**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

105+260 ***2023:PHHC:068261-DB***

CWP No. 5349 of 2021 (O & M)
Date of Decision: 10.05.2023

Bank of Baroda .....Petitioner(s)

Versus

District Magistrate, Ludhiana and others ....Respondent(s)

AND

CWP No. 5378 of 2021 (O & M)

Bank of Baroda .....Petitioner(s)

Versus

District Magistrate, Ludhiana and others ....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. Aalok Jagga, Advocate,
for the petitioner(s).

Mr. Navneet Singh, Sr. DAG, Punjab.

Mr. Vikas Bali, Advocate,
for respondent Nos.2 and 3.

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G.S.SANDHAWALIA, J.

The present judgment shall dispose of two writ petitions i.e. CWP Nos. 5349 and 5378 of 2021 as common questions of facts and law are involved in both the writ petitions.

Facts of CWP No. 5349 of 2021

1. The present writ petition filed under Article 226/227 of the

Constitution of India challenges the order dated 14.01.2020 (Annexure P-7) passed by the District Magistrate, Ludhiana whereby the application filed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') was dismissed. Directions are further sought to take a decision on another application dated 01.09.2020 (Annexure P-10), which is stated to be pending.

2. A perusal of the impugned order dated 14.01.2020 (Annexure P-7) would go on to show that an application dated 09.09.2019 (Annexure R-3) under Section 14 of the Act had been filed wherein the bank had prayed to take the property in its possession which had been mortgaged under the Act. The application had been objected to by the private respondents on the ground that the objections had been dismissed without any valid reason under Section 13(3A) of the Act. There were two notices dated 29.05.2019 (Annexure P-4) and 28.08.2019 (Annexure R-2) under Section 13(4) of the Act and, therefore, the bank had committed mistake and resultantly it was held that once the notice had been withdrawn and a fresh notice had been issued, the bank was as such estopped from doing so. There were deficiencies on the part of the officer of the bank in the affidavit that the procedure under the Act had not been followed. Resultantly, it was ordered that the rectification be done and a fresh application be filed. The deficiencies as such in the affidavit were noted to the extent that it was in the name of the loanee instead of the authorized officer and no certificate was included in respect of the compliance of Section 26-D of registration with the Central Registry.

3. A perusal of the paper book would go on to show that initially

notice dated 13.03.2019 was issued under Section 13(2) of the Act (Annexure P-1) to respondent No.2, the loanee including respondent No.3-Balwinder Kumar Sharma that the loan account of M/s. Jagdambay Exports had been classified as non performing asset on 01.01.2019 and there were outstandings of Rs.10,48,34,587/- w.e.f. 28.02.2019. Similar notice of even date was also issued to the guarantor-respondent No.4 namely Pawan Kumar Sharma and Suraj Parkash Sharma-respondent No.5 apart from the fact that Smt. Subhash Rani was also issued the said notice. Resultantly, objections had been filed under Section 13(3A) of the Act on 10.05.2019 (Annexure P-2) which were rejected on 21.05.2019 (Annexure P-3) by the authorized officer. Apparently, thereafter possession notices (Annexure P-4 Colly) were issued on 29.05.2019 wherein, firstly there is a description of four properties in one notice and one property each in the other two notices which belong to the guarantors.

4. Apparently, the bank had also issued another set of Section 13(4) notices dated 28.08.2019 (Annexure R-2). The bank had also filed an application dated 02.07.2019 (Annexure P-5) under Section 14 of the Act, which was rejected vide order dated 27.08.2019 on the ground that detailed reasons had not been given in the objections raised by the borrower placing reliance upon the judgment of the Apex Court in ***Mardia Chemicals Ltd. and others vs. Union of India and others, (2004) 4 SCC 311.*** The affidavit stated to be given by the authorized officer of the bank was also held to be defective in as much as it has been purchased by the bank in the name of the borrower instead of in the name of the bank and compliance of Section 26D of the Act as such had not been done. Liberty was given to the bank to remove the

deficiencies and move a fresh application under Section 14 of the Act.

5. Apparently, the bank issued a fresh notice under Section 13(2) of the Act on 11.02.2020 (Annexure P-8) wherein, the respondents filed objections again on 19.05.2020 (Annexure R-4) taking advantage of the difference in amount in the two Section 13(2) notices. The bank on 11.06.2020 (Annexure R-5) rejected the said notices. Thereafter, notice under Section 13(4) of the Act was issued on 20.06.2020 (Annexure P-9) wherein, there was reference to the amount of Rs.10,47,82,274/- which was due on 11.02.2020 inclusive of the unapplied interest and charges w.e.f. 28.02.2019. The possession notice talked about the four properties as on an earlier occasion in one case and the two separate possession notices of the other two properties as also on the earlier occasion. Resultantly, the application dated 09.09.2019 under Section 14 of the Act (Annexure R-3) came to be filed wherein, the claim was of Rs.10,48,34,587/- and reference was made to the possession notices and which was duly supported by the affidavit dated 09.09.2019 of the authorized officer namely Sanjay Kumar Ruwali, Chief Manager posted at the Clock Tower Branch, Ludhiana. Resultantly, the said application was rejected vide the order dated 14.01.2020 as discussed in para No.2.

