

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12766 OF 2022

BAJAJ FINANCE LIMITED,

a company incorporated under the provisions of)
the Companies Act having its Corporate office)
at 4" floor, Bajaj Finserv Corporate Office, Off)
Pune Ahmednagar Road, Viman Nagar, Pune -)
411014 and registered office at Mumbai Pune)
Road, Akurdi, Pune - 411 035 and Mumbai)
Office at B-10, 1st Floor, Shriram Industrial)
Estate, Katrak Road, Opp. Wadala Udyog)
Bhavan, Wadala, Dadar (E), Mumbai — 400031.)

...PETITIONER

Vs.

1. NISHANT PRAKASHCHANDRA BHUTADA)

Indian inhabitant, residing at House No. 8,)
Chopada Duplex No 676/1, H Kala Nagar,)
Nashik, Maharashtra -422 001.)

2. NISHANT PRAKASHCHANDRA)

BHUTADA, HUF)
Indian inhabitant, residing at House No. 8,)
Chopada Duplex No 676/1, H Kala Nagar,)
Nashik, Maharashtra ~ 422 001.)

3. MAGIC MOTORS,)

Through its authorized signatory Nishant)
Prakashchandra Bhutada, Plot No. 02, Mata)
Motors, Next to PTC ground, Trimbak Road,)
Mahatma Nagar, Nasik — 422 007.)

4. PRAKASHCHANDRA BHUTADA)

Indian inhabitant, residing at House No. 8,)
Chopada Duplex No 676/1, H Kala Nagar,)
Nashik, Maharashtra - 422 001.)

5. KANCHAN BHUTADA,)
 Indian inhabitant, residing at House No. 8,)
 Chopada Duplex No 676/1, H Kala Nagar,)
 Nashik, Maharashtra - 422 001.)
6. SARITA BHUTADA,)
 Indian inhabitant, residing at House No. 8,)
 Chopada Duplex No 676/1, H Kala Nagar,)
 Nashik, Maharashtra — 422 001.)
7. DATTU RAGHUNATH HADPE,)
 Indian inhabitant, having address as At Post)
 Mhalasakore, Tal. Niphad, Dist. Nasik also)
 at Plot No. 2, Mata Motors, next to P.T.C.)
 Grounds, Trimbak Road, Mahatma Nagar,)
 Nasik — 422 007.)
8. STATE OF MAHARASHTRA,)
 Through the Government Pleader, Bombay)
 High Court, Appellate Side Bombay)
9. ADDITIONAL DISTRICT MAGISTRATE)
 NASHIK) ...RESPONDENTS

Mr. Chirag Balsara, Mr. Manoj Prajapati, Ms. Pooja Tripathi a/w. Mr. Mohit Gadkari i/b. Mohit Gadkari and Co. for the Petitioner.
 Ms. Shruti D. Vyas, 'B' Panel counsel for the State/Respondent nos. 8 and 9.
 Mr. Jainish Jain for Respondent nos. 1 to 6.

**CORAM : NITIN JAMDAR AND
 GAURI GODSE, JJ.**

DATE : 23 November 2022.

ORAL JUDGMENT (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Respondents waives service. Taken up for disposal.

2. By this Petition, the Petitioner-Financial Institute is seeking to challenge the Order dated 15 February 2020 passed by the Additional District Magistrate, Nashik in Securitization Case No. 359 of 2018 rejecting the said Application filed by the Petitioner for obtaining possession of property of Respondent nos. 1 to 6-borrowers.

3. Respondent nos. 1 to 6 sought financial assistance in respect of subject property from the Petitioner. The loan was granted to Respondent nos. 1 to 6 to the tune of Rs.5 crores as against security of the subject property and by way of an Agreement dated 30 April 2012, the first charge over the subject property was registered. Respondent no. 1 signed the Agreement as a borrower and Respondent nos. 2 to 6 as co-borrower of the loan. Since the Respondent nos. 1 to 6 did not adhere to the commitments under the Loan Agreement, the Petitioner filed an Application under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Thereafter, the borrowers instituted certain proceedings in the Civil Court and according to the Petitioner, sought to create a fraudulent Tenancy Agreement. Further, the civil proceedings were instituted between the parties. The Petitioner filed Writ Petition No. 2895 of 2019 for direction to the Additional District Magistrate to decide the Securitization Application in a time bound manner. Thereafter, by the impugned order dated 15 February 2020, the Additional District Magistrate rejected the petition filed by the Petitioner seeking possession of the subject property. The Additional District Magistrate stated in the order that it would be open to the

Petitioner to file an Appeal in the Debt Recovery Tribunal under section 17 of the Act of 2002. Being aggrieved by the impugned order, the Petitioner is before us in this Writ Petition.

4. Learned counsel for the Petitioner submitted that the impugned order passed by the Additional District Magistrate is wholly without jurisdiction and the Magistrate is not empowered under section 14 of the Act of 2002 to adjudicate inter-se rights between the lender and borrowers and has to only take action as stipulated under section 14 of the Act of 2002. Learned counsel for the Petitioner submitted that no adjudicatory powers have been conferred on the Additional District Magistrate under section 14 of the Act of 2002. Learned counsel further submitted that this is a modus operandi of the Respondents-borrowers where they have indulged in the same method and the same Additional District Magistrate, Nashik in another proceedings instituted by different lender, has passed an Order rejecting the Application after adjudicating inter-se rights. Learned counsel for the Petitioner has relied on the decision of the Division Bench of this Court in the case of *Phoenix ARC Private Ltd. & Anr. vs. The State of Maharashtra & Ors.*¹ and the decision of the Hon'ble Supreme Court in case of *Balkrishna Rama Tarle Dead thr. LRS & Anr. vs. Phoenix ARC Pvt. Ltd. & Ors.*² confirming the decision of the Division Bench in the case of *Phoenix ARC Private Limited*. Learned counsel submitted that therefore serious view of the matter be taken.

