

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.27601 of 2022

Pawan Kumar Jajodia

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Petitioner

Mr. Santanu Kumar Sarangi Senior Advocate

-Versus-

Bajaj Finance Ltd., Pune & others

.

Opp. Parties

CORAM:

JUSTICE S. TALAPATRA

JUSTICE M.S. SAHOO

ORDER

21.10.2022

Order No.

01.

- 1.** This matter is taken up through Hybrid Mode.
- 2.** Heard Mr. Santanu Kumar Sarangi, learned Senior Counsel assisted by Mr. A.K. Nayak, learned counsel appearing for the petitioner.
- 3.** By means of this writ petition, the order dated 12.10.2020 as delivered in Misc. Case No.06 of 2020 by the Chief Judicial Magistrate, Cuttack has been challenged.
- 4.** Mr. Sarangi, learned Senior Counsel has laid that being aggrieved by the judgment dated 10.01.2021 of this Court, delivered in W.P.(C) No.11425 of 2020, titled as ***Bajaj Finance Ltd. vs. M/s. Ali Agency and others***, the petitioner had approached the apex court

for intervention. One of the grounds that raised before the apex court is that whether the Chief Judicial Magistrate can exercise the administrative power as provided under Section 14(1) of the SARFAESI Act, 2002.

5. In ***Bajaj Finance Ltd.***, this Court had occasion to observe that the District Magistrates and Chief Judicial Magistrates in the State of Odisha may exercise their power under Section 14(1) of the SARFAESI Act, 2002.

6. Mr. Sarangi, learned Senior Counsel has pointed out that while dismissing the Special Leave Petition (Civil), being SLP(C) No.9406 of 2020, by the order dated 12.07.2020, the following observation was made by the apex court:

“However, in the event, the respondent-Bank initiates proceedings either before the Chief Judicial Magistrate/ Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), the petitioners would be at liberty to raise the grounds based on the order dated 23.12.2020 of the learned District Magistrate-cum-Collector” [Emphasis added].

7. The District Magistrate & Collector, in the proceeding under Section 14(1) of the SARFAESI Act being Bank Misc. (Bajaj

Finance) No.03 of 2018 had observed that since the applicant-company did not want to pursue the case, in the result, the case is dismissed, as withdrawn without liberty to the applicant company as prayed.

8. According to Mr. Sarangi, learned Senior Counsel, that order operate as estoppel against the Opp. Party from approaching any forum under Section 14(1) of the SARFAESI Act. But when the company approached the Chief Judicial Magistrate, by instituting a proceeding being Criminal Misc. Case No.06 of 2022, the Chief Judicial Magistrate (CJM) observed by the order dated 23.12.2020 that, the proceeding before him is not hit by the provisions of law as laid down under Section-11 under Order-23, Rule-3 and under Order-2, Rule-2 of the CPC, as was insisted by the writ petitioner herein. Hence, we have been approached to quash the order dated 26.08.2022 passed in Criminal Misc. Case No.06 of 2020 by the Chief Judicial Magistrate.

9. The Chief Judicial Magistrate refused to hold that the company is barred by *res judicata* to raise the same issue again by passing an express order. The Chief Judicial Magistrate was not inclined to re-call his earlier order on application, filed by the Opp. Party No.2 (the petitioner herein).

10. Mr. Sarangi, learned Senior Counsel has contended that the Chief Judicial Magistrate has utterly failed to take due consideration of the observation of the apex court, as made in the order dated 16.09.2022.

11. On a keen reading of the order dated 14.10.2022 as passed by the Chief Judicial Magistrate, Cuttack in Misc. Case No.06 of 2020 it surfaces that due consideration was taken of the observation made by the apex court by reflecting the plea in the impugned order.

12. According to the petitioner, since the apex court has observed that must have binding effect on the decision of the Chief Judicial Magistrate. As stated earlier, the Chief Judicial Magistrate did not entertain that plea by observing that the court found it difficult to accept.

13. It is a little surprising that the Chief Judicial Magistrate sought to exercise the power of review notwithstanding that the law in this regard is no more *res integra*.

14. It is well settled that, the power of review has to be created by the statutory provision. It is not inherent. Which is inherent in every Court is to correct the typographical or arithmetical mistakes etc.

15. There are two aspects in the matter viz. (1) whether the apex court has made any observation which is definite and binding in

nature (2) whether the order of the District Magistrate dated 23.12.2020 creates any jurisprudential bar from considering the similar prayer.

16. The basic feature of *res judicata* is that the decision on adjudication, *intra partis* cannot be reopened. But in this case, the jurisdiction or authority as created under Section-14(1) of the SARFAESI Act is not adjudicatory in nature, rather that of a facilitator.

17. Hence, in our considered view, the doctrine of *res judicata* regular or constructive cannot be applied in this case.

18. The challenge, fundamentally raised is that whether the Chief Judicial Magistrate can exercise the power under Section 14(1) of the SARFAESI Act or not. The apex court has declined to interfere. Consequently, the proposition of *Bajaj Finance Ltd. (supra)* stood affirmed before the apex court.

19. Hence, we do not find any merit in this petition. Accordingly, the same stands dismissed.

20. No order as to cost.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge





