

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

**108+240+283**

***2023:PHHC:059534-DB***

**CM-3998-CWP and 4000-CWP-2023 in/and**  
**CWP-15918-2021 (O & M) and**  
**CWP-2536-2022**  
**Date of Decision: 26.04.2023**

Union Bank of India

.....Petitioner(s)

Versus

State of Haryana and others

....Respondent(s)

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

Present: Ms. Priyanka Sud, Advocate,  
for the applicant  
(in CM-3998-CWP and 4000-CWP-2023 in CWP-15918-2021).

Mr. Mahesh Dheer, Advocate,  
for the petitioner (in CWP-15918-2021).

Mr. V.K. Sachdeva, Advocate,  
for the petitioners (in CWP-2536-2022).

Mr. Aman Bahri, Addl. A.G., Haryana.

Mr. Gaurav Goel, Advocate,  
for respondent No.4 (in CWP-2536-2022).

Mr. Jasbir Singh Ahlawat, Advocate,  
for the applicant  
(in CM-17999-CWP-2021 in CWP-15918-2021).

Mr. Tajinder Joshi, Advocate,  
for respondent No.11 (in CWP-2536-2022).

**G.S.SANDHAWALIA, J. (Oral)**

1. The present judgment shall dispose of two writ petitions i.e.

***CWP-15918-2021 and CWP-2536-2022.*** Challenge in CWP-2536-2022 filed

by loanee is to the order dated 25.02.2021 passed by the Debt Recovery

relief was not granted regarding the auction proceedings on the ground that no *ex parte* orders could be passed. It is only against the interim order of the DRT, the writ petition has been filed. The auction was apparently fixed for 18.01.2021, which was also subject matter of challenge and stated to be in complete violation of the earlier interim order dated 17.02.2021 passed by this Court in CWP-29435-2019 (Annexure P-40) wherein, the petitioner has been relegated to his alternative remedy before the Tribunal with a direction that the interim order will continue for one week. We have also been informed that SA No. 49 of 2021 has now been dismissed in default on 17.04.2023.

2. The bank, on the other hand in CWP-15918-2021, has challenged the orders passed by the District Magistrate, Panchkula wherein, the earlier order dated 24.12.2020 (Annexure P-22) passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') giving possession to the secured creditor was sought to be recalled by passing interim orders dated 18.05.2021 and 28.05.2021 (Annexures P-23 and P-26 in CWP No. 15918 of 2021). The District Magistrate has also reviewed his earlier order dated 24.12.2020 by final order dated 29.10.2021 (Annexure P-54A). It has also been brought to our notice that earlier the loanee company i.e. Respondent No.5-M/s. Eee & Cee Pressing Pvt. Ltd. (in CWP No. 2536 of 2022) filed ***CWP No. 29435 of 2019, M/s. Eee & Cee Pressing Pvt. Ltd. vs. Corporation Bank and others*** and ***CWP No. 5056 of 2021, M/s. Eee & Cee Pressing Pvt. Ltd. and others vs. Union Bank of India and others*** wherein, they were relegated to avail their alternative remedy before the Debt Recovery Tribunal.

3. It is not disputed that the property has also been put to auction in two lots and sale certificates dated 12.03.2021 (Annexures P-11 and P-12 in CWP No.15918 of 2021) for Rs.7.42 crores and 7.04 crores have been issued. The outstandings as such due to the loanee-company were Rs.8,89,57,701/- as per the Section 13(2) notice dated 04.07.2019 (Annexure P-11 in CWP No. 2536 of 2022), which is also subject matter of challenge in the said writ petition alongwith notice under Section 13(4) of the Act issued on 30.09.2019 (Annexure P-16). Apparently, the matter was pending with the Tribunal and matter had been withdrawn before two earlier Division Benches to approach the Tribunal. The Tribunal has been clothed with sufficient power under Section 17(3) of the Act wherein if any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, it can direct restoration of possession of the secured assets. The petitioners and their representatives having approached this Court twice over and have withdrawn the writ petitions and resultantly filed SA No. 49 of 2021. Repeated writ petitions by the same set of parties or by Directors of the same company are not liable to be entertained. Challenge in CWP No. 29435 of 2019 filed by the suspended Director of Eee & Cee Pressing Pvt. Ltd. and another is to proceedings under Section 13(2) and 13(4) of the Act and eventually, the writ petition was dismissed on 17.02.2021 by passing the following order:-

