was dismissed vide order dated 16.09.2016 (Annexure P-12). At this stage, it may be mentioned here that the company had stated before the Writ Court that the finding in the order that the amount was still outstanding may prejudice the petitioner under Section 17 of the Act or in other proceedings as in paragraph 11 in the last sentence, the Court had recorded that the

petitioner admittedly had not paid arrears due in respect of the first account. It was, however, clarified by observing that it would be open to the petitioner to establish that there is now no further amount due and payable to the respondents.

6. After the dismissal of the writ petition, petitioner in furtherance of its action under the SARFAESI Act, filed an application dated 02.05.2016 (Annexure P-14) under Section 14 of the SARFAESI Act before the District Magistrate, Ludhiana, seeking assistance in taking over the secured assets belonging to Shri Raj Pal Oswal-respondent No.2 i.e. residential property bearing MC No.B-XIX-148/1 along with all the present and future superstructure thereon, measuring 3852 sq. yards comprised in khasra No.1518/667/532/461, situated in Village Taraf, Gehilwal Locality, known as Seepshankh Road, Tehsil and District Ludhiana, Punjab. Respondent No.2 filed reply/objections in August 2016. Reply to the said objections was given by the petitioner on 07.09.2016 and thereafter further objections were filed by respondent No.2 on 13.10.2016.

7. Petitioner asserts that the application which was preferred under Section 14 of the SARFAESI Act in the month of July 2016, remained pending for more than ten months before the District Magistrate, Ludhiana, despite the requirement of deciding the same within 30 days. On 27.04.2017, the District Magistrate directed the petitioner to produce the statement of account, which he stated was for recording his satisfaction, to which the petitioner-company responded by asserting that the District Magistrate does not have any jurisdiction to examine the statement of account and nor does it have any jurisdiction to decide upon rival claims made by the parties.

The District Magistrate proceeded to reject the application of the petitioner-

company under Section 14 of the SARFAESI Act by observing that the bank having failed to produce the statement of account and, therefore, the District Magistrate was not satisfied of the existence of any debt or default committed by the borrower i.e. the company so that the order of possession could be passed.

8. Preliminary objection has been taken by respondent No.2 with regard to the maintainability of the present writ petition on the ground that the petitioner has an alternative efficacious statutory remedy of filing an application/appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal. In support of this contention, reliance has been placed upon the judgment of the Supreme Court in ***Kaniyalal Lalchand Sachdev and others Versus State of Maharashtra, 2011 (2) SCC 782***. It has further been stated that the petitioner has raised disputed questions of facts and that OA No.2643 preferred by the petitioner is already pending before the Debts Recovery Tribunal-III, Chandigarh, where the determination of the amount due towards the company and payable or not is pending consideration. The stand of respondent No.2 on facts primarily is that no amount is due towards respondent No.2. The factual aspect as pleaded by the petitioner has not been disputed. However, the order dated 17.05.2017 (Annexure P-1) passed by the District Magistrate, which is under challenge, has been supported by the answering respondent by placing reliance upon the judgment of the Hon'ble Supreme Court in ***Standard Chartered Bank Versus V. Noble Kumar and others, 2013 (9) SCC 620*** to contend that the satisfaction of the Magistrate as contemplated under second proviso to Section 14 (1) of the SARFAESI Act necessarily requires the Magistrate to examine the factual correctness of the assertions made in the affidavit, which is filed along with application under

Section 14 of the SARFAESI Act and it is in pursuance thereto that the District Magistrate had called upon the petitioner to produce its account statements as respondent No.2 had taken a specific stand that no amount was due towards the company, which was payable. Since the District Magistrate was required to record its satisfaction, it has, therefore, proceeded to pass an order of rejection as it was not in a position to record its satisfaction in the absence of the statement of accounts.

