IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.5055 OF 2021

1]	Authorized Officer, I.D.B.I Bank Ltd. 7th Floor, IDBI Tower, WTC Complex, Cuff Parade, Colaba, Mumbai 400 005	]]]]	
2]	Authorized Officer, Axis Bank Ltd. Axis House, C-2, Wadia International Centre, 7th Floor, P. B. Marg, Worli, Mumbai 400 025	]]]]	
3]	Authorized Officer, Bank of Baroda, ZOSARB Branch, Pune 2nd Floor, Omkar Jyoti Niwas Market Yard Road, Gultekdi, Pune 411037	]]]]	
4]	Authorized Officer, CFM Asset Reconstruction Pvt.Ltd. First Floor, Wakefield House, Sprott Road Balard Estate, Mumbai 400 038	]]]]	….. Petitioners

versus

1]	The State of Maharashtra, Through the Office of the Additional District Magistrate, Nashik	]]]	
2]	Powerdeal Energy System (I) Pvt. Ltd. Director 1) Shri Mahesh Babanrao Khairnar, 2) Shri Yogesh Babanrao Khairnar, R/at F-29 (A & B), M.I.D.C. Satpur, Nashik 422 007	]]]]]	….. Respondents

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Mr. Rohit Gupta a/w Mr. Tushar Halwai and Mr. Haneen Shaikh i/by Ms. Rubina Khan for Petitioners.
Ms. S D. Vyas `B' Panel Counsel for Respondent No.1/State.

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.
DATED : 19th JULY 2022

JUDGMENT : (PER A.S. DOCTOR, J.)

1 The present Writ Petition impugns an order dated 26th March 2021 ("impugned order") passed by the Additional District Magistrate, Nashik in Securitization Case No.285/2017 ("the said Application") filed by Petitioners under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act"). By the said order the Additional District Magistrate, Nashik has disposed the said Application without taking possession of the secured assets mortgaged by Respondent No. 2 in favour of Petitioners despite due compliance by Petitioners with the provisions of Section 14 of the SARFAESI Act.

2 The facts, briefly stated are, that Petitioners are authorized officers of four financial institutions who had advanced loans aggregating Rs.141.38 crores (approximately) to Respondent No.2 at various intervals. The said loans had been secured, *inter-alia,* by a mortgage of the following immovable properties ("secured assets") created by Respondent No. 2 in favour of the Petitioners, viz.

> *"(a) All those pieces and parcel of Leasehold Land bearing Survey No.4/1, 4/2, 5/1, 5/2, 5/3/4,*

6/2/1 admeasuring 80,400 sq. meters, situated at Village Vilholi, Taluka and District Nashik, and within the limits of Zilla Parishad, Nashik and within the limits of Vilholi Grampanchayat together with all buildings, sheds and structures constructed thereon and all plant and machinery attached to the earth or permanently fastened to anything attached to the earth. Fixtures and fitting erected / installed thereon and every part thereof and all movable assets.

(b) All those pieces and parcel of the property bearing Plot No.F-29A admeasuring area 1628 sq. mtrs. And Plot No. F-29B admeasuring area 2489 sq.mtrs. in the Nashik Industrial Area at Village Satpur, within the limits of Nashik, Municipal Corporation, taluka and District Nashik together with all buildings shed and structures constructed thereon and all plant and machinery attached to the earth or permanently fastened to anything attached to the earth. Fixtures and fittings erected / installed thereon and every part thereof and all movable assets."

It is not in dispute that Respondent No. 2 thereafter committed defaults in repayment of the amounts due to Petitioners which led to Petitioners classifying the accounts of Respondent No.2 as Non-Performing Assets ("NPA"). Petitioners thereafter, in their capacity as secured creditors as defined in Section 2 (zd) of the SARFAESI Act, issued a demand notice to Respondent No.2 under Section 13(2) of the said Act. Despite due receipt of the said demand notice Respondent No. 2 failed and neglected to discharge in full it's liabilities to Petitioners within the statutory period of 60 days as provided for in Section 13(2) of the SARFAESI Act, thus entitling Petitioners to take possession of secured assets under Section 13(4) of the said Act.

3 It appears Respondent No.2 thereafter obstructed Petitioners from taking possession of the secured assets. On 8th February 2021 Petitioners thus filed an Application invoking the jurisdiction of the Additional District Magistrate, Nashik *to* assist Petitioners in taking possession of the said secured assets in which the Petitioners sought the following reliefs, viz.

