

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.1078 of 2022

State Bank of India,
A banking Corporation Constituted
under The State Bank of India
Act, 1955, having one of its
Branch at Stressed Assets Recovery
Branch, 5 Sai Complex,
3rd Floor, Above Industrial Finance
Branch, Bharat Nagar,
Amravati Road, Nagpur-440033,
acting through its Authorised Officer
Sh. Sanjay Sudhakar Rambhad.

... Petitioner

Versus

1. State of Maharashtra,
Through Home Ministry,
Mantralaya, Mumbai 32.
2. District Magistrate,
Nagpur.
3. District Magistrate,
Washim.
4. District Magistrate,
Amravati.

... Respondents

Mr. A.T. Purohit, Advocate for Petitioner.

Mr. A.S. Fulzele, Additional Government Pleader for Respondents.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 26 APRIL 2022

ORAL JUDGMENT (PER : NITIN JAMDAR, J.) :

Rule. Rule made returnable forthwith. The matter is taken up for final disposal.

2. This Petition is filed by the secured creditor making a grievance that the concerned Executive Magistrates are not taking steps on time in respect of the proceedings under Section 14 of the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, “ the SARFAESI Act”).

3. In this Petition, various orders are passed. Hence, those orders are referred to hereunder.

4. On 28 February 2022, the following order was passed :

“This is one more petition filed a secured creditor making a grievance that the District Magistrates of Nagpur, Washim and Amravati are not taking any action under Section 14 of the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and, therefore, the Petitioner-Bank is unable to proceed further. Details of pending cases is given in the petition.

2. The Act of 2002 was enacted recognising that the country’s financial sector has been one of the key drivers in efforts to achieve success in developing its economy. It was recognised that there is no legal provision for facilitating securitisation of financial assets of banks and financial

institutions which has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Committees for reforms suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the Court. That is how the Act of 2002 was brought on the statute book. The Act of 2002 provides for a mechanism for speedy recovery of the dues of secured creditors. The inaction by the District Magistrate to take steps under Section 14 of the Act of 2002 would nullify the purpose of the Act and consequently will have effect on the Nation's economy.

3. Learned counsel for the Petitioner has also placed on record the guidelines framed pursuant to the order passed by the Division Bench of this Court, which are also not being followed.

4. The Secretary, Home Ministry, Mantralaya, Mumbai would look into the issue and coordinate with the District Magistrates for disposal of the pending applications u/s. 14 of the Act and impress upon them to the need to take up immediate steps. The Secretary, Home Ministry will call for a meeting of the concerned District Magistrates for that purpose, if feasible, through video conferencing so that the sensitivity is inculcated in the matter of applications u/s 14 of the Act and Petitions of the nature do not come before this Court with the grievance by the secured creditors. If it is found that action is deliberately delayed, the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 can be invoked.

5. Stand over to 14 March 2022. To be listed under the caption "for directions".

6. In the meanwhile, the District Magistrates will proceed to take necessary action."

5. Thereafter, on 14 March 2022, the following order was passed :

The learned Additional Government Pleader states that the meeting could not be held by the Chief Secretary (Home) and states that the same will be conducted in this week.

2. *The learned Counsel for the Petitioner states that since there being large number of cases, a mechanism needs to be put in place. He has drawn our attention to the order passed by the Division Bench of Allahabad High Court in Writ Petition No.7126 of 2021 in the case of Indian Bank (Erstwhile Allahabad Bank) V/s State of U.P. and Others, where a Committee was constituted to oversee the disposal of the Applications filed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.*

3. *In the meeting the feasibility of a mechanism similar to the one set up by the Allahabad High Court may also be explored.*

4. *Stand over to 22 March 2002 under the caption 'for directions'."*

6. On 22 March 2022, after hearing the parties, the following order was passed :

Heard learned Counsel for the parties.

2. *Though the specific cause raised in this Petition in respect of the Respondent borrower has been worked out in view of subsequent steps taken by the Respondent Collector,*

we had taken note of the larger issue and had called upon the Chief Secretary (Home) to hold a meeting and impress upon the concerned Collectors to take necessary steps under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, “the SARFAESI Act”), as the issue of non enforcement of security interests has a wider implications.

3. Learned Additional Government Pleader states that the meeting was held by the Chief Secretary (Home) on 17 March 2022 through Video Conferencing with the Executive Magistrates of Amravati, Washim and Nagpur, in which the Executive Magistrates have assured that they will take steps for time bound disposal of proceedings under Section 14 of the SARFAESI Act and also ascertain whether any mechanism can be evolved as referred to in the earlier order passed in this Petition.

4. As regards evolving of a permanent mechanism is concerned, the decision will have to be taken by the Chief Secretary and not by the Executive Magistrates. On the next date, the Chief Secretary (Home) will inform the Court as to the progress regarding evolving a permanent mechanism. Note be also taken of the guidelines laid down by this Court in the case of International Assets Reconstruction Company Private Limited Vs. Union of Indian and Others¹.

