

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 16614 of 2023

**Aditya Birla Finance Limited and another
Vs.
The State of West Bengal and others**

For the petitioners	:	Mr. A. Nag, Mr. Soumavo Mukherjee, Mr. Subhankar Chatterjee
For the State	:	Mr. Somnath Ganguli, Mr. Srinath Singha Roy,
For the respondent no.7	:	Mr. Kishore Dutta, Mr. Arijit Bardhan, Mr. Avik Ghatak, Mr. Saibal Krishna Dasgupta, Mr. Ratikanta Pal
Hearing concluded on	:	20.07.2023
Judgment on	:	26.07.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioners are secured creditors. After having proceeded under Section 13(2) and Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short, "the 2002 Act"), the petitioners/creditors made an application under Section 14 of the said Act before the concerned Magistrate for taking possession. The Chief Judicial Magistrate, Alipore, *vide* order dated January 6, 2023, directed the

Court Commissioner to take such steps and use such force, including breaking open the lock or any hurdle, taking assistance of police, if required, at the expenses of the applicant “and if any articles/documents found in the secured asset, then deliver its possession to the Authorized Officer of the petitioner after preparing list of articles and making inventory”. Photographs were also directed to be taken as proof of the same. Copies of the inventory were to be handed over to the borrowers, if present at the site, under acknowledgment and also to the Authorized Officer of the petitioner. The Seal Bailiff of the court was also directed to file his report along with photographs/video, CD, documents if any, inventory prepared if any, etc., within two months from the date of the order.

2. It is contended that thereafter, the borrower/respondent filed an application, which was allowed by the impugned order dated June 23, 2023 by the Chief Judicial Magistrate, Alipore, directing the Seal Bailiff of the court, being the appointed Commissioner who had delivered possession, to oversee the process of valuation and removal of movable items/goods/articles mentioned in the four inventory lists, which are lying in the premises of the four immovable properties, secured assets, possession of which has been handed over to the Secure Creditor between May 15, 2023 to May 17, 2023, pursuant to the order dated January 6, 2023 passed by the said court under Section 14 of the 2002 Act. The Secured Creditor and the respondents, in consultation with the Commissioner so appointed, were directed to fix the date/dates on which the process of valuation

and removal of movable properties would be carried out from the schedule mentioned immovable properties. The entire process was to be completed within 45 days of the order.

3. The Commissioner was given liberty to requisition police help if necessary and the entire process was directed to be videographed for future reference.
4. Learned counsel for the petitioners contends that the Judicial Magistrate, under Section 14 of the 2002 Act, does not have the power of reviewing his own order. That apart, it is argued that the magistrate became *functus officio* after disposing of the application under Section 14 of the said Act and, as such, acted *de hors* his jurisdiction in passing the impugned order.
5. It is further submitted that the borrower got sufficient opportunity to remove the movable properties, which opportunity was given by specific notice in writing by the Authorized Officer. However, the borrower chose not to avail of such opportunity, for which the said movables were inventorized duly by the initial order under Section 14 and the possession thereof was handed over to the Authorized Officer of the petitioner. It is argued that there was no occasion for the Magistrate to recall the said order or reverse the same by directing the possession to be handed over to the borrower.
6. Insofar as the prayer made by learned senior counsel appearing for the respondent-borrower for a fresh inventory, it is argued by the petitioners that the said prayer ought to be turned down, since the movable properties have already been duly inventorized by the order of

the Magistrate. It is further argued that the Magistrate acted without jurisdiction in passing the impugned order, since an application under Section 17 of the 2002 Act is already pending at the behest of the borrower before the Tribunal itself. In the event any order was to be passed with regard to the immovable properties, the same could only be passed by the Tribunal, and not the Magistrate.

7. It is argued by the petitioners that the petitioners also have a valid claim on the movables, as substantiated by a hypothecation agreement annexed to the writ petition. Thus, the direction passed by the Magistrate to return the movables to the borrower ought to be set aside in any event.
8. Learned senior counsel appearing for the respondents, in reply, submits that the Magistrate has power to rectify his erroneous order at any point of time.
9. It is contended that the order passed by the Magistrate in respect of the movable properties was entirely *de hors* the Sale Notice, which clearly mentions only the immovable properties. In fact, it has been admitted by the petitioner that the secured assets comprised only of the immovable properties and not the movable properties lying therein. All along, the specific claim of the petitioners/creditors, which was enforced under Section 14 by the Magistrate, pertained to the secured assets, that is, the immovable properties only.
10. Hence, in the first place, the Magistrate did not have the authority to pass any direction for handing over the movable properties to the Authorized Officer to the petitioner. Hence, by the impugned order,

the Magistrate only rectified his null and void directions regarding the movable properties.