*“1. This writ petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ in the nature of certiorari or direction quashing the impugned notice dated 4.7.2019 (Annexure P-1)*

*issued under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') and dated 30.9.2019 (Annexure P-3-A) issued under Section 13 (4) of the Act whereby possession notice has been issued for immovable properties as detailed in the petition without deciding representation filed by the petitioner.*

*2. Additional affidavit dated 17.2.2021 of Upender Rai, S/o Sohan Lal, Authorised Officer, Branch Manager, Union Bank of India (Erstwhile-Corporation Bank) SCO No.302, Sector-9, Panchkula has been filed on behalf of respondents No.1 and 2.*

*3. In view of the affidavit, learned counsel for the petitioner states that he would approach the DRT but prays that the interim order which was granted by this Court may be continued for one week more.*

*4. Learned counsel for respondent No.1 has reservations and states that no interim protection could have been allowed by this Court in any case because the SARFAESI is a complete Code.*

*5. We have noticed the contention of the learned counsel for respondent No.1 but keeping the mind the limited nature of the prayer which has been made by the learned counsel for the petitioner, we do not deem it appropriate to deny the same and consequently, while dismissing this petition and relegating the petitioner to his remedy under the SARFAESI Act we direct that the interim order shall be continued for one week from today.*

*6. Petition stands dismissed with above-said observations.*

*7. Since the main case has been dismissed, the*

*pending application, if any, also stands dismissed.”*

4. Another writ petition i.e. CWP No. 5056 of 2021 filed by the same respondent again through its Managing Director Sh. Ajay Chhabra was dismissed on 08.03.2021 by observing as under:-

*“After arguing for some time, learned Senior counsel for the petitioners prays for permission to withdraw this petition with liberty to take alternate remedy available in law (either before DRT or before DRAT).*

*Allowed as prayed for. Petition stands dismissed as withdrawn with above-said liberty.*

*Since the main case has been dismissed as withdrawn, the pending application, if any, also stands dismissed as withdrawn.”*

5. In such circumstances, we are of the considered opinion that CWP No.2536 of 2022 is not maintainable. It is open to the petitioner to file and application for getting their securitization application, which was dismissed in default on 17.04.2023 and to get it restored regarding the issue. The petitioner had an alternative and efficacious remedy as such to approach the Tribunal under Section 17 of the Act against the notice issued under Section 13(4) of the Act, which has been time and again laid down by the Apex Court and recently reiterated in ***SLP No. 22021-22022 of 2022, M/s. South India Bank Ltd. and others vs. Naveen Mathew Philip and another*** decided on 17.04.2023 wherein, it has been held that only in exceptional cases, the resort as such is to be taken to Articles 226 and 227 of the Constitution of India in financial matters. In the present case, as noticed, after twice being relegated to the remedy before the Tribunal, we do not find

jurisdiction at the third stage.

6. The provisions of Section 17(2) and 17(3) are very widely worded to the extent that the Tribunal has wide powers to examine the validity of all the actions taken by the secured creditor and whether the provisions of the Act and the Rules have been complied with. The measures resorted to under Section 13(4) of the Act by the secured creditor have to be in accordance with the mandatory provisions and if it is not done, the Tribunal has the power to declare recourse to any one or more measures referred as invalid and even direct restoration of the possession.

7. In the present case, as noticed, sale certificates dated 12.03.2021 (Annexure P-11) have also been issued in favour of Shri Laxmi Niwas Maheshwari and Arun Maheshwari acknowledging the receipt of Rs.7,42,00,000/- regarding Plot No.169 situated in Phase-1, Panchkula. A similar sale certificate in favour of Anil Kumar has been issued on the payment of Rs.7,04,70,000/- for commercial property i.e. SCO No. 11, Sector 5, Panchkula and, therefore, if there is any discrepancy as such in the sales which have been conducted, it is always open to the petitioner to agitate for the said procedure before the Tribunal.