5. The Office of the Government Pleader will send copies of the judgment and order passed by Division Bench of this Court in the case of International Assets Reconstruction Company Private Limited (supra) to the Executive Magistrates of Amravati, Washim and Nagpur so that they can peruse the guidelines laid down and adhere to the same.

6. To oversee the further progress pursuant to this meeting, hearing of this Petition is deferred till 19 April 2022.

7. *In light of the positive stand taken by the Executive Magistrate as indicated in the minutes of the meeting, we expect that no secured creditor will be required to come to this Court from these districts for direction for disposal of proceedings under Section 14 of the SARFAESI Act.*

8. *Stand over to 19 April 2022. To be listed under the caption “For Directions”.*

7. On 19 April 2022, the other Petitions in the group were also listed and after hearing the parties, the following order was passed :

“Learned Additional Government Pleader submits that a Circular is issued to all the District Magistrates in respect of the permanent mechanism to ensure expeditious disposal of an Application filed by the Secured Creditors for enforcement of their security interest under Section 14 of the Securitisation & Reconstruction Financial Assets and Enforcement of Security Interest Act, 2002.

2. *The learned Additional Government Pleader to place the said Circular on record by way of an affidavit on the next date.*

3. *Stand over to 26 April 2022 under the caption ‘for directions’.*”

8. The learned Additional Government Pleader for the Respondents has placed a copy of the affidavit filed by the Deputy Secretary in the Home Department, Government of Maharashtra, wherein a reference is made to the Circular dated 13 April 2022 issued by the Home Department, State of Maharashtra, addressed to all the Collectors and the Divisional Commissioners in the State of

Maharashtra, wherein a reference is made to the order passed in this Petition on 22 March 2022 directing the State Government to set up a permanent mechanism for time-bound disposal of the proceedings under Section 14 of the SARFAESI Act. In the affidavit, the mechanism has been referred to, which reads thus :

“3. (I) The District Magistrate should follow the guidelines issued by Hon’ble High Court in the case of Criminal PIL No.24/2011 dated 20.08.2011, International Assets Reconstruction Company Private Limited Vs. Union of India and others, while taking action under Section 14 of the SARFAESI Act.

(II) The District Magistrate shall set up a cell in his office to deal with cases under section 14 of the SARFAESI ACT, 2002 and that a separate register shall be kept for this purpose by said Cell in his office especially for keeping record of receipt of such applications in the office of the District Magistrate.

(III) The said Register should be checked by the District Magistrate from time to time and further counter-signed fortnightly.

(IV) All applications filed under Section 14 of the said Act, which comply with the requisite requirements and guidelines shall be disposed of by the District Magistrate as soon as possible and in any case, within a period of two months from the date of proper submission.

(V) For review and disposal of cases received under SARFAESI Act, the District Magistrate may make use of the modern technology, if so required, for regular review of cases received and for timely disposal of pending cases.

(VI) The District Magistrate should prepare a

monthly report of the cases received, disposed and pending under section 14 of SARFAESI Act, 2002 and submit such a report to the concerned Divisional Commissioner's Office.

(VII) The Divisional Commissioner shall appoint an officer of the rank of Deputy Commissioner in his office as the Nodal Officer to review the cases under the SARFAESI Act, 2002 received with the District Magistrates under his jurisdiction. The said Nodal Officer should maintain a separate register for this purpose. The Divisional Commissioner should take a quarterly review with respect to pending cases, for their disposal.”

9. The learned Additional Government Pleader states that the State has taken cognizance of the concern expressed by the secured creditors and in light of the larger interest of the economy, has come out with certain permanent mechanism to expedite the applications under Section 14 of the SARFAESI Act.

10. The learned Counsel for the Petitioner-Bank/secured creditor states that the terms of the Circular can be made stricter and there are certain shortfalls in the Circular. The manner in which the State Government has responded to the concern expressed by the secured creditors, we have no reason to disbelieve that if any such suggestions are given by the secured creditors, the State Government would not incorporate/add the same in the instructions issued, if the same are found feasible. Therefore, it is always open to the Petitioner-Bank/secured creditor to forward their suggestions to the Home Department in the State of Maharashtra for its consideration.

11. In this Petition, action under Section 14 of the SARFAESI Act has already been taken and the Petition was kept pending for the State Government to issue necessary guidelines and the State Government has now issued the guidelines as stated above.

12. As regards the contention of the Petitioner-Bank/secured creditor that there are shortfalls in the said guidelines, the Petitioner-Bank can give suggestions and if not incorporated in the guidelines issued by the State Government, it is always open for the Petitioner-Bank/secured creditor to initiate the necessary proceedings in that regard, which would be considered on their own merits.

13. The Writ Petition is accordingly disposed of.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)