

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

WRIT PETITION NO.9749 OF 2021

1. Phoenix ARC Private Limited
a Company incorporated under the
Companies Act, 1956 and registered
as an Asset Reconstruction Company
pursuant to section 3 of SARFAESI
having its registered office at
5th Floor, Dani Corporate Park, 158,
C.S.T. Road, Kalina Santacruz (East),
Mumbai 400 098 acting in its
capacity as trustee of the Phoenix Trust
FY 19-5 Scheme 'K' (Phoenix).
2. Mr. Rahul Gurav,
the authorized representative of
Phoenix ARC Pvt., a having address at
5th Floor, Dani Corporate Park, 158,
C.S.T. Road, Kalina Santacruz (East),
Mumbai 400 098.

.....Petitioners

Vs.

1. The State of Maharashtra
Through the District Magistrate, Nashik
through Government Pleader (A.S.),
High Court, Bombay, High Court,
Mumbai.
2. Balkrishna Rama Tarle
having address at next to Chari No.6,
Aurangabad Road, Mazgavi Taluka
and Dist Nashik. (Since Deceased)

- 2(a) Mahalsabai Balkrishna Tarle
having address at next to Chari No.6,
Aurangabad Road, Mazgavi Taluka
and Dist Nashik and also at
Village Chandori, Taluka Nifad,
Dist. Nashik.
- 2(b) Deepak Balkrishna Tarle
having address at next to Chari No.6,
Aurangabad Road, Mazgavi Taluka
and Dist Nashik and also at
Village Chandori, Taluka Nifad,
Dist. Nashik.
- 2(c) Dyneshwar Balkrishna Tarle
having address at next to Chari No.6,
Aurangabad Road, Mazgavi Taluka
and Dist Nashik and also at
Village Chandori, Taluka Nifad,
Dist. Nashik.
- 2(d) Subhash Balkrishna Tarle
having address at next to Chari No.6,
Aurangabad Road, Mazgavi Taluka
and Dist Nashik and also at
Village Chandori, Taluka Nifad,
Dist. Nashik.
- 3. M/s. Kanchan Motors through
its Proprietor Nishant Bhutada having
address at 3rd Floor, Plot No.7,
S. No.396/2A/8, Tigrania Corner,
Dwarka, Nashik 422011.
- 4. M/s. Magic Motors, through
partner Nishant Bhutada, 3rd Floor,
Plot No.7, S. No.396/2A/8,
Tigrania Corner, Dwarka,
Nashik 422011.

5. M/s. Shaurya Motors, through
its Proprietor Mr. Nishant Bhutada
3rd Floor, Plot No.7, S. No.396/2A/8,
Tigrania Corner, Dwarka,
Nashik 422011.
 6. Prakashchandra Bhutada,
S/o. Mr. Gangabhishan Bhutada,
3rd Floor, Plot No.7, S. No.396/2A/8,
Tigrania Corner, Dwarka,
Nashik 422011.
 7. Kanchan Bhutada,
W/o. Mr. Prakashchandra Bhutada,
3rd Floor, Plot No.7, S. No.396/2A/8,
Tigrania Corner, Dwarka,
Nashik 422011.
 8. Sarita Bhutada,
w/o. Nishant Bhutada, R/o. House No.8,
Chopda Duplex, H. Kala Nagar,
S. No.676/1, Gangapur Road,
Nashik 422 005.
 9. Nishant Bhutada
S/o Prakashchandra Bhutada,
R/o. House No.8, Chopda Duplex,
H. Kala Nagar, S. No.676/1,
Gangapur Road, Nashik 422 005.
 10. Nishant Prakashchandra Bhutada, HUF
through Karta Nishant Prakashchandra
Bhutada
3rd Floor, Plot No.7, S.No.396/2A/8,
Tigrania Corner, Dwarka,
Nashik – 422011.
-Respondents

Mr. Prathmesh Kamat along with Ms. Jyoti Sanap i/by M/s. V. Deshpande & Company for Petitioners.

Smt. S.D. Vyas, GP, 'B' Panel for Respondent No.1-State.

Mr. Durgesh Rege for Respondent Nos.2(a) to 2(d).

Mr. Mayank Bagla i/by Mr. Jainish Jain for Respondent Nos.3 to 9.