- 11.** Learned senior counsel appearing for the respondent-borrower further submits that the first order in the proceeding under Section 14 of the 2002 Act, in respect of the movable properties, was *de hors* the jurisdiction of the Debts Recovery Tribunal under Section 17, which deals only with the secured assets. Since the secured assets, in the present case, involve only the immovable properties, no challenge lies under Section 17 of the 2002 Act for any relief regarding the movables.
- 12.** It is argued that the expression “such steps” in section 14(2) of the 2002 Act clearly pertains to the subject-matter of the dispute, which is restricted to the secured assets, that is, the immovable properties mentioned in the schedule of the Sale Notice.
- 13.** Upon hearing learned counsel for the parties, as well as a careful scrutiny of the documents annexed to the writ petition, there cannot be any iota of doubt that the subject-matter of the Sale Notice was the secured asset, which, as per the schedule thereof, is restricted only to the immovable properties.
- 14.** Section 14 being merely a further step to implement the rights of the petitioner under Section 13 of the 2002 Act, the power of the Magistrate cannot exceed the subject-matter of the dispute itself, that is, the secured assets only.

15. Hence, insofar as the movable properties are concerned, the same does not fall, under normal circumstances, within the contemplation of an order passed under Section 14 of the 2002 Act.
16. The respondent-borrower has cited *Standard Chartered Bank Vs. V. Noble Kumar and others*, reported at (2013) 9 SCC 620, which laid down that the satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction that the Magistrate can pass “appropriate orders” regarding taking of possession of the secured asset.
17. It has been sought to be argued by the respondent-borrower that, by virtue of such observation, the Magistrate is not rendered *functus officio* even after passing necessary directions with regard to the assets under Section 14 of the 2002 Act. As such, it has been contended that the Magistrate could very well pass subsequent “appropriate” orders in connection with the main proceeding.
18. We are required to see the context in which the Magistrate exercised his power in the present case, in order to decide the legality of the same.
19. In the first place, the Magistrate, *vide* order dated January 6, 2023, had not only directed possession of the secured assets to be taken, but clearly specified that any articles/documents found in the said secured asset shall be properly inventorized. The Magistrate further directed that the possession of the said articles, after such inventory

being made and photographs taken, would be made over to the Authorized Officer of the petitioner, thereby virtually handing over the same to the petitioner.

- 20.** There are two components to such direction – the inventory of the articles, and the handing over of the same to the Authorized Officer.
- 21.** Upon a scrutiny of the materials annexed to the writ petition, there is no dearth of documents to show that the Authorized Officer gave sufficient notice, in time, to the respondent/borrower to remove the movable properties from the secured assets. However, despite being given ample time, the respondents/borrower did not do so, on the subsequently taken pretext that, in view of the volume of the movables, the shifting could not be done within time.
- 22.** The aforesaid inaction of the respondent-borrower left no other option before the Magistrate but to direct the possession of the movable articles, lying in the immovable properties, also to be handed over to the Authorized Officer of the petitioner. Otherwise, a peculiar predicament would entail, being that the immovable properties would be handed over to the Authorized Officer in due process of law, without the movable properties which were lying therein. One probable option could be to dispose of the properties as envisaged under Order XXI of the Code of Civil Procedure in a regular civil execution case.
- 23.** However, an interesting aspect of the law is that the District Magistrate, in exercise of his powers under Section 14 of the 2002 Act,

stands in hierarchy somewhere between an executing court and a Court Bailiff, as contemplated under the Code of Civil Procedure.

- 24.** Whereas the District Magistrate has to ensure that possession is taken through a Court Bailiff, he does not have powers of the executing court as contemplated in Rules 43 and 43A of Order XXI of the Code of Civil Procedure.
- 25.** Hence, the Magistrate did what he could best do to protect the interest of all parties, by directing an inventory of the articles to be taken and handing over them over to the Authorized Officer of the petitioner, along with the secured assets.
- 26.** Hence, the Magistrate could not be faulted for passing the initial order under Section 14.
- 27.** In such context, the predicament which arises is that although the District Magistrate does not have any specific power of review under Section 14 of the SARFAESI Act, the respondent-borrower is equally justified in contending that the Magistrate did not have any authority under Section 14 to deal with the movable articles, which were not part of the secured assets, in the first place.
- 28.** Section 14 of the 2002 Act is conspicuously silent regarding any movable property, which might be lying in the secured assets, but is not a part of the secured assets.
- 29.** The only possible scope of exercise of authority of the Magistrate with regard to such properties can be found in sub-section (2) of Section 14, which entitles the Magistrate to take or cause to be taken “such steps” as may, in his opinion, be necessary for the purpose of securing

compliance with the provisions of sub-section (1) of Section 14. Hence, while complying with Section 14(1) with regard to secured assets, any other steps which may, in the opinion of the Magistrate, be necessary can also be taken by the Magistrate. However, such power is restricted only at the juncture when the compliance of Section 14(1) is secured, that is, when the possession of the secured assets is taken, and not thereafter, when he becomes *functus officio*.