9. Learned senior counsel for the petitioner has asserted that the District Magistrate, Ludhiana, while passing the impugned order dated 17.05.2017 (Annexure P-1), has exceeded its jurisdiction. He asserts that the District Magistrate is only required to consider the aspect that there is a loan transaction, which the borrower is required to repay with interest, there is a default in repayment, pursuant to such default, a notice under Section 13 (2) has been issued despite which repayment was not made, in case of objection of the borrower under Section 13 (3-A), the same has been considered, rejected and conveyed to the borrower and the property sought to be securitized is situated within the jurisdiction of the Magistrate. These are the factual assertions, which are required to be contained in the affidavit of the secured creditor and if the same are found therein, the District Magistrate is required to pass an order under Section 14 of the SARFAESI Act enabling the secured creditor to take possession of the secured asset. He is not required to nor entitled to examine the legal niceties of the transactions including the accounts. This jurisdiction would lie with the Debts Recovery Tribunal in case the borrower chooses to file an application under Section 17 of the SARFAESI Act on an order passed under Section 14 of the SARFAESI Act. His contention is that the aspect with regard to the question whether the asset is a secured asset or not is to be ascertained

from the notice issued by the bank under Section 13 (2) of the SARFAESI Act and action taken under Section 13 (4) of the SARFAESI Act. On this satisfaction alone, possession is required to be taken and handed over to the secured creditor under Section 14 of the SARFAESI Act.

His submission is that the question with regard to the asset having been properly mortgaged, its validity, the payable amount, if any, or not is a question which need not to be adjudicated upon by the District Magistrate. What is required to be looked into is as to whether the possession sought is of the same property which is secured or not, which requirement having been fulfilled, the Magistrate should have proceeded to allow the application under Section 14 of the SARFAESI Act moved by the petitioner. The District Magistrate does not have the power under Section 14 of the SARFAESI Act to adjudicate the rights and liabilities between the parties nor can any right be read into the said powers in the term 'after satisfying the contents of the affidavit'. What is required to be seen by the Magistrate is whether the requirement of the application is fulfilled, which is supported by an affidavit. Section 14 of the SARFAESI Act is not a stage for adjudication of the rights and liabilities between the parties before the Magistrate.

Learned senior counsel for the petitioner has also asserted that the factum that respondent No.2 is a guarantor/mortgagor is not in dispute. The details as required under the statute having been mentioned in the affidavit, which has been filed along with the application under Section 14 of the SARFAESI Act leading to the requirement of the statute having been fulfilled, the action of the District Magistrate requiring the petitioner to submit the statement of account, amounts to exceeding its jurisdiction and, therefore, the

impugned order dated 17.05.2017 is not sustainable and deserves to be set aside.

10. Learned senior counsel for the petitioner has placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***Standard Chartered Bank's case (supra), Hari Trading Corporation Versus Bank of Baroda, III (2015) BC 284 (DB) (Bomb.)***, judgment passed by a Division Bench of Hon'ble Bombay High Court in ***WP No.1273 of 2017*** titled as ***Kotak Mahindra Bank Limited Versus The State of Maharashtra and others*** decided on 03.05.2018.

11. On the other hand, learned senior counsel for respondent No.2 has vehemently argued that the present writ petition is not maintainable in the light of the fact that the impugned order dated 17.05.2017 (Annexure P-1) passed by the District Magistrate is appealable before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. This, he asserts, in the light of the observations of the Hon'ble Supreme Court in ***Kaniyalal Lalchand Sachdev and others' case*** (supra). He, therefore, asserts that the writ petition on this short ground deserves to be dismissed. That apart, he asserts that there are disputed questions of facts involved in this case, especially in the light of the fact that OA No.2643 has been preferred by the petitioner, where the recovery of amount dues is being sought from the company in which a counter claim has been raised of Rs.79.03 crores against the bank in terms of Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 by answering respondent No.2. He asserts that there is no amount due/payable which could be termed as recoverable from the company and, therefore, assets of respondent No.2, which have been mortgaged with the petitioner, could not have been taken possession of under Section 14 of the SARFAESI Act.

He submits that the primary requirement for invoking Section 14 of the SARFAESI Act would be a liability of a loan from the borrower and when there is none, the question of taking physical possession of the secured property would not arise. The District Magistrate, according to the requirement of Section 14 of the SARFAESI Act, has to record his satisfaction in relation to the 9 points as required to be mentioned in the affidavit on due affirmation by the authorized officer of the secured creditor. For the purpose of such satisfaction, the District Magistrate is entitled to call upon the secured creditor to satisfy whether at all there is any amount or existing due in the statement of accounts of bank and, therefore, for this reason only the bank was called upon to get the statement of account, which is the basic document which firstly the petitioner did not produce and secondly refused to produce before the Magistrate. This he asserts is primarily for the reason that there is no amount payable by the company. The provisions of the SARFAESI Act can be enforced only if there are any arrears outstanding in the books of accounts of the bank against a borrower, which can be classified as NPA. In the absence of such a claim, which would be recoverable from the borrower, the provisions of Section 14 of the SARFAESI Act could not have been invoked by the petitioner. He asserts that the District Magistrate has not exceeded its jurisdiction and has proceeded to pass the order in accordance with the statutory requirements being not satisfied with regard to there being any debt payable.