**CORAM : K. R. SHRIRAM &
A. S. DOCTOR, JJ.**

DATE : 03RD AUGUST, 2022

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

1. The present Writ Petition impugns an order dated 27th August 2021 ("impugned order") passed by Respondent No.1 (Additional District Magistrate, Nashik) in an application filed by Petitioners under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') seeking assistance of Respondent No.1 to recover possession of the properties mortgaged ("secured asset") by Respondent Nos. 3 to 8 (Borrowers) in favour of Petitioner. By the impugned order not only has Respondent No.1 failed and neglected to assist Petitioner in recovering possession of the secured asset, but has effectively granted relief in favour of Borrowers and Respondent No.2 (a Third Party).

2. We are constrained to note that the impugned order is yet another instance of the Designated Authorities (“DA”) under Section 14 of the SARFAESI Act not only failing and/or neglecting to exercise the jurisdiction vested in them under Section 14 of the SARFAESI Act, but instead, and regrettably acting in excess of the jurisdiction vested in them under Section 14 and also contrary to Section 14 of the SARFAESI Act. We find that such conduct on the part of the DA is now common place and is being impugned repeatedly before this Hon’ble Court. This is despite the fact that the scope of Section 14 as also the jurisdiction of the DA thereunder is not only clear from a plain reading of Section 14 but has since been emphasized in several judgements of the Hon’ble Supreme Court as well as this Hon’ble Court. Before we advert to the same, it is necessary to set out the facts of the present case leading upto the passing of the Impugned Order.

3. In or about September 2014, Borrowers had approached one Religare Finvest Limited (‘Religare’) for a loan of Rs. 6 Crores. Religare by its sanction letter dated 30th September, 2014 issued the said loan to Borrowers. The said loan was secured by a

registered mortgage created by Borrowers in favour of Religare in respect of the following properties, i.e., the secured assets :-

“All the piece and parcel of N.A. land bearing Gut No.463 (North Part), admeasuring at about 2000 sq.mtrs and South Part admeasuring at about 3900 sq.mtrs, and all that piece and parcel of NA land Gut No.465 (West) Part admeasuring at about 2600 sq. mtrs and total admeasuring at about 8500 sq. mtrs along with the constructed ground floor + 1st floor, show room along with service station having total built up area of about 669.44 sq. mtrs situated at Madsangvi Revenue Village Limit, Revenue Limit Nashik within the limits of Nashik Municipal Corporation and Joint Sub-Registrar Nashik, District Nashik.”

4. Thereafter, Borrowers committed defaults in repayment of the said loan which led to Religare classifying Borrowers' account as a Non-Performing Asset (NPA) with effect from 31st March, 2018. Religare, thereafter, issued a notice dated 13th April, 2018 under Section 13(2) of the SARFAESI Act ('first SARFAESI notice') calling upon Borrowers to pay the amount then outstanding under the said facility within the sixty days period provided for under Section 13(2) of the SARFAESI Act.
5. Thereafter by a Deed of Assignment dated 29th September, 2018, Religare, unconditionally and absolutely, assigned all its right, title, interest and benefit under the said loan agreement to Petitioner No.1 (hereinafter referred to as Petitioner). Petitioner,

thus, having stepped into the shoes of Religare become the secured creditor and in that capacity issued a notice dated 21st May, 2019 under Section 13(2) of the SARFAESI Act ('second SARFAESI notice') to Borrowers calling upon Borrowers to make payments of a sum of Rs.5,83,22,866/-. By the second SARFAESI notice, Petitioner recalled the first SARFAESI notice (issued by Religare) and called upon Borrowers to read the second SARFAESI notice, as being the stipulated demand notice under Section 13(2) of the SARFAESI Act.

6. Borrowers, by their letter dated 15th June, 2019 replied to the second SARFAESI notice and sought to deny their liability. Petitioner, therefore, by its letter dated 1st July, 2019 dealt with the contentions raised by Borrowers. Since Borrowers failed and neglected to discharge in full the outstanding loan amount within the sixty day period stipulated in Section 13(2) of the SARFAESI Act, Petitioner took symbolic possession of the secured asset under Section 13(4) of the SARFAESI Act. Pertinently, no proceedings were taken by Borrowers under Section 17 of the SARFAESI Act challenging the steps taken by Petitioner under Section 13 of the SARFAESI Act. On 21st September, 2019, Petitioner took symbolic possession of the secured assets and

intimated this fact to Borrowers vide their letter dated 21st September, 2019. A public notice was also issued by Petitioner in two newspapers in compliance with the provisions of the Security Interest (Enforcement) Rights, 2002.

