

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

(205)

Neutral Citation No.2023:PHHC:073861-DB

CWP-16188-2022

Decided on: 03.05.2023

Amit Ahuja

....Petitioner(s)

Versus

The South Indian Bank Ltd. and others

.... Respondent(s)

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

Present: Mr. Balraj Gujjar, Advocate for the petitioner (s).

Mr. C.S. Pasricha, Advocate for respondent Nos.1 & 2.

Mr. Aman Bahri, Addl. AG, Haryana
for respondent No.3.

G.S. Sandhawalia, J.

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the order 30.05.2022 (Annexure P-4) whereby application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short '2002 Act') was allowed by the District Magistrate without any measure being taken under Section 13 (4) of the 2002 Act. The said order was further upheld by the District Magistrate on 14.11.2022 (Annexure R-1), which also in the considered opinion of this Court as per settled principles of law is not justifiable.

2. The question of law which, thus, arises in the present writ petition being a question of jurisdiction primarily calls upon us to exercise our powers under the extra-ordinary writ jurisdiction, as the Bank in its illegal manner had proceeded to take possession of the secured property

secured without resorting to the measures under Section 13 (4) of the 2002 Act.

3. A perusal of the paper-book would go on to show that the case of the petitioner was that a term loan for machinery to the extent of ₹95 lakhs had been granted vide sanction letter dated 04.08.2018. He had been regularly paying the loan installment in spite of having financial difficulties but the Bank in violation of RBI Guidelines had declared him as a 'Non-Performing Asset on 25.05.2021. He had deposited the amounts in April, 2021 to the tune of ₹1,45,469/- and ₹13,397/-. Notice under Section 13 (2) was issued on 09.07.2021 (Annexure P-1) wherein against the term loan of ₹95 lakhs there was balance outstanding of ₹71,38,710.59 and against the ECLGS facility of ₹14,77,000/- there was balance of ₹14,76,973.16 as on 08.07.2021 for both accounts. Resultantly, hypothecation of machineries which were computerized machines and which were stored in the premises of godown at D-74, HSIIDC, Sector-37, Phase-VI, Udyog Vihar, Gurgaon, Haryana, were shown as the movable properties, which were secured with the Bank.

4. The case of the petitioner is that between the intervening period from being declared NPA on 25.05.2021 and 13 (2) notice issued on 09.07.2021, he made payments of ₹13,397/- and ₹39,360/- on 04.06.2021 and ₹40,639/- on 11.06.2021, ₹10,000/- on 16.06.2021, ₹14,500/- on 29.06.2021, ₹50,000/- on 03.07.2021. After issuance of notice under Section 13 (2) he made payments of ₹11,145/- and ₹58,999/- on 16.07.2021. It is his case that he had paid ₹66,11,928/- against the total amount of ₹1,09,77,000/-.

5. Apparently, the Bank in its anxiety never proceeded under Section 13 (4) of the 2002 Act, which is *sine qua non* as it is given a right to the borrower to approach the Tribunal against the action of the Bank. The Bank straightway preferred Section 14 application dated 29.11.2021 (Annexure P-2) before the District Magistrate seeking the possession of the machineries and their accessories as per the invoice dated 04.08.2017 having a value of ₹1,40,93,188 which were stated to be stored in the said godown which were mentioned in the Section 13 (2) notice.

6. The petitioner objected to the said methodology and filed his objection dated 30.05.2022 (Annexure P-3) and highlighted the payments as noticed above and prayed for dismissal of the application.

7. However, the District Magistrate in its anxiety passed the order on the same date when the reply was filed on 30.05.2022 (Annexure P-3) without recording its satisfaction regarding the provisions of Section 14 wherein the Magistrate was duty bound to take into account the affidavit giving due nine point details which include the factum of the entitlement to take possession of the secured asset under the provisions of sub-section (4) of Section 13 read with Section 14 of the Principal Act and also the fact that the borrower had not made any re-payment of the financial assistance in spite of the notice. The first proviso of the said section provides that the affidavits duly affirmed by the authorized officer has to be given, which fact was noticed by the District Magistrate but nothing was said about 13 (4) action.

8. The respondent-Bank in its reply before this Court also in the reply to the paragraph No.5 of the petition which raises this legal issue has taken the stance that the creditor can approach the Magistrate under

Section 14 without issuing a notice under Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002 and has placed reliance upon the judgment of this Court passed in **CWP No. 2019 of 2021 ‘Bank of India Vs. State of Punjab’** decided on 28.04.2022. Reliance was also placed upon the judgment of the Apex Court passed in **Standard Chartered Bank Vs. Noble Kumar, (2013) 9 SCC 620**. The Relevant part of the said judgment reads as under:-

“37. Thus, there will be three methods for the secured creditor to take possession of the secured assets:-

(i) The first method would be where the secured creditor gives the requisite notice under rule 8(1) and where he does not meet with any resistance. In that case, the authorised officer will proceed to take steps as stipulated under rule 8(2) onwards to take possession and thereafter for sale of the secured assets to realise the amounts that are claimed by the secured creditor.

(ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under rule 8(1) is given. In that case he will take recourse to the mechanism provided under section 14 of the Act viz. making application to the Magistrate. The Magistrate will scrutinize the application as provided in section 14, and then if satisfied, appoint an officer subordinate to him as provided under section 14 (1)(A) to take possession of the assets and documents. For that purpose the Magistrate may authorise the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.

(iii) The third situation will be one where the secured creditor approaches the Magistrate concerned directly under section 14 of the Act. The Magistrate will thereafter scrutinize the application as provided in section 14, and then if satisfied, authorise a subordinate officer to take possession of the assets and documents and forwards them to the secured creditor as under clause (ii) above.”

9. In our considered opinion of this Court the Apex Court in the case of **Noble Kumar (supra)** was dealing with the provisions of Section

14 and the legality of an order dated 14.12.2009 passed before the amendment in the provisions and had held that the Tribunal can be approached on an order passed under Section 14. It is not disputed that there has been an amendment in the 2002 Act from 15.01.2013, wherein the proviso has been appended that an affidavit duly affirmed by the authorized officer has to be accompanied in the application under Section 14. The said affidavit has to be scrutinized by the District Magistrate and he has to be satisfied about the contents of the affidavit before passing a suitable order for the purpose of taking possession of the secured assets. Under Clause (viii) & (ix) of Section 14 there is a specific reference of the entitlement to take possession of the secured asset under sub-Section (4) of Section 13 read with Section 14 of the Principal Act and the necessary averments have to be made under the provisions of the Act and the rules made thereunder. Relevant part of Section 14 reads 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 repaymentof 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[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.”

10. It is, thus, apparent that there was a statutory requirement as such to give a specific affidavit that Section 13 (4) notice has been served. It is more so in order to entitle the person to avail his legal remedy since the possession of the secured assets had to be taken over by the secured creditor under Section 13 (4) on the failure of the borrower to discharge his liability. In **Noble Kumar (supra)** though while noticing that there was an amendment, the Apex Court has held that the appeal under Section 17 of the 2002 Act is available to the borrower only after losing possession of the secured asset. It was also factually noticed in the said case that though the amendment was subsequent and there was no statutory requirement on the date when the application was filed to give an affidavit, but it was recorded that the Bank had substantially complied with the condition that was contemplated in the newly introduced proviso. It was in such circumstances, the observations of the Apex Court have come by noticing that the borrower had not even chose to raise objections to the demand raised under Section 13 (2) of the 2002 Act, but on account of the order of the High Court which had set aside the Section 14 order the possession could not be taken. Relevant portion of the said judgment reads as under:-

“39. Coming to the facts of this case, a notice under section 13(2) was in fact served on the respondent for which the respondent did not choose to respond. Therefore, there was no occasion for the appellant to consider the objections as there

was none of the respondent against the demand made in the said notice. It is brought to our notice that even while making application under section 14 the appellant filed an affidavit substantially providing for the necessary information contemplated under the newly introduced proviso to section 14 (1). We have already noticed that there was no statutory requirement as on the date when the application under section 14 was made in the instant case either to give such an affidavit or regarding the content of the affidavit. Nonetheless the appellant chose to give such an affidavit. A copy of which is placed before us. We have perused the affidavit and it substantially complies with the conditions stipulated in the newly introduced proviso. May be the appellant did it by way of abundant caution to avoid any litigation.