6. Apparently, another application was thereafter filed on 01.09.2020 (Annexure P-10) wherein reliance was placed upon Section 13(4) notice dated 20.06.2020 (Annexure P-9) and the reply of the bank dated 11.06.2020 to the objections which was supported by the affidavit of Jagdish Narayan Meena, Assistant General Manager, the authorized officer posted at the Bank of Baroda in the Section 17-B Branch, Chandigarh, which is stated

to be pending. Apparently, in the intervening period, the fourth application had been filed on 21.12.2020 (Annexure R-7) under Section 14 of the Act on the same cause of action by the same officer, which was rejected on 26.02.2021 (Annexure R-8) on similar grounds that two notices had been issued under Section 13(2) and notices dated 29.05.2019, 28.08.2019 and 20.06.2020 had been issued under Section 13(4) of the Act. Resultantly, the District Magistrate came to the conclusion that repeated notices under Section 13(4) had been issued and the outstanding amounts mentioned in the applications and affidavits were varying. Therefore, he rejected the application under Section 14 of the Act on the ground that it was not appropriate to further proceed and directions were issued to remove the deficiencies and liberty was given to file a fresh application.

7. The resistance from the borrowers in the written statement was that the action of the bank in issuing repeated notices and by withdrawing the earlier notices was wrong. The respondent State chose not to file reply in the present writ petition.

Facts of CWP No. 5378 of 2021

8. The challenge herein by the bank is to the order dated 17.12.2020 (Annexure P-13) wherein, the petition under Section 14 of the Act was dismissed against private respondents who are common to the extent of Balwinder Kumar Sharma, Pawan Kumar Sharma alongwith Smt. Subhash Rani and Suraj Parkash Sharma also who were also arrayed as private respondents in the earlier case. The company in question was M/s. Tripuri Garments Pvt. Ltd. through its Director, Pawan Kumar Sharma. The reason for rejection by the Additional District Magistrate, Ludhiana was that the

bank had issued two notices under Section 13(2) of the Act dated 01.01.2019 (Annexure R-1) and 11.02.2020 (Annexure P-10). The objections dated 02.03.2019 were rejected on 05.03.2019 (Annexure P-3) and apparently, the application was filed under Section 14 of the Act on 02.07.2019 (Annexure P-5) which was dismissed on 27.08.2019 firstly (Annexure P-6) on the ground that there was no reasoning given for the dismissal of the objections while placing reliance upon the judgment in *Mardia Chemicals Ltd. (supra).* Similarly, three notices under Section 13(4) of the Act dated 29.05.2019 (Annexure R-3) dated 28.08.2019 (Annexure R-4) and 20.06.2020 were issued. It was noticed that in the first Section 13(2) notice dated 01.01.2019, the amount outstanding was stated to be Rs.7,04,08,544.59/- whereas in the second notice dated 11.02.2020 (Annexure P-10), the amount was stated to be Rs.6,31,38,033/-. It was noticed that the affidavit dated 01.09.2020 has been filed by Sh. Jagdish Narayan Meena, Assistant General Manager/authorized officer posted at Ludhiana. The application as such was supposedly filed by another officer and, therefore, keeping in view the deficiencies in mind, it was held that the application was liable to be rejected and the bank should rectify the objections and submit a fresh application and get appropriate orders. The perual of the paper book would go on to show that apparently, the first notice under Section 13(2) of the Act was issued on 01.01.2019 wherein the borrower M/s. Tripuri Garments Pvt. Ltd. had been declared as a non performing asset and the amount of Rs.7,04,08,544.59/- + interest became outstanding w.e.f. 31.12.2018. The corresponding notices were also issued to the other private respondents and details of the property was also similar as in the first case regarding the properties which were described in the notices which were regarding 5 to 6 properties. Resultantly, notice under Section 13(4) of the Act was issued on 29.05.2019 (Annexure R-3 colly) in which the property owned by the guarantors was also mentioned which are separate possession notices of even date. Apparently separate notice dated 28.08.2019 under Section 13(4) of the Act was also issued (Annexure R-4) qua one of the properties.