7. Thereafter, Petitioner filed an application under Section 14 of the SARFAESI Act seeking the assistance of Respondent No.1 for taking physical possession of the secured assets. On or about 10th November, 2020, Respondent No. 2, claiming to be a tenant in respect of the ground floor plus first floor showroom along with service station on a part of the secured assets bearing Nos. 465 and 463 (“the said premises”), sought to intervene in the said proceedings filed by Petitioner before Respondent No.1. Respondent No.2 placed reliance upon an order dated 20th April, 2018 passed in regular Civil Suit No.58 of 2018 filed by Respondent No. 2 against one of the Borrowers (i.e. Respondent No. 8), whereby Respondent No. 8 was restrained from dispossessing Respondent No. 2 from the said premises. Pertinently, Respondent No. 2 also did not adopt any proceedings before the Debt Recovery Tribunal (“DRT”) under Section 17 of the SARFAESI Act.

8. Petitioner, filed an Affidavit dated 22nd January, 2021 before Respondent No.1 in reply to the intervention application and dealt with all the contentions raised by Respondent No.2 in the said Application for Intervention. The said Reply specifically stated that the Intervention Application and contentions raised therein were beyond the scope of the jurisdiction of Respondent No.1 under Section 14 of the SARFAESI Act. Despite the protest of Petitioner, Respondent No.1, vide the impugned order dated 27th August, 2021, declined to assist Petitioner in taking possession of the secured assets after holding that the application filed by Petitioner under SARFAESI Act was legal and valid. Respondent No.1 went on to pass the following order, viz.,

“ORDER

- 1. In consideration of the reasons recorded in the above referred issues and conclusions, the Application of the Finance Company is kept for decision.*
- 2. After termination of the tenancy rights of the third-person Complainant Shri. Balkrishna Rama Tarle by the Finance Company by following due procedure of law the further orders regarding possession of the mortgage property will be decided.*
- 3. If any party feel aggrieved due to this order, then they may file an appeal under section 17 of the Securitisation Act, 2002 before Hon’ble Debts Recovery Tribunal, Mumbai.*
- 4. No order as to cost.”*

9. Mr. Kamat, Learned Counsel appearing on behalf of Petitioner submitted that,

(a) The impugned order was not only incomprehensible but also in excess of the jurisdiction vested in Respondent No. 1 under Section 14 of the SARFAESI Act. Respondent No. 1, on the one hand, has held the Application filed by Petitioner to be legal and valid as per the provisions of the SARFAESI Act but then instead of passing an order for recovery of possession of the secured assets, kept the Application pending and subject to the outcome of certain purported tenancy proceedings pending between Respondent No. 2 and Respondent No. 8;

(b) The impugned order was completely beyond the scope of Section 14 and the jurisdiction vested in Respondent No. 1 under Section 14. The jurisdiction of the DA under Section 14 of the SARFAESI Act was well-settled by several judgments which held that the jurisdiction of the DA under Section 14 of the SARFAESI Act was limited only to the extent of assisting secured creditors in obtaining possession of the secured assets and nothing more. Section 14 did not even remotely contemplate, much less empower,

the DA to conduct any inquiry/hearing and/or consider and decide any objections raised by Borrower or a Third Party;

(c) The scope of the provisions of Section 14 is limited to verification of the mortgage documents deposited with the secured creditor and also, to ensure that the secured creditor had complied with and/or followed the process laid down under the SARFAESI Act (more particularly Section 13 and 14). After such verification, if the DA is satisfied that the secured creditor has a valid mortgage over the secured assets in question, then the DA without any further adjudication is necessarily required to render the assistance needed by the secured creditor to take possession of the secured assets and hand over the same to the authorised officer of the secured creditor;

(d) Section 14 of the SARFAESI Act does not provide for the Borrower much less a Third Party the right to file any reply or to intervene in the proceedings adopted by the secured creditor. The DA when hearing

an Application filed under Section 14 of the SARFAESI Act, is not empowered to hear Borrower much less a Third Party;

(e) Respondent No.1 even in entertaining and/or accepting the application filed by Respondent No. 2 has exceeded the scope of his jurisdiction under Section 14 of the SARFAESI Act. The remedy, available, to Borrowers and/or Third Parties aggrieved by steps taken under Section 13 of the SARFEASI Act, would be to file an Application under Section 17 of the SARFAESI Act before the relevant DRT and not to raise any dispute before the DA in proceeding adopted under Section 14. Respondent No.1 has completely ignored and given a go-by to the guidelines prescribed by the Hon'ble Supreme Court on the scope of the jurisdiction of the DA's when deciding Applications under Section 14 of the SARFAESI Act. In support of his contention, reliance was placed upon the judgement of the Hon'ble Supreme Court in ***NKGSB Co-operative Bank Limited Vs. Subir Chakravarty and***

Others¹ and our attention was invited to paragraph 28 thereof which held viz.

