

18.05.2022
Item No.17
Ct. No.7
CHC
(disposed of)

C.O.1142 of 2022

**Cholamandalam Investment and Finance
Company Limited**

Vs.

Ashok Kumar Ghosh & ors.

Ms. Soni Ojha,
Ms. Sambrita B. Chatterjee
...for the petitioner

The subject-matter of challenge in this revisional application is against the order dated 7th April, 2022, passed by learned Chief Judicial Magistrate, Hooghly, in Misc. Application No.184 of 2021, thereby returning application of the petitioner with a direction to present the same before learned A.C.J.M. Srerampore, Hooghly, for the subject property under reference being situated with Dankuni P.S.

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 parties. An exercise was then taken by filing an application under

Section 14(1) of the said Act addressed to the learned Chief Judicial Magistrate, Hooghly.

The said application, upon being duly registered, as Misc. Case has ultimately been returned to petitioner with a direction to represent the same before the learned A.C.J.M., Srerampore, Hooghly 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 order directing return of the application 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 this, dispensed with.

Reliance is placed by Ms. Soni Ojha, learned advocate appearing 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, learned 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 decision, 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 specifically conferred with such power to that effect.

Learned Chief Judicial Magistrate being the competent and only authorised to deal with the application under Section 14(1) of the Act, there cannot be any other order directing re-presentation of the application before any other Magistrate, within whose statutory jurisdiction, the subject property under reference may be situated. The order impugned returning the application for presentation of the same before the learned A.C.J.M, Srerampore, is thus set aside.

Learned Chief Judicial Magistrate, Hooghly is directed to dispose of the said Misc.Case independently and expeditiously as possible in accordance with the law.

The petitioner is directed to make communication of this order to the learned court below as well as to the opposite parties and their learned advocate in the court below.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)