9. The stamp paper having been purchased in the name of the loanee instead of authorized officer and the certificate under Section 26D not having been submitted was also one of the reasons which weighed with the District Magistrate. Resultantly, another application dated 12.09.2019 (Annexure P-7) came to be filed, which was followed up by representation dated 19.11.2019 (Annexure P-8) that the application be decided expeditiously. The same was dismissed on 14.01.2020 (Annexure P-9) on the ground that there were two notices under Section 13(4) of the Act and there was no such provision in the SARFAESI Act and there was no satisfactory explanation. Liberty was given to the bank to file a fresh application and get appropriate orders. Apparently on 11.02.2020 (Annexure P-10), fresh notice was issued under Section 13(2) of the Act claiming the outstandings of Rs.6,31,38,033.01/- w.e.f. 31.12.2018 alongwith interest. Resultantly, possession notices dated 20.06.2020 (Annexure P-11) were issued wherein, the details of the four properties of the principal borrower and one each of the guarantors was shown. Resultantly, the application under Section 14 of the Act was filed on 01.09.2020 duly accompanied by the affidavit of Jagdish Chander Meena, Assistant General Manager posted at the Ludhiana Branch which has been dismissed vide the impugned order for the discussed in para

No.8 above.

10. The stand of the official respondents in the written statement is that in view of the amendment carried out which came into force from 15.01.2013 in the proviso to Section 14 of the Act had prescribed that an affidavit has to be filed in the format mentioned by the officer. The affidavit had to touch upon the 9 points indicated in Clauses (i) to (ix) of the first proviso and the satisfaction had to be recorded by the District Magistrate/Chief Metropoliton Magistrate and, therefore, the order was justified that the documents could be demanded from the secured creditor for the assertion of the truth and it was not a blind folded exercise which has to be done.

11. The stand of the private respondent Nos.2 and 4 would go on to show that an original application was also filed before the DRT-III, Chandigarh by the Bank as such and the defence in the written statement was also that several notices under Section 13(4) had been issued.

Legal Position

12. A Division Bench of this Court in ***Asset Reconstruction Company India Ltd. vs. State of Haryana, 2018 (1) PLR 473,*** while discussing the provisions of Section 14 of the 2002 Act and the powers exercised by the District Magistrate came to the conclusion that the said power is not quasi judicial and does not involve any adjudicatory process. The nature of the duty assigned to a Magistrate was basically administrative in nature after due application of mind for the purposes of granting assistance and aid to the financial institution to secure physical

possession of the secured asset, if it could not be taken over in the ordinary process under Section 13 (4). The discretion was only to the extent that the ingredients of the first proviso of Section 14 had to be satisfied. It was also held that it was the duty of the District Magistrate and such obligation shall remain alive till the entire process comes to its logical end to achieve the above stated legislative object or till the transfer takes place through auction sale or private negotiation or through any permissible mode. The purpose, thus, was only that the secured creditor could sell such asset and to satisfy the secured debt and till such time a secured creditor is unable to do so, his right to apply under Section 14 and the corresponding duty of the District Magistrate shall continue to subsist. The Division Bench, thus, came to the conclusion that the proceedings under Section 14 were supplemental to the measure defined under Section 13 (4) of the 2002 Act. The relevant part of the provisions of Section 14 read as under:-

> *"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.—(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets 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 assets, 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 asset and documents to the secured creditor:

[Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised 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 Financial Institution 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 thereunder 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 purpose of taking possession of the secured assets [within a period of thirty days from the date of application]:

[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 or 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 1 [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority."

13. Resultantly, keeping in view the settled principle of law laid down by the judgment of the Division Bench of this Court in ***Allahabad Bank vs. District Magistrate, Ludhiana and others, 2021 (4) RCR (Civil) 571,*** we are of the considered opinion that the scope and power of the District Magistrate has been delineated. It has also been held in various judgments of the Apex Court that the role of the Magistrate is only to assist the secured creditor and to get the possession of the secured assets and it is not for him to adjudicate or decide the dispute. The Apex Court in ***Balkrishna Rama Tarle (D) through L.Rs. and another vs. Phoenix ARC Pvt. Ltd. and others, 2022 AIR (SC) 4756*** also, while placing reliance upon the judgment in ***M/s. R.D. Jain and Co. vs. Capital First Ltd., AIR 2022 (SC) 4820*** decided on 27.07.2022, held that there is no element of *quasi judicial* function or

application of mind by the Magistrate who is just to adjudicate and decide the correctness of the information given in the application and nothing more. It resultantly upheld the order of the Division Bench wherein the claim for tenancy was being entertained by the District Magistrate and he had declined to assist the secured creditor in taking possession of the secured assets. The High Court had set aside the said order which was upheld by the Apex Court and the directions which had been issued to proceed further in the application under Section 14 of the Act. The statement of objects was considered and it was held that the said authority is to take possession of the secured assets once the application is submitted duly accompanied by the affidavit. The relevant part reads as under:-

> *"8.1 However, for taking physical possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action. 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 SARFAESI Act from the secured creditor for that purpose. As soon as such an 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 SARFAESI 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. As mandated by Section 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment. As observed and held by this Court in the case of NKGSB Cooperative Bank Ltd. (supra), the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the advocate commissioner who is considered as an officer of his/her court. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. Thus, we reiterate that the step to be taken by the CMM/DM under Section 14 of the SARFAESI Act, is a ministerial step. While disposing of the application under Section 14 of the SARFAESI Act, no element of quasijudicial function or application of mind would require. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets."