“28. *The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application Under Section 14(1) of the 2002 Act from the secured creditor for that purpose. As soon as such application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the 2002 Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. The latter is a ministerial act. It cannot brook delay. Time is of the essence. This is the spirit of the special enactment.*”

(emphasize supplied)

10. Mr. Kamat then went on to place reliance upon the following judgments in which the scope of the jurisdiction of the DA under Section 14 of the SARFAESI Act has been elaborated, set out and explained, viz.,

- (i) ***Indian Overseas Bank Vs. The State of Maharashtra & Ors.***²
- (ii) ***Asset Recovery Corporation India Ltd. Vs. State of Maharashtra & Ors.***³
- (iii) ***Liladhar Ladappa Kendole Vs. Solapur Janata Sahakari Bank Ltd. & Ors.***⁴

1 MANU/SC/0247/2022.

2 Writ Petition No.1740 of 2017, dated 13th December, 2017 (unreported).

3 Writ Petition No.8561 of 2010 dated 30th August, 2011 (unreported).

4 Writ Petition No.7486 of 2021 dated 9th November, 2021(unreported).

- (iv) *Kotak Mahindra Bank Limited Vs. The State of Maharashtra & Others.*⁵
- (v) *Authorized Officer, I.D.B.I. Bank Limited & Ors. Vs. The State of Maharashtra & Anr.*⁶

For the reasons stated above and placing reliance on the said authorities, Mr. Kamat concluded by submitting that the impugned order was entirely bad in law. Respondent No. 1 clearly transgressed the scope of his jurisdiction under Section 14 of the SARFAESI Act and therefore the impugned order required be set aside.

- 11. Per contra, Smt. Vyas, learned Counsel appearing on behalf of Respondent No.1, while supporting the impugned order, very fairly did not dispute that Section 14 did not empower Respondent No.1 to consider objections taken by a Third Party while deciding an application under Section 14 of the SARFAESI Act.
- 12. Mr.Rege, the learned counsel appearing on behalf of Respondent Nos. 2(a) to 2(d) (the heirs of Respondent No.2), supported the impugned order and submitted that no prejudice was caused to

⁵ 2018 SCC OnLine Bom 933.

⁶ Writ Petition No.5055 of 2021 dated 19th July, 2022 (unreported)

Petitioner as Respondent No.1 had not dismissed Petitioner's application but merely kept the same open for decision after termination of tenancy rights of late Balkrishna Rama Tarle (original Respondent No.2) by following due procedure of law. He submitted that thus the impugned order was in fact perfectly just, fair and legal.

13. Mr.Bagla, the learned counsel appearing on behalf of Respondent Nos.3 to 9, supported the submissions made by Mr.Rege.
14. No Affidavit-in-Reply opposing the said Writ Petition had been filed by any of Respondents.
15. We have heard Learned Counsel and have considered the papers and proceedings including the impugned order and also the several judgments cited by Mr. Kamat and are satisfied that Respondent No. 1 has not only transgressed the jurisdiction vested in him under Section 14 of the SARFAESI Act but has acted contrary to it. We find that the impugned order is patently illegal and contrary to Section 14 of the SARFAESI Act and therefore the impugned order requires to be quashed and set aside.

16. The jurisdiction of the CMM/DM under Section 14 of the SARFAESI Act is purely ministerial and limited only to assisting secured creditors in taking possession of secured assets and nothing more. Section 14 of the SARFAESI Act does not contemplate much less empower the DA to even consider much less adjudicate upon any objections raised by Borrower or anybody else. All that the DA is required to do when considering an Application under Section 14 is (a) to ascertain that the secured asset falls within his jurisdiction and (b) that the secured creditor has complied with the requirements of Section 13 and 14 of the SARFAESI Act, and nothing else. Once the DA is satisfied that the requirements of Section 13 and 14 have been met and/or complied with, the DA has to proceed to take possession of the secured asset. It is implicit on an examination of Chapter III of the SARFAESI Act that the DA on finding that the secured creditor has complied with Section 14 must act promptly and with due dispatch in ensuring that possession of the secured asset is recovered as quickly as possible. The very objective of Chapter III of the SARFAESI Act is to enable secured creditors to enforce their security interest *without the intervention of the court or tribunal*. We find that in several