- 30.** There cannot be any doubt that after taking steps under Section 14 of the 2002 Act, the Magistrate becomes *functus officio* for all purposes.
- 31.** Further orders cannot be passed by the Magistrate with regard to any property or in regard to any aspect covered by the previous orders passed by it securing compliance under Section 14(1). Thus, the impugned order is palpably without jurisdiction. It is not only a question of lack of power of review but whether the Magistrate could, taking the shelter of sub-section (2) of Section 14, take further steps after compliance had been secured under sub-section (1) of Section 14 and he became *functus officio*.
- 32.** The clear answer is in the negative, since all steps to be taken by the Magistrate could at best be till the juncture when the compliance of sub-section (1) of Section 14 was secured or being secured. Thereafter, the Magistrate could neither take the aid of Section 14(2) nor invoke a non-existent power of review, which has not been conferred by the statute. The Magistrate, unlike the Civil Court, does not have any inherent power to pass “appropriate orders”, subsequent to the exhaustion of his authority under Section 14.

33. Hence, the impugned order directing the movable articles to be handed over to the respondent-borrower is palpably *de hors* the law.
34. In fact, the respondent-borrower cannot plead equity as well, since the Authorized officer gave ample opportunity to the borrower to take away the said movables from the secured assets. If the borrower could not conclude the said process in time, it ought to have come up with a proper application to the Authorized Officer sufficiently prior to the expiry of the date given for such withdrawal of the articles.
35. Having not done so, no equity on such score can be claimed by the borrower.
36. Even if the borrower contends that the time given by the Authorized Officer was insufficient, such insufficiency, by itself, would not confer jurisdiction on the Magistrate to subsequently recall its order and direct the movables to be returned to the borrower.
37. The petitioners/creditors stress, in the present case, that they have an independent right under a hypothecation of the movable articles as well, except the personal belongings of the borrower.
38. However, the petitioners cannot justify the enforcement of a different right under the purported hypothecation agreement, in the garb of a proceeding under Section 14 of the 2002 Act related only to the immovable properties, which were the secured assets as shown in the sale notice.
39. Hence, the only recourse which can be taken in the present case is that the petitioners as well as its Authorized Officer shall not be permitted to deal with the movable properties of the borrower lying in

the immovable properties comprised of the secured assets, till appropriate orders are passed by the Tribunal on the question of hypothecation.

- 40.** In any event, the petitioner is entitled in law to take out an appropriate proceeding for recovery of the movable properties, asserting its rights thereon before the Tribunal, since the terms “property” within the contemplation of Section 2(1)(t)(ii) also includes movable property.
- 41.** In view of the above observations, WPA No.16614 of 2023 is disposed of by setting aside the impugned order dated June 23, 2023 passed in Miscellaneous Case No.187 of 2022 by the Chief Judicial Magistrate, Alipore.
- 42.** The petitioner and its Authorized Officer, however, are restrained by an order of injunction from dealing with and/or parting with and/or creating any encumbrance on the movable articles/properties lying in the secured assets, possession of which have been taken by the petitioner through its Authorized Officer, till appropriate orders with regard to the movables are passed by the Tribunal.
- 43.** Liberty is given to the petitioner to approach the concerned Tribunal and/or invoke any other remedy, if available to it in law, for urging its cause of action on the movable articles, on the basis of any hypothecation agreement or otherwise. At the same time, liberty is also granted to the respondent-borrower to approach the Tribunal, where its application under Section 17 of the 2002 Act is already pending, with appropriate prayers regarding the said movable articles.

If so approached, the Tribunal shall decide such issues in accordance with law, upon giving opportunity of hearing to all the concerned parties, as expeditiously as the roster of the Tribunal permits.

- 44.** Till any such order is passed by the Tribunal with regard to the said movable articles lying in the immovable properties, that is, the secured assets, the injunction order passed above on the petitioner and its Authorized Officer shall continue. Such injunction, however, shall be subject to any order which may be passed by the concerned Tribunal in respect of immovable properties.
- 45.** The relevant issues regarding movable properties shall be decided by the Tribunal, upon being approached to do so by either of the contesting parties or both of them, independently and in accordance with law, without being unduly influenced in any manner by any of the observations made herein.
- 46.** There will be no order as to costs.
- 47.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)