40. However, the respondent submitted before us that there is nothing in the impugned order of the Magistrate which indicates that the Magistrate applied his mind to such an affidavit and satisfied that it is necessary to deliver possession of the secured asset to the appellant. No doubt that there is no material on record to show that the Magistrate applied his mind to the facts stated in the affidavit filed by the appellant. On the date of the impugned order the law did not oblige the Magistrate to undertake any such exercise. Apart from that we are satisfied on examination of the content of the affidavit that all the basic requirements necessary for granting the request of the appellant of delivery of the possession of the secured asset are asserted to have existed on the date of application. Therefore, we do not see any illegality in the impugned order. The appeal is allowed. The order of the High Court is set aside.

41. In view of our conclusion on the scope of section 17 recorded earlier it would normally have been open to the respondent to prefer an appeal under section 17 raising objections regarding legality of the decision of the Magistrate to deprive the respondent of the possession of the secured asset. But in view of the fact that the respondent chose to challenge the decision of the magistrate by invoking the jurisdiction of the High Court under Article 226 of the

Constitution and in view of the fact that the respondent does not have any substantive objection as can be discerned from the record, we make it clear that the respondent in the instant case would not be entitled to avail the remedy under section 17 as the respondent stalled the proceedings for a period of almost 4 years. It is worthwhile remembering that the respondent did not even choose to raise any objections to the demand issued under section 13(2) of the Act. However, we make it clear that it is always open to the respondent to seek restoration of his property by complying with sub-section 8 of section 13 of the Act.”

11. In **M/s Hindon Forge Pvt. Ltd. and another vs. State of Uttar Pradesh through District Magistrate Ghaziabad and another**, 2018 AIR SC 5383 while reversing the judgment of the Allahabad High Court it has categorically been held while discussing the scheme of the Act that the provisions of Section 13 (4) would give a right as such to the loanee to take recourse to Section 17 and the Apex Court has distinguished the earlier judgment. The argument raised that the right would only accrue after actual possession is taken was rejected. Relevant portion of the said judgment reads as under:-

“18. Another argument that was raised by learned senior counsel for the respondents is that the taking of possession under section 13(4)(a) must mean actual physical possession or otherwise, no transfer by way of lease can be made as possession of the secured asset would continue to be with the borrower when only symbolic possession is taken. This argument also must be rejected for the reason that what is referred to in [section 13\(4\)\(a\)](#) is the right to transfer by way of lease for realising the secured asset. One way of realising the secured asset is when physical possession is taken over and a lease of the same is made to a third party. When possession is taken under rule 8(1) and 8(2), the asset can be realised by way of assignment or sale, as has been held by us

hereinabove. This being the case, it is clear that the right to transfer could be by way of lease, assignment or sale, depending upon which mode of transfer the secured creditor chooses for realising the secured asset. Also, the right to transfer by way of assignment or sale can only be exercised in accordance with rules 8 and 9 of the 2002 Rules which require various pre-conditions to be met before sale or assignment can be effected. Equally, transfer by way of lease can be done in future in cases where actual physical possession is taken of the secured asset after possession is taken under rule 8(1) and 8(2) at a future point in time. If no such actual physical possession is taken, the right to transfer by way of assignment or sale for realising the secured asset continues. This argument must also, therefore, be rejected.

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21. Another case strongly relied upon by learned counsel for the respondents is Noble Kumar (supra). This judgment decided that it is not necessary to first resort to the procedure under section 13(4) and, on facing resistance, then approach the Magistrate under section 14. The secured creditor need not avail of any of the remedies under section 13(4), and can approach the Magistrate straightaway after the 60-day period of the notice under section 13(2) is over, under section 14 of the Act. This Court therefore held:

“35. Therefore, there is no justification for the conclusion that the Receiver appointed by the Magistrate is also required to follow Rule 8 of the Security Interest (Enforcement) Rules, 2002. The procedure to be followed by the Receiver is otherwise regulated by law. Rule 8 provides for the procedure to be followed by a secured creditor taking possession of the secured asset without the intervention of the court. Such a process was unknown prior to the SARFAESI Act. So, specific provision is made under Rule 8 to ensure transparency in taking such possession. We do not see any conflict between different procedures prescribed by law for taking possession of the secured asset. The finding of the High Court in our view is unsustainable.