Learned senior counsel for respondent No.2 has referred to the order dated 16.09.2016 passed by a Division Bench of this Court in Review Application No.256 of 2016 (Annexure R-2/3) to contend that the Division Bench of this Court had granted liberty to the company to establish that there is no further amount due and payable to the petitioner as the entire

amounts had actually been paid under all facilities as asserted by the company. It is in exercise of this liberty that respondent No.2 has put forth his assertion that all the amount due stands already paid and, therefore, there was no liability for which order under Section 14 of the SARFAESI Act could be passed for handing over the physical possession of the mortgaged property. He has placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***Standard Chartered Bank's case (supra)***, ***Kaniyalal Lalchand Sachdev and others's case (supra)*** in support of his contentions. In the light of the above, it has been prayed by the counsel for private respondent No.2 that the writ petition deserves to be dismissed.

12. We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings, records as well as the judgments on which reliance has been placed.

13. Before we proceed in the matter on merits, preliminary objections as raised by respondent No.2, need to be addressed.

The first preliminary objection being non-maintainability of the present writ petition in the light of the remedy of appeal being available to the petitioner against the impugned order dated 17.05.2017 (Annexure P-1) passed by the District Magistrate, Ludhiana.

Section 17 of the SARFAESI Act reads as follows:-

“17. [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 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.

(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.*

(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.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

- (a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and*
- (b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and*

(c) *pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.*

(4) *If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.*

(4A) *Where—*

(i) *any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—*

(a) *has expired or stood determined; or*

(b) *is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or*

(c) *is contrary to terms of mortgage; or*

(d) *is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and*

(ii) *the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.*

(5) *Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:*

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.] ”

A perusal of the above would show that any person which includes a borrower, who is aggrieved by any of the measures taken by the secured creditor or his authorized officer referred to in sub-section 4 of Section 13 of the SARFAESI Act under the Chapter, can make an application under Section 17 of the SARFAESI Act. The language itself makes it amply clear that the remedy is available to a person aggrieved by any of the measures referred in sub-section 4 of Section 13 of the SARFAESI Act, which are taken by the secured creditor or his authorized officer. The remedy, therefore, under Section 17 of the SARFAESI Act, would not be available to the secured creditor or his authorized officer for rejection of an application preferred by the said secured creditor or his authorized person under the SARFAESI Act.

In the light of the above, the order which has been passed by the District Magistrate under Section 14 of the SARFAESI Act is final qua the

petitioner and under these circumstances, the remedy available to the petitioner is only under Article 226/227 of the Constitution of India, which remedy the petitioner has rightly availed of. Reliance on the judgment of the Hon'ble Supreme Court in ***Kaniyalal Lalchand Sachdev and others' case (supra)*** by the counsel for respondent No.2 is totally misplaced, where the Hon'ble Supreme Court was considering Section 17 of the SARFAESI Act when the person aggrieved was neither the secured creditor nor the authorized officer but any other person. The said judgment, therefore, would not be attracted to the present case.

14. As regards the ground for non-maintainability of the present writ petition on the disputed question of facts is concerned, suffice it to say that the facts primarily are not disputed by the parties except for the aspect that the petitioner asserts that the amount is payable and due towards it, whereas respondent No.2 asserts that there is no liability at all and the loan amount *in toto* has been paid. This, in the considered view of this Court, would not be the real issue involved in the present case and the said aspect need not be gone into, especially in the light of the fact that in case the petitioner succeeds on merits with regard to the jurisdiction exercised by the District Magistrate being beyond the provisions of Section 14 of the SARFAESI Act, the said question would be open for consideration before the Debts Recovery Tribunal and that too at a stage if ultimately the District Magistrate comes to the conclusion that the physical possession of the property, which is the secured asset, has to be handed over to the petitioner by allowing the application preferred under Section 14 of the SARFAESI Act. It may be added here that in case the application under Section 14 of the SARFAESI Act as preferred by the petitioner for handing over the physical possession of the property in question is

allowed, it would be open to private respondent No.2 to avail of the remedy under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, which would thereafter adjudicate upon these factual aspects. Therefore, the plea of private respondent No.2 with reference to the above, cannot be accepted.

