

26.04.2022
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ct. no. 7
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C.O. 918 of 2022

IDFC First Bank Limited
-vs-
Narendra Kumar Sharma & Anr.

Mr. Sounak Bhattacharya
Mr. Shibnath Bhattacharya
Mr. Abhishek Bhattacharya
Mr. Sounak Mondal
...for the petitioner

The subject matter of challenge in this revisional application is against the order dated 1st December, 2021 passed by the learned Chief Judicial Magistrate, Howrah in Misc. Case no. 573 of 2021, transferring the case to the learned Judicial Magistrate, 1st Court, Howrah for disposal.

Learned advocate appearing for the petitioner submits that the opposite party, having made infraction of the provisions of Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, by not complying with the demand notice issued by the petitioner, the petitioner bank thought it prudent to take recourse to the provision of Section 14 of such Act for the purpose of taking possession, or control of secured assets against the opposite party. An exercise was then taken by filing

an application under Section 14(1) of the said Act addressed to the learned Chief Judicial Magistrate, Howrah.

The said application, upon being duly registered, as misc. case has ultimately been transferred to learned Judicial Magistrate, 1st Court, Howrah for disposal.

Learned advocate appearing for the petitioner contends that when the legislature has specifically authorised District Magistrate or Chief Metropolitan Magistrate in Section 14 of this Act, referred hereinabove, to take possession of the secured assets in application of provisions available under Section 14(1) of the Act, no other officer is permitted to discharge the function. Delegation of power, as happened in this case, is not according to law.

It is thus submitted that the order of transfer is without jurisdiction, because there cannot be any delegation of power, contrary to the intention expressed by the legislature, as specifically disclosed in Section 14(1) of the Act itself.

Since a jurisdictional error is the only subject matter of challenge in this case, service of notice of the present revisional application upon the opposite parties, is considered to be not necessary.

Service upon the opposite parties, is thus, dispensed with.

Reliance is placed by Mr. Bhattacharya, learned advocate for the petitioner, on a decision rendered by Apex Court in the case of **Authorised Officer, Indian Bank vs. D. Visalakshi & Anr** reported in **(2019) 20 SCC 47**, wherein purposive and contextual, construction of Section 14 of the Act was stressed upon.

In view of such decision, Chief Judicial Magistrate and Chief Metropolitan Magistrate were held to be competent to assist the secured creditor, to take possession of the secured assets.

Reliance is also placed to unreported decisions, rendered by a Coordinate bench of this Court in the case of **Sri Arupeswar Chatterjee & Ors. vs. Bank of Baroda & Ors.** vide **W.P. No. 8615(W) of 2015** and **The Authorised Officer, DCB Bank Limited and Anr. vs. Dinesh Kumar Goswami & Anr.** vide **C.O. 549 of 2022** wherein the same view was taken, restricting delegation of power on such issue either by District Magistrate or Chief Judicial Magistrate to any other Magistrate.

When statute has specifically authorised, naming such dignitaries, to take possession or control of secured assets in application of

provisions of Section 14(1) of the Act, referred hereinabove, such function has to be necessarily, discharged by the dignitaries specifically named in the Act itself, and not by any other officer, unless specially conferred with such power to that effect.

The Chief Judicial Magistrate, being competent and authorised to deal with application under Section 14(1) of the Act, there can not be any transfer of such application to any other Magistrate.

The order impugned transferring the case to learned Judicial Magistrate, Howrah is thus set aside. The learned Chief Judicial Magistrate, Howrah is directed to dispose of the said Misc. case independently and expeditiously as possible in accordance with law.

The petitioner is directed to communicate this order to the learned Court below, opposite party and their advocates as well.

With this direction and observation, this revisional application stands disposed of.

Urgent photostat certified copy of this order duly applied for, be given to the parties upon compliance of all requisite formalities.

(Subhasis Dasgupta, J.)