cases, the DA dispose off Applications under Section 14 not only without granting assistance to secure creditors in recovering possession of their secured assets but in fact granting relief (directly or indirectly) to Borrowers and/or Third Parties as has been done in the present case. What is indeed shocking (as in the present case) is that reliefs are granted to Borrowers/Third Parties not only in the teeth of the provisions of Section 14 but also despite the fact that these Borrowers/Third Parties have not even contested the steps taken by the secured creditors under Section 13 for enforcement of their securing interest by filing any application before the DRT under Section 17 of the SARFAESI Act. We find that the DA under Section 14 of the SARFAESI Act claim powers which they do not have under Section 14 and proceed to pass orders which are completely contrary to the provisions of Section 14 and the very object and purpose of Chapter III of the SARFAESI Act. We find that the conclusion reached by Respondent No. 1 in the impugned order is a prime example of this very worrying trend.

17. In the present case Respondent No. 1 while having categorically held, on the one hand that the application filed by Petitioner was legal and valid has on the other hand completely derailed

the efforts of Petitioner in securing possession of its security interest. We cannot help but note that, Petitioner has been deprived of its security interest even though (a) Borrowers continue to be in default, and (b) there is no challenge by anyone to the proceedings adopted by Petitioner under Section 13 of the SARFAESI Act for enforcement of security interest. Thus the proceedings adopted by Petitioner to secure possession of its security interest has been effectively scuttled and resulted in relief being granted to defaulting and non-co-operative Borrowers. Such patently illegal orders, apart from defeating the very purpose of Chapter III of the SARFAESI Act, also burden this Hon'ble Court with needless litigation. It is for these reasons that we find it necessary to once again reiterate the extent and scope of the jurisdiction of the DA under Section 14. The DA while considering an Application filed by a secured creditor under Section 14 is only required to ascertain as follows

:-

- (i) Whether the immovable property falls within its jurisdiction?
- (ii) Whether notice of demand under Section 13(2) has been served on Borrower ?
- (iii) Whether a duly affirmed Affidavit accompanying said

application filed by the authorised officer of the secured creditor contains the declaration as required in Clauses (I) to (IX) of Section 14 of the SARFAESI Act?

It will be apposite to also refer to Paragraph 5 of the judgement in ***Asset Recovery Corporation India Ltd.*** (supra) and it reads as under :-

*“5. The parameters of the jurisdiction that is exercised by the District Magistrate under Section 14 has been explained in a judgment of the Division Bench of this Court in **Trade Well** (supra). The Division Bench has observed that while passing an order under Section 14, the District Magistrate has to consider only two aspects. He has to first determine whether the secured asset falls within his territorial jurisdiction. Secondly, the District Magistrate has to determine whether the notice under Section 13(2) has been furnished. The Division Bench held that no adjudication is contemplated at that stage. The principles which have been enunciated in the judgment of the Division Bench are inter alia as follows:*

“1. The bank or financial institution shall, before making an application under section 14 of the NPA Act, verify and confirm that notice under Section 13(2) of the NPA Act is given and that the secured asset falls within the jurisdiction of CMM/DM before whom application under section 14 is made. The bank and financial institution shall also consider before approaching CMM/DM for an order under section 14 of the NPA Act, whether section 31 of the NPA Act excludes the application of sections 13 and 14 thereof to the case on hand.

2. CMM/DM acting under section 14 of the NPA Act is not required to give notice either to the borrower or to the 3rd party.

3. He has to only verify from the bank or financial

institution whether notice under section 13(2) of the NPA Act is given or not and whether the secured assets fall within his jurisdiction. There is no adjudication of any kind at that stage.

4. *It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under section 14 of the NPA Act by recording that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under section 14.*

5. *Remedy provided under section 17 of the NPA Act is available to the borrower as well as the third party.*

6. *Remedy provided under section 17 is an efficacious alternative remedy available to the third party as well as to the borrower where all grievances can be raised.”*

18. Section 14 does not contemplate the following :-

- (i) Any notice to be given to either Borrower or a Third Party,
- (ii) Borrower or a Third Party to file any reply to the application,
- (iii) Borrower/Third Party to be heard,
- (iv) Adjudication as to the legality or validity of the mortgage.
- (v) Adjudication as to the quantum of the debt claimed by the secured creditor.
- (vi) Adjudication of any issues such as limitation, etc.

19. 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.

20. Petition disposed.

(A. S. DOCTOR, J.)

(K. R. SHRIRAM, J.)