> *"a. To exercise powers under section 14 of the Act and take over the possession of the secured asset as described hereinabove for the recovery of Rs.286,63,61,990.47/-(In Words Rupees Two Hundred And Eighty Six Crore Sixty Three Lakhs Sixty One Thousand Nine Hundred And Ninety & paisa forty seven only)*
>
> *b. To handover the possession of the secured asset with documents thereof to Applicants herein.*
>
> *c. To direct the concerned police authorities to assist/give full protection to the officers appointed by this Hon'ble Court for execution of the order; and if the premises are found locked, to break open the lock of the said premises.*
>
> *d. Applicants are ready to bear the cost of the proposed action.*
>
> *e. Any other just and equitable relief may please be granted in favour of the Applicants.*

4 Petitioners thereafter completed all formalities/requirements as required by the Additional District Magistrate, Nashik. Respondent No. 2 filed its objections cum reply to the said Application.

5 However, despite the fact that Petitioners had complied with the provisions of Section 14 of the SARFAESI Act, the Additional District Magistrate, Nashik did not take possession of the secured assets but disposed Petitioners' Application, *inter alia,* holding as follows, viz.

> *"3 (ii) As mentioned by the Applicant Banks in their undertaking dated 05/03/2021 submitted to this office that, the Applicant IDBI Bank filed the Original Application No.144/2020 before Hon'ble National Company Law Tribunal (NCLT) against the Defendant. As per provisions of the said Act, the Hon'ble National Company Law Tribunal (NCLT) has right to take over management of the Defendant and to appoint Receiver on the management of the Defendant and also has right to direct to deposit all the monies coming in the Account of the Defendant to the Applicant Banks and also has right to hold disposing of all properties of the Defendant. With respect to same, the Applicant IDBI Bank not mentioned anything in their Application before this office that, whether they have made any such above mentioned prayers in the Original Application No.144/2020 filed before Hon'ble National Company Law Tribunal (NCLT) or whether they already got any order in that Application. Also in this situation, it seems that, even though the Applicant already filed an application before the Hon'ble National Company Law Tribunal (NCLT) for getting above mentioned orders and NCLT is appropriate forum for passing such orders still the Applicant filed application before this office for getting possession of the mortgaged properties only for increasing number of cases against the Defendant (Multiplicity of Proceedings). Also the Applicant Bank not mentioned in their application, whether they have informed to the Hon'ble National Company Law (NCLT) about filing of application for taking over possession of mortgaged properties before this office or not.*
>
> *(iii) As per undertaking dated 10/03/2021 filed by*

the Applicant Bank to this office, the Applicant Axis Bank already filed Original Application No.24/2017 before Hon'ble Debt Recovery Tribunal, Mumbai (DRT) against the Defendant. Also, the Applicant Bank of Baroda already filed Original Application No.62/2017 before Hon'ble Debt Recovery Tribunal (DRT) against the Defendant. Also the Applicant SVCP Bank already filed the Original Application No.708/2017 against the Defendant. With respect to the same, the Applicant Banks filed their Undertakings to this office. However, they have not mentioned in their application anything about what kind of orders are passed by Hon'ble Debt Recovery Tribunal, Mumbai (DRT) in those cases against the Defendant. Those cases were filed in and around 2017, however, the Applicant Banks have not mentioned anything about any orders passed in those cases with respect to recovery of the loans from the Defendant.

(iv) On perusal of written objections submitted by the Defendant before this office, the Defendant raised strong objection on the action of the Applicant Banks by declaring its loan account as NPA. Also the Defendant mentioned that, the Applicant Banks recorded the loan amounts in a wrong way in its loan account and illegally declared its loan account as Non Performing Asset (NPA). Also as per written objections raised by the Defendant on 07/11/2016, 28/11/2016, 09/07/2016 and 08/02/2017 respectively against the notices sent by the Applicant Banks under section 13(2), the Applicant Banks have not provided the documents for inspection as demanded by the Defendant in above mentioned replies. Also it is mentioned by the Defendant that, the Applicant Banks are trying to do conspiracy against the Defendant and therefore, illegally declared the loan account of the Defendant as Non Performing Assets (NPA) in order to take illegal/forceful possession of the mortgaged properties of the Defendant so that the Applicant Banks can carry out illegal auction of those properties. Also the Chartered Accountant of the Defendant certified after verification/ inspection of loan accounts that the dues mentioned by the Applicant Banks against the

