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

**CWP-6367-2023
DATE OF DECISION: 24.05.2023**

INDIAN BANK

......PETITIONER

VS.

ADDITIONAL DISTRICT MAGISTRATE, LUDHIANA

.........RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Ms. Jasleen Kaur, Advocate, for the petitioner.

Mr. Navneet Singh, Sr. D.A.G., Punjab.

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G.S.SANDHAWALIA, J. (ORAL)

1. The present petition has been filed for quashing of the order dated 22.04.2022 (Annexure P-7) passed by the Additional District Magistrate, Ludhiana, whereby the application filed by the petitioner-Bank under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') has been dismissed, on the ground that the Bank in its reply has not given any clarification regarding the reply under Section 13 (3-A) of the Act and that the guarantor/mortgagor has died on 12.01.2022 which is apparently after the notices dated 18.06.2021 (Annexure P-3) and 10.09.2021 (Annexure P-5) issued under Sections 13 (2) and 13 (4) respectively, of the Act.

2. The co-ordinate Bench of this Court in **Kotak Mahindra Bank Limited vs. The District Magistrate and another** 2022 AIR (Punjab and Haryana) 169 issue regarding the death of the borrower and

the right of the LRs was considered and the following questions were framed:-

> "*i) Whether it is necessary for a secured creditor to issue a fresh notice under Section 13(2) of the SARFAESI Act to the legal heirs of a deceased guarantor or a borrower if the guarantor or borrower dies after initiation of proceedings of the secured creditor against them under Section 14 of the SARFAESI Act?; and*
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> *(ii) Whether the proceedings already initiated under Section 14 of the SARFAESI Act prior to a guarantor's/borrower's death automatically abate and they cannot be continued against his legal heirs on the basis of the notice under Section 13(2) of the SARFAESI Act issued to the deceased guarantor/borrower during his life time?*"

3. Resultantly, it was held that the District Magistrate or the Chief Metropolitan Magistrate would have no adjudicatory powers and power under Section 14 will not adjudication of *inter se* rights of the parties in respect of the subject matter. The said position of law has also been laid down by an other Division Bench on an earlier occasion in **Asset Reconstruction Company (India) Ltd. vs. State of Haryana** 2018 (1) PLR 443.

4. The Apex Court in **Balakrishna Rama Tarle (D) through LRs and another** vs. **Phoenix ARC Pvt. Ltd. and others** 2002 AIR (SC) 4756 while placing reliance upon the judgment in **M/s R.D. Jain and Co. vs. Capital First Ltd.** AIR 2022 (SC) 4820, also held to the same extent 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. The Division Bench Judgment in **Allahabad Bank, Branch at Industrial Area vs. District**

Magistrate, Ludhiana and others 2021 (4) RCR (Civil) 571, is also to the same extent.

5. Accordingly, that the order dated 22.04.2022 (Annexure P-7) passed by the Additional District Magistate, Ludhiana, is not sustainable. Accordingly, the same is quashed. The Additional District Magistrate, Ludhiana, shall pass a fresh order within a period of four weeks in terms of the principles laid down by the Division Bench of this Court in **Allahabad Bank's** case *(supra)*.

6. We do not issue notice to the guarantor, who has also not impleaded as respondent, keeping in view the fact that the Division Bench has already held that issuance of notice to the borrower is not required, who is only to be given sufficient time to vacate.

7. Accordingly, the petition stands disposed of.

8. Status report regarding compliance of this order be filed to the Registrar General of this Court.

9. Pending miscellaneous application (s), if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

May 24, 2023
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(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No