15. The basic facts with regard to the petitioner having acquired the debt/debentures from some of the banks and financial institutions as detailed in the earlier part of the judgment, their assignment/transfer of debentures having been confirmed by the company and the guarantors, the subsequent transactions rescheduling of the financial facilities, restructuring etc. of the loan as well as the payment schedule have not been disputed. That apart, the factum that the account of the company was declared Non Performing Asset, issuance of notices under Section 13 (2) of the SARFAESI Act, the objections filed by the company as well as private respondent No.2, rejection thereof, leading to approach to this Court by way of two writ petitions, dismissal thereof as also the Review Applications preferred therein, have all been admitted.

16. In the light of the above, the detailed factual aspects are not being referred to herein and straightway, we proceed to decide the issue raised by the petitioner in the writ petition, wherein challenge is to the order dated 17.05.2017 (Annexure P-1) passed by the Additional District Magistrate, Ludhiana, exercising the powers of the District Magistrate under the SARFAESI Act rejecting the application preferred by the petitioner under Section 14 of the said Act. Petitioner has challenged the impugned order by asserting that the District Magistrate-respondent No.1 has exceeded its jurisdiction and it did not have the power or jurisdiction to examine the statement of account nor did it have any jurisdiction to adjudicate upon the rival claims made by the parties, whereas the stand of respondent No.2 is that the

District Magistrate, who is to record its satisfaction, does not act as a rubberstamp and can inquire into the facts as have been stated in the application, which is duly supported by the affidavit.

17. Before proceeding further at this stage, we need to refer to Section 14 of the SARFAESI Act, around which the controversy revolves, which reads as follows:-

“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: 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 assets within a period of thirty days from the date of application.

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.”

(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 Magistrate¹ [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. The amendment which has been brought about in Section 14 of the SARFAESI Act in the year 2013 is in the first proviso, wherein the words “shall after satisfying the contents of the affidavit” have been added. It is this amendment which is being sought to be projected in a manner, which would give the jurisdiction to the District Magistrate to see the correctness of the contents of the affidavit. The Hon’ble Supreme Court in ***Standard Chartered Bank’s case (supra)***, on which reliance has been placed by both the counsel for the parties, has held in paras 24 and 25 as follows:-

“24. An analysis of the nine sub-clauses of the proviso which deal with the information that is required to be

furnished in the affidavit filed by the secured creditor indicates in substance that:

24.1 (i) there was a loan transaction under which a borrower is liable to repay the loan amount with interest,

24.2 (ii) there is a security interest created in a secured asset belonging to the borrower,

24.3 (iii) that the borrower committed default in the repayment,

24.4 (iv) that a notice contemplated under Section 13(2) was in fact issued,

24.5 (v) in spite of such a notice, the borrower did not make the repayment,

24.6 (vi) the objections of the borrower had in fact been considered and rejected,

24.7 (vii) the reasons for such rejection had been communicated to the borrower, etc.

25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset.”

A perusal of the above would show that the Magistrate can only examine the factual correctness of the assertions made in the affidavit and cannot go beyond that. Division Bench of the Bombay High Court in ***Hari Trading Corporation’s case (supra)*** had dealt with this aspect while considering the judgment of the Hon’ble Supreme Court in ***Standard Chartered Bank’s case (supra)*** and after reproducing Section 14 of the SARFAESI Act in para 14 of the said judgment, has concluded in para 15 as follows:-

“15. The words in italic therefore were not there before section 14 was amended in 2013. In our view, amendment to Section 14 has not changed the character of the application