loan is incorrect. Therefore, for the above reasons, the Defendant already filed the Criminal Complaint No.201/2021 against the Applicant Banks before Hon'ble Magistrate Class 1 and in the said case, the Hon'be Magistrate Class 1 issued order on 12/03/2021 to carry out preliminary inquiry against the accused Applicant Banks under Section 195 and 340 of Criminal Procedure Code. Also the Court had already called for report of Chartered Accountant. On perusal of above mentioned order passed by Hon'ble Magistrate Class 1 it seems that, the Court found some prima facie merits in the Criminal Complaint No.201/2021 filed by the Defendant against the accused Applicant Banks and therefore, Hon'ble Court issued the above mentioned orders. On perusal of papers of the said case, the Defendant made serious allegations against the Applicant Banks and therefore, there is questions/doubts on the multiple cases filed by the Applicant Banks against the Defendant in various courts/forums. After considering the orders passed by the Hon'ble Magistrate Court against the accused Applicant Banks for carrying out inquiry under section 195 and 340 of Criminal Procedure Code, I came to conclusion that, if there are any orders passed against the Defendants which will have direct impact on the inquiry to be conducted pursuant to the abovementioned orders or which will prejudice the said inquiry then it will Contempt of Court as per provisions of Section 2 (C) and sub sections of Contempt of Court Act, 1971

(v) Pursuant to above referred issues, and on perusal of Section 14 of SARFAESI Act, 2002, as per application and documents submitted by the Banks, the concerned District Collector or Metropolitan Magistrate, if satisfied with the application and the documents, have authority of issuing the orders of granting possession of mortgaged properties as per the said provisions, however, on perusal of legal provisions and factual circumstances of present case as detailed out in the above mentioned Section i and iv, prima facie it seems that, the Applicant Banks have not complied binding provisions of loan account

> *of the Defendant. Hence, if the orders of handing possession of mortgaged properties are passed in favour of the Applicant Banks then there is possibility of complications in the ongoing legal cases and possibility of contempt of court also cannot be denied. Also there is possibility of unnecessary injustice with the Defendant.*
>
> *Hence, I Bhagwat Doiphode, Additional District Magistrate, Nashik, came to conclusion of disposing the application filed the Applicant Banks under Section 14 of SARFAESI Act, 2002.*
>
> *ORDER*
> *1. The present application is disposed off.*
> *2. No order as to cost.*
> *3. Inform the order to all concerned by Registered Post.*
> *4. If this order is not acceptable then as per provisions of Section 17 of securitisation Act, 2002, the Parties can file appeal before the Debt Recovery Tribunal Mumbai."*
>
> (emphasis supplied)

6 Mr. Rohit Gupta, the learned counsel appearing on behalf of Petitioners, submitted that the impugned order was perverse and beyond the scope of the jurisdiction vested in the Additional District Magistrate Nashik under Section 14 of the SARFAESI Act. Mr. Gupta submitted that the Additional District Magistrate Nashik had not only travelled beyond the jurisdiction vested in him by virtue of Section 14 of the SARFAESI Act, 2002 but had infact acted contrary to it. Mr. Gupta invited our attention to Section 14 of the SARFAESI Act, 2002 which provides as follows, viz.

> *"14. **Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking***

***possession of secured asset*—**

(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset 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 asset, 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 assets and documents to the secured creditor.

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorized 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 the Financial 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 there under 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 <u>purpose of taking possession of the secured asset within a period of thirty days from the date of application</u>.

Provided also that if no order is passed by the Chief Metropolitan

> *Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.*
>
> *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 of 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 Magistrate (any officer authorised by the Chief Metropolitan or District Magistrate) done in pursuance of this section shall be called in question in any court or before any authority"*

Mr. Gupta submitted that (a) the jurisdiction vested in the relevant Authority under Section 14 of the SARFAESI Act, was limited only to the relevant Authority aiding and assisting the secured creditor in recovering possession of the secured asset(s) from a defaulting borrower and nothing more; (b) Section 14 does not provide for the borrower to file a Reply, despite which Respondent No.2 had not only filed a Reply but the contents of the same had even been considered by the Additional District Magistrate in the Impugned Order; (c) in paragraphs 3(ii) to (iv) of the impugned order the Additional District Magistrate had gone into and dealt with the contentions raised by Respondent No.2 in the said Reply, which was ex facie beyond the jurisdiction vested in him under Section 14 of the SARFAESI Act.