8. Regarding the issue of the District Magistrate, it has already been held that the District Magistrate has no power as such to review its orders as there is no provision under the Act. Reliance can be placed on judgment of the Division Bench in ***CWP No. 16366-2016, Asset Reconstruction Company (India) Ltd. vs. State of Hayana, 2018 (1) PLR 443*** wherein, it has been held as under:-

*“(27) The powers exercisable by a District*

*Magistrate under Section 14 are creation of a Statute. Those powers are required to be exercised within the four corners of the said provision. In the case in hand, the then District Magistrate, Sonapat rightly exercised such power and passed the order dated 08.02.2016 thereby directing his subordinate officer, namely, Naib Tehsildar-cum-Executive Magistrate to take possession of the secured assets and hand over the same to ARCIL. It could not be disputed by the learned State counsel or senior counsel for the borrowers that there is no provision under the SARFAESI Act under which the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, can review, recall or modify his order. The successor District Magistrate, therefore, had no jurisdiction whatsoever either to entertain the borrower's application dated 12.06.2016 or to pass the impugned orders dated 14.06.2016 and 24.10.2016. These orders are totally without jurisdiction and void ab initio, for it is well settled that the power to review is not an inherent power and it must always be conferred by law either expressly or by necessary implication. The socalled reasons assigned by the successor District Magistrate, even if assumed to be correct, did not and cannot clothe him with a nonexistent power to review the order passed by him or his predecessor. [Ref. (i) **Patel Narshi Thakershi & Ors. vs. Shri Pradyumansinghji Arjunsinghji (1971) 3 SCC 844;** (ii) **Kewal Chand Mimani (D) By Lrs. Vs. S.K. Sen & Ors. (2001) 6 SCC 512].**”*

*(28) It would be apt to cite a Division Bench decision of Allahabad High Court in **Writ-C No.30899 of 2016 (Kotak Mahindra Bank Ltd. vs. State of UP & 4 others) decided on 21.10.2016**, where an identical*

*question came up for consideration and the High Court viewed as follows:-*

*“Be that it may, we are of the considered opinion that the District **Magistrate** has absolutely no jurisdiction to review his order dated 24.06.2013 passed under the Act, 2002 specifically when the order was subjected to challenge before the Debt Recovery Tribunal and such application was dismissed by a reasoned order holding therein that the borrower had not approached the Tribunal with clean hands. If they were not satisfied they had the remedy of approaching the Appellate Tribunal under Section 18 of the Act, 2002. We are, therefore, more than satisfied that such order of the District Magistrate cannot be permitted to stand on record. The order of the District Magistrate dated 27.04.2016 and dated 30.06.2016 are hereby quashed.”*

*We are respectfully in agreement with the view taken by the Allahabad High Court. Consequently, it is held that the District Magistrate, Sonapat had no authority or power to review the order dated 08.02.2016 and his subsequent orders being without any authority of law, cannot sustain.” ( **emphasis supplied**).*

9. This was reiterated by another Division Bench of this Court in CWP-4892-2019 titled as **“Indiabulls Housing Finance Ltd. Vs. State of Haryana and others”**, decided on 15.10.2019 and followed in **Shriram Housing Finance Ltd. vs. State of Haryana and others, 2022 (2) RCR (Civil) 510** wherein, the District Magistrate as such had passed an order recalling his earlier order on account of the death of one of the loanees. It was held that the District Magistrate cannot stop the enforcement of the order by subsequent order by issuing directions for whatsoever reason. 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 and 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 have been issued to proceed further in the application under Section 14 of the Act. 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.”*

10. In such circumstances, the orders dated 18.05.2021 and 28.05.2021 (Annexures P-23 and P-26 in CWP No. 15918 of 2021) and the final order dated 29.10.2021 (Annexure P-54A in CWP No. 2536 of 2022) are quashed. Resultantly, the order dated 24.12.2020 shall come into force. The writ petition filed by the Bank i.e. CWP No. 15918 of 2021 is accordingly allowed to the limited extent whereas, CWP No. 2536 of 2022 stands dismissed with liberty to revive the proceedings before the Tribunal. All miscellaneous applications accordingly stand disposed of.

(G.S. SANDHAWALIA)  
JUDGE

|                           |                        |
|---------------------------|------------------------|
| 26.04.2023                | (HARPREET KAUR JEEWAN) |
| shivani                   | JUDGE                  |
| Whether reasoned/speaking | Yes                    |
| Whether reportable        | Yes                    |