5. Learned counsel for the State sought to contend that though the

¹ Writ Petition No. 9749 of 2021

² Special Leave Petition No. 16013 of 2022

position of law as laid down in the said decisions and as emerges from Section 14 of the Act of 2002 is undisputable, there is no such malafide intention on the part of Additional District Magistrate. Learned counsel for the State submitted that in view of the order passed by the Division Bench of this Court in Writ Petition No. 2895 of 2019 dated 10 January 2020, as corrected on 14 January 2020., the Magistrate was genuinely of the view that adjudication should be carried out and therefore, he has proceeded to pass the impugned Order. Learned counsel for the Respondents-borrowers stated that time may be given to reply on merits.

6. Section 14 of the Act of 2002 postulates that the Chief Metropolitan Magistrate or District Magistrate is to assist secured creditor in taking possession of secured asset. As regards the ambit of power of the Magistrate under section 14 of the Act of 2002 has squarely fallen for consideration of the Hon'ble Supreme Court in the case of *Balkrishna Rama Tarle*, the Hon'ble Supreme Court in paragraph 5.2 specifically framed a question as to whether the Magistrate can pass an order regarding the ambit of Section 14 of the Act and has observed thus:

“5.2 Thus, the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial step and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter, once all the requirements under Section 14 of the SARFAESI Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of

any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under section 17 of the SARFAESI Act, before Debts Recovery Tribunal.”

7. It is not disputed and cannot be disputed before us that the Magistrate could not have adjudicated inter-se rights between the Petitioner and Respondents as regards the claim of tenancy. If the Respondents-borrowers wanted to restrain the Petitioner-lender from taking any action or protect their possession, they have to approach the Competent Court/Authority to obtain a restraint order and not file reply in this petition on merits.

8. As regards the contention of learned counsel for the Petitioner that the order is not only without jurisdiction but malafide, learned counsel for the State, as stated above, contended that the Magistrate has misread the order passed by the Division Bench of this Court in Writ Petition No. 2895 of 2019 in the earlier petition filed by the Petitioner on 10 January 2020. It would be appropriate to reproduce the order in entirety :

“1. The Petitioner is aggrieved by the fact that the learned Metropolitan Magistrate has not passed an order on an application filed by the Petitioner under Section 14 of the SARFAESI Act, 2002 on account of the fact that on 27th April 2018 an order passed in R.C.S. No.230 of 2018 was communicated to the learned Metropolitan Magistrate who in turn informed the Petitioner of said order. The order in question has been passed in a suit filed by one Shri. Dattu Raghunath Hadpe against Shri. Nishant Prakashchandra

Bhutada to whom the Petitioner claims to have extended a credit.

2. From the nature of the order it is apparent that the claim of Shri. Dattu Raghunath Hadpe is that he is a tenant in the subject property.

3. Suffice it to state in proceedings under Section 14 of the SARFAESI Act, 2002, learned Metropolitan Magistrate can appoint an officer to take possession of the secured asset if the same is in possession of the debtor. Learned Metropolitan Magistrate can throw out a tenant.

4. If it is the case of the Petitioner that the suit is a collusive suit, the remedy is to file an application seeking impleadment in the suit and obtain necessary orders.

5. If the Petitioner wants to sell the property on as is where is basis the Petitioner does not need any help from the learned Metropolitan Magistrate for the reason if property is tenanted the same can be attached and sold but subject to the right of the tenant.

6. It is for the Petitioner to choose what course it should follow.

7. The Writ Petition is misconceived and is therefore dismissed.”

This Order thereafter was corrected on 14 January 2020 as under:

“1. Not on board. Upon mentioning taken on board.

2. A praecipe has been filed by the learned counsel for Respondent Nos. 1 to 3 for speaking to the minutes of the order dated 10th January 2020.

3. It is submitted that wherever there are words “learned Metropolitan Magistrate” the same be substituted as “learned District Magistrate”. It is also submitted that in fourth line in paragraph No.3 on page No.2, the word “can” be substituted by “cannot”.

4. Order dated 10th January 2020 be corrected accordingly. Corrected order be uploaded.”

9. According to learned counsel for the Petitioner, the observations made by the Division Bench in Writ Petition No. 2895 of 2019 dated 10 January 2020 are *per incuriam* and does not consider settled position of law. The Petitioner has not challenged the order further. We note this order only in the context of explanation sought to be put forth by the learned counsel for the State that there was no intention on the part of the Magistrate in passing the impugned order and the Magistrate had followed the order passed in Writ Petition no. 2895 of 2019 as understood by the Magistrate. Since now the legal position has been settled by the Hon'ble Supreme Court in the case of *Balkrishna Rama Tarle* and that it is not seriously disputed before us by the learned counsel for the State that the order cannot be sustained in light of the law laid down by the Hon'ble Supreme Court, we do not wish to elaborate on the aspect of intention on the part of learned Magistrate any further.

10. In light of the above discussion, the impugned order is quashed and set aside. The Application of the Petitioner in Securitization Case No. 359 of 2018 is restored to the file of Additional District Magistrate. The proceedings be listed before the Additional District Magistrate on 7 December 2022 at 11 a.m.

11. Considering the fact that the delay has occurred due to an order that was passed without jurisdiction, the Additional District

Magistrate, Nashik will consider taking steps as per law at the earliest subject to earlier time bound commitments and pressing public duties, within a period of four weeks.

12. Rule is made absolute in above terms. Writ Petition is disposed of.

(GAURI GODSE, J.)

(NITIN JAMDAR, J.)