14. Similar view has also been taken by the Apex Court in ***Civil***

Appeal No. 6662 of 2022, Kotak Mahindra Bank Ltd. vs. Girnar Corrugators Pvt. Ltd. and others, decided on 05.01.2023. The said view has been reiterated in *Allahabad Bank's case (supra)* wherein, it has held that the satisfaction of the Magistrate has to be recorded and a 9 point affidavit has to be filed as per the provisions of Section 14 of the Act.

Conclusion

15. Thus, from the above discussion of events, it would be apparent that the bank itself was faltering as the applications filed by it were not as per the requirement of Section 14 of the Act and did not exactly clarify the correct position regarding why the first notices had been withdrawn. The scope and powers of the District Magistrate have been delineated in *Allahabad Bank's case (supra)* and that the power as such to take possession through the District Magistrate to provide the assistance has been mentioned. But the provisions of the Act would also go on to say that the satisfaction is to be required on the application and then only the suitable orders can be passed. Apparently, the Magistrate was correct in coming to the conclusion as such that there was some discrepancies which needed to be removed. Merely because several notices had been issued under Section 13(4) of the Act as such could not be a ground not to grant possession since large outstandings have not been paid. Therefore, the order of the District Magistrate practically ensures that the private respondents continue to remain in possession of the secured assets without even resorting to their remedy of challenge under Section 17 before the Tribunal and, thus, frustrating the very purpose as such of the provisions which require that the possession should be delivered at the earliest. It is settled principle of law that it is for the Tribunal to adjudicate

upon the issues as to whether the provisions of the Act and the Rules have been followed under Section 17 (2) and (3) and as to whether the measures taken under Section 13 (4) were in accordance with law thereunder. In case, the Tribunal comes to the conclusion that they are not in accordance with law whether under the Act or Rules made thereunder, it has a power to restore the possession over the management to the borrower and declare a recourse taken under Section 13(4) as invalid. Unfortunately in the present case the District Magistrate started exercising the powers of the Tribunal without the loanees as such having opted to challenge the procedure under Section 13 (4) and merely because the reasons given while deciding the objections under Section 13(3A) were not good, would not be a ground for the District Magistrate to opine on the same, keeping in view the settled principles of law referred to above. The District Magistrate failed to take into consideration the provisions of Rule 3A of the Security Interest (Enforcement) Rules, 2002 which provide that the Authorized Officer should examine the objections and make changes or modification in the demand notice and serve a revised notice or pass such other suitable orders as may be deemed necessary within 15 days from the date of receipt of the representation or objection. Thus, if a fresh notice under Section 13 (2) was issued in furtherance of Section 13(3A) objections, the District Magistrate had no jurisdiction not to enforce the notice of possession under Section 13(4) of the Act and it would not give it a valid reason to withhold giving effect on the Section 14 application. Apparently the loanees/borrowers are not willing to pay the amount of huge outstandings to the tune of over Rs.10 crores in one case and Rs.7 crores in another case.

16. The District Magistrate also failed to notice the proviso of

Section 13 (3A) which provides that if the reasons given by the Bank while rejecting the objections which were communicated would not give it a right of filing an application before the DRT under Section 17. Thus, it is settled principles that the right as such would only accrue once the 13 (4) notice was issued and the securitization application under Section 17 could only be filed thereafter. Therefore, the reasoning given by the District Magistrate also on that cannot be held to be justified in any manner.

17. Resultantly, we partly allow these writ petitions to the extent that the banks will be free to file detailed applications setting out the reasons which led to the issuance of the fresh notices so that the Magistrate can record his satisfaction as provided under Section 14 of the Act.

18. Accordingly, keeping in view the above, the bank shall as such file fresh applications under Section 14 of the Act keeping in view the law laid down in *Allahabad Bank's case (supra).* Thereafter, the District Magistrate shall pass fresh orders within a period of 4 weeks from the date of receipt of the said application keeping in mind the observations made herein. The writ petitions are partly allowed to that extent. Needless to say the reasons given in the earlier orders passed by the District Magistrate would not as such prejudice the District Magistrates in any manner and the applications be decided without considering the earlier orders passed *interse* the parties.

(G.S. SANDHAWALIA)
JUDGE

10.05.2023
shivani

(GURBIR SINGH)
JUDGE

Whether reasoned/speaking Yes
Whether reportable Yes