which is made by the secured creditor, seeking assistance of the Magistrate in getting possession of the secured assets. The amendment only seeks to impose further obligation on the Bank (i) to file an application which is duly affirmed by the authorized Officer and (ii) to give the relevant information as provided in clauses (i) to (ix) of the proviso and all that the Magistrate is called upon to do is to check whether this information is supplied or not. In the event, the Magistrate finds that all the information is given in the application under Section 14 then he has no other option but to pass an order allowing the application under Section 14 and in the event he finds that some information is not provided then he has to return the application to the secured creditor and only after all the information is provided final order under section 14 will be passed. Much emphasis has been laid on the words “after satisfying the contents of the affidavit” which are found in the amended provision. We are afraid that we are unable to accept the contention raised by the learned Counsels appearing on behalf of the Petitioners viz (i) that the inclusion of these words indicate that the Magistrate has now to adjudicate and decide the correctness or otherwise of the information which is given in the application and (ii) that by virtue of inclusion of these clauses, principal borrower gets right of taking part in these proceedings for the purpose of assisting the Magistrate. It is also not possible to accept the submission that since the section 14(3) contemplates a finality to the orders passed by the Magistrate, the principal borrower does not get any right to point out that the decision of the Bank of declaring the Account of the borrower as non-performing asset is not correct or the measures taken by the Bank are not in accordance with law and, therefore, under Section 14 alone the borrower would get a right to point out to the Magistrate that these measures not being taken properly, the order directing that the possession should be taken cannot be passed without giving hearing to him.

18. Similarly in Kotak Mahindra Bank Limited's case (supra), which was decided on 03.05.2018, the Division Bench of the Bombay High Court again had an occasion to consider the provisions of Section 14 of the SARFAESI Act, wherein it was concluded that the Chief Metropolitan Magistrate/District Magistrate is not expected to enter into the aspect relating to the validity of a mortgage or indulge in adjudication of the amount/debt claimed by the bank or a financial institution as this would tantamount to resort to adjudication, which can only be within the jurisdiction of the Debts Recovery Tribunal. It was further held that the Magistrate is required to ascertain where the statements are made by the bank under the 9 clauses below Section 14 (1) of the SARFAESI Act and once he is satisfied that the statements as required in those 9 clauses have been made by the bank in its affidavit, the District Magistrate would proceed to grant the application under Section 14 (3) of the SARFAESI Act.

We are in respectful agreement with the observations, which have been made by the Division Bench of the Bombay High Court in Hari Trading Corporation's case (supra) as also in Kotak Mahindra Bank Limited's case (supra).

19. With the legal position with reference to the jurisdiction of the District Magistrate having been settled as above, the time is right now ripe to proceed to consider the correctness or otherwise of the impugned order dated 17.05.2017 (Annexure P-1).

A perusal of the above order would show that the District Magistrate has proceeded to embark upon an adjudicatory process of determining the due amount, if any. What was required of him as per Section 14

of the SARFAESI Act, was limited to the extent of satisfying itself with regard to the statements as required on the 9 clauses below Section 14 (1) of the SARFAESI Act. If the said statement had been made by the bank in its affidavit, the District Magistrate was required to proceed and grant the application under Section 14 (3) of the SARFAESI Act. The District Magistrate it appears, had conferred on itself the jurisdiction of the Debts Recovery Tribunal to decide upon the aspects, which would be beyond its jurisdiction as mandated under Section 14 of the SARFAESI Act.

21. It may be pointed out here that in *Standard Chartered Bank's case (supra)*, the Hon'ble Supreme Court although has observed that on the date the impugned order was passed, which was challenged before it, did not oblige the Magistrate to undertake the exercise of satisfying itself, however, the Hon'ble Supreme Court after going through the contents of the affidavit, were satisfied on examining the contents of the affidavit that all the basic requirements necessary granting the request of the bank of delivery of possession of the secured asset are asserted to have existed on the date of the application.

This makes it amply clear the satisfaction or otherwise to be reached at by the Magistrate is on the examination of the contents of the affidavit that all basic requirement necessary for granting the request for delivery of possession of the secured asset are asserted to have existed on the date of application or not. The District Magistrate cannot go beyond that.

22. In the light of the above, we are of the considered view that the impugned order dated 17.05.2017 (Annexure P-1) passed by the District Magistrate cannot sustain and deserves to be set aside.

23. Ordered accordingly.

24. In view of the above, the present writ petition is allowed.

25. Parties are directed to appear before the Additional District Magistrate, Ludhiana, exercising the powers of District Magistrate, on **30.04.2021 at 11:00 AM**, who shall decide the application preferred by the petitioner under Section 14 of the SARFAESI Act in the light of the law laid down above within a period of one week of appearance of the parties.

26. In the light of the decision of the present writ petition, CM No.16029-CWP of 2018 stands disposed of as infructuous.

(AUGUSTINE GEORGE MASIH)
JUDGE

April 23rd, 2021
Puneet

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned Yes

Whether reportable Yes