In support of his submission that the Additional District Magistrate had travelled beyond his jurisdiction, Mr. Gupta placed reliance on a judgment of a Division Bench of this Hon'ble Court in ***Kotak Mahindra Bank Ltd. and Ors. vs. The State of Maharashtra and Ors***,[1] which held as follows, :-

> *19. We are therefore of the view that the Magistrate is required to ascertain whether the statements are made by the bank under the nine clauses below Section 14(1) and once he is satisfied that the statements as required in those nine clauses have been made by the bank in its affidavit, the Magistrate/DM would proceed to grant the application under Section 14(3).*
>
> *20. Considering the law laid down by the Hon'ble Apex Court and which was relied upon by the three benches of this Court, we find that the Magistrate has travelled beyond its jurisdiction in this case in going*

1 MANU/MH/0877/2018 = (2018 4 ALLMR 37

into the limitation aspects under Sections 14(1) and 14(3). Once a recovery certificate was issued, the bank would derive its authority to recover the said amount within 12 years. The Magistrate, while exercising jurisdiction under Section 14(1), was only required to verify whether there was a mortgage keeping in view the second proviso below Section 14(1) by which the CMM/DM has to satisfy itself as regards the contents of the affidavit being in tune with the declarations required to be made by the bank in the nine clauses below the first proviso and whether the secured assets are located within his jurisdiction (See. Trade Well v. Indian Bank (supra).

21. In the light of the above, we find that the CMM was not required to go into whether the claim of the bank was barred by limitation or not since the first as well as the second proviso and the nine clauses introduced by the amendment dated 15.01.2013 to Section 14(1), did not invest this jurisdiction with the said authority. The impugned order dated 10.04.2017 is therefore unsustainable."

Based upon the above, Mr. Gupta submitted that the order of the Additional District Magistrate was bad in law and in excess of the jurisdiction vested in the Additional District Magistrate under Section 14 of the SARFAESI Act.

7 Respondent No.1 has not filed any Affidavit in Reply opposing the Writ Petition. Ms. Vyas, the learned counsel appearing on behalf of Respondent No.1, while supporting the impugned order fairly did not dispute that insofar as the findings contained in paragraphs 3 (ii) to (iv)

thereof, the same were beyond the scope of Section 14 of the SARFAESI Act.

8 Having heard the learned counsel for the Parties and having perused the pleadings and the provisions of the SARFAESI Act, as well as considering the law laid down by this High Court in the case of ***Kotak Mahindra Bank Ltd. (supra)*** we find that the Additional District Magistrate, Nashik has not only transgressed the jurisdiction vested in him under Section 14 of the SARFAESI Act but has infact acted contrary to it. The jurisdiction vested under Section 14 of the SARFAESI Act is limited only to assisting a secured creditor in taking possession of the secured assets and nothing more. Section 14 does not contemplate, much less provide for the defaulting borrower to raise any objections and/or reasons to resist the taking of possession of the secured asset(s) by the Authorities so mentioned in Section 14. The defaulting Borrower under Section 14 does not have any vested right of hearing and/or of filing a reply. Section 14 comes into play when secured creditor has failed to discharge in full its liabilities within sixty days from receipt of a demand notice issued under Section 13(2) of the SARFAESI Act. Section 14 is merely an enabling provision under Chapter III of the SARFAESI Act to enable a secured creditor to recover possession of the secured assets from a defaulting and non-cooperative borrower, thats all. The function of the relevant Authority under Section 14 of the SARFAESI Act is purely ministerial and restricted to ensuring that the

secured creditor has complied with the requirements [as set out in Section 14 (1) (i) to (ix)]. Once the Authority is satisfied that the requirements of Section 14 have been met and/or complied with, the Authority has to proceed to take possession of the secured asset. The wordings of Section 14 leave no manner of doubt in this regard, viz.

> *(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset 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 asset, 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 assets and documents to the secured creditor.*

9 It is also essential to note that Chapter III of the SARFAESI Act is for "*Enforcement of Security Interest*" and Section 13 specifically provides for a secured creditor to enforce the security interest created in its favour *without the intervention of the court or tribunal*. The secured creditor under Section 13 (3A) has a right to make any representation or raise any objection on receipt of a demand notice. Section 14 is only an enabling provision which comes into play only after the defaulting borrower has

failed and/or neglected to *discharge in full* its liability to the secured creditor and is limited to providing assistance to the secured creditor to recover possession of secured asset against non-co-operative borrowers thats all.

10 Thus in light of the above observations, we find that the Additional District Magistrate, Nashik has transgressed the jurisdiction vested in him under Section 14 of the SARFAESI Act. We accordingly set aside the Impugned Order and remand the matter with direction that the same be heard and disposed within a period of six weeks from today in accordance with the provisions of Section 14 of the SARFAESI Act.

11 Petition disposed.

[A.S. DOCTOR, J] **[K.R. SHRIRAM , J]**