36. Thus, there will be three methods for the secured creditor to take possession of the secured assets:

36.1. (i) The first method would be where the secured creditor gives the requisite notice under Rule 8(1) and where he does not meet with any resistance. In that case, the authorised officer will proceed to take steps as stipulated under Rule 8(2) onwards to take possession and thereafter for sale of the secured assets to realise the amounts that are claimed by the secured creditor.

36.2. (ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under Rule 8(1) is given. In that case he will take recourse to the mechanism provided under Section 14 of the Act viz. making application to the Magistrate. The Magistrate will scrutinise the application as provided in Section 14, and then if satisfied, appoint an officer subordinate to him as provided under Section 14(1-A) to take possession of the assets and documents. For that purpose the Magistrate may authorise the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.

36.3. (iii) The third situation will be one where the secured creditor approaches the Magistrate concerned directly under Section 14 of the Act. The Magistrate will thereafter scrutinise the application as provided in Section 14, and then if satisfied, authorise a subordinate officer to take possession of the assets and documents and forward them to the secured creditor as under clause 36.2.(ii) above.

36.4. In any of the three situations above, after the possession is handed over to the secured creditor, the subsequent specified provisions of Rule 8 concerning the preservation, valuation and sale of the secured assets, and other subsequent rules from the Security Interest (Enforcement) Rules, 2002, shall apply.”

When this Court referred to the first method of taking possession of secured assets in paragraph 36.1.(i), this Court spoke of a case in which, once possession notice is given under rule 8(1), no resistance is met with. That is why, this Court states that steps as stipulated under rule 8(2) onwards to take possession, and thereafter, for sale of the secured assets to realise the amounts that are claimed by the secured

creditor would have to be taken, meaning thereby that advertisement must necessarily be given in the newspaper as mentioned in rule 8(2), after which steps for sale may take place. This case again does not deal with the precise problem that is before the Court in this case. The observation made in paragraph 36.1.(i), which is strongly relied upon by the Full Bench of the High Court, to arrive at the conclusion that actual physical possession must first be taken before the remedy under section 17(1) can be availed of by the borrower, does not flow from this decision at all.”

12. The said view was followed by a Coordinate Bench of this Court in **M/s Shree Shayam Cotex Private Limited and another Vs. State Bank of India and others, 2019 (2) PLR 836** wherein the writ petitions were allowed and the orders passed by the Debts Recovery Tribunal were set aside. The Tribunal had held that proceedings by way of securitization applications were not maintainable without losing physical possession and the securitization applications are premature. Resultantly, the Coordinate Bench as such came to the conclusion that the remedy lies before the Tribunal under Section 17 of the 2002 Act without losing symbolic or physical possession and it would be on the issuance of the notice under Section 13 (4) of the 2002 Act. The relevant part of the said judgment reads as under:-

“18. In view of the law enunciated by the Apex Court, it is held that remedy available under Section 17(1) of the Act challenging proceedings under Section 13(4) of the 2002 Act would be available without losing symbolic or physical possession. In other words, the borrower or any other aggrieved person would be entitled to invoke the jurisdiction of the DRT under Section 17(1) of the 2002 Act on issuance of notice under Section 13(4) of the said Act.”

13. A Full Bench of this Court in **M/s Indo Swiss Time Limited, Dundahera Vs. Umrao Singh and others, (1981) 83 PLR 335** has held that if there are two Apex Court judgments which take a different view, it is open to the High Courts to take a view which in it feels to be a better view, while discussing the law of precedents. Relevant portion of the said judgment reads as under:-

“22. A perusal of the judgment in the Municipal corporation of the City of **Ahmedabad (1970) 1 SCWR 183 and Himalaya Tiles' (AIR 1980 SC 1118)** cases would plainly indicate that there is a direct conflict on the point therein Both the judgments have been rendered by a Bench Consisting of two Hon'ble Judges and cannot possibly be reconciled. This situation at once brings to the fore the somewhat intricate question which is now not of infrequent occurrence namely... 'when there is a direct conflict between two decision of the Supreme court rendered by co-equal Benches, which of them should be followed by the High Courts and the Courts below'.

23. Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior court are of co-equal benches and therefore of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extent than both of them cannot be binding on the courts below. Inevitably a choice though a difficult one has to be made in such a situation. On principles of it appears to me that the high Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of co-equal Benches

of the Superior Court are earlier or later is a consideration which appears to me as hardly relevant.

24. The view I am inclined to take has the support of the high authority of Jessel M. R. in *Hampton v. Holman*, (1877) 5 Ch D 183. Therein also the learned Master of the Rolls was faced with the difficult task of choosing between the two decisions of equal authority which were directly in conflict with each other. He observed as follows :-

" Now I take it that both the cases to which I have referred are not to be reconciled with *Hayes v. Hayes* ((1828) 38 ER 822); at all events, they differ from it so far as to leave me at liberty now to say that *Hayes v. Hayes* is not sound law; indeed it appears that Sir John Leach himself was dissatisfied with his decision."

Again In *Miles v. Jarvis*, (1883) 24 Ch D 633, Kay, J., was similarly faced with two judgments of equal weight which were in conflict. He observed as follows :-

"***** The question is which of these two decisions I should follow, and it seems to me that I ought to follow that of the Master of the Rolls as being the better in point of law."

Reference in this context may in particular be made to the celebrated *Co. Ltd., Young v. Bristol Aeroplane Co. Ltd.*, (1944) KB 718. Therein in a similar context of the court of appeal being bound by its previous decisions it was held that it was not only entitled but indeed duty bound to decide which of the two conflicting decisions of its own will it follow in case of a clear divergence of the opinion in the earlier precedents."

14. In such circumstances, we are of the considered opinion that considering the consistent line of thought that the Section 14 proceedings is only an execution proceeding which has been rendered by the Apex Court also, it would be more appropriate for us to follow the view as laid down by the Apex Court in **Hindon Forge (supra)**.

15. The remedy of the borrower is thereafter provided under Section 17, if he is aggrieved by any of the measures referred to in sub-

section (4) of Section 13 taken by secured creditor and he can approach the Debts Recovery Tribunal. The Debts Recovery Tribunal only has power under Section 17 (2) and (3) to set aside the same, if the measures taken are not in accordance with the provisions of the Act. Section 13 (4) and 17 reads as under:-

“13 (4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset: Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt: Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

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17. [Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such

fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

- (a) the cause of action, wholly or in part, arises;
- (b) where the secured asset is located; or(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that 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, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

- (a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and
- (b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and
- (c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]”

16. Rule 4 of the Security Interest (Enforcement) Rules, 2002 would be relevant since the property was movable. Said rule further would go on to show that the action under Section 13 (4) is mandatory.

Rule 4 reads as under:-

“4. Procedure after issue of notice.- If the amount mentioned in the demand notice is not paid within the time specified therein, the authorised officer shall proceed to realise the amount by adopting any one or more of the measures specified in sub-section (4) of section 13 of the Act] for taking possession of movable property, namely:-

(1) Where the possession of the secured assets to be taken by the secured creditor are movable property in possession of the borrower, the authorised officer shall take possession of such movable property in the presence of two witnesses after Panchnama drawn and signed by the witnesses as nearly as possible in Appendix I to these rules.

(2) After taking possession under sub-rule (1) above, the authorised officer shall make or cause to be made an inventory of the property as nearly as possible in the form given in Appendix II to these rules and deliver or cause to be delivered, a copy of such inventory to the borrower or to any person entitled to receive on behalf of borrower.

(2A) The borrower shall be intimated by a notice, enclosing the panchnama drawn in Appendix I and the inventory made in Appendix II.

(2B) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes specified under rule 3.

(3) The authorised officer shall keep the property taken possession under sub-rule (1) either in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as owner of ordinary prudence would, under the similar circumstances, take of such property:

Provided that if such property is subject to speedy or natural decay, or the expense of keeping such property in custody is likely to exceed its value, the authorised officer may sell it at once.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) In case any secured asset is:-

- (a) a debt not secured by negotiable instrument; or
- (b) a share, in a body corporate;

(c) other movable property not in the possession of the borrower except the property deposited in or in the custody of any Court or any like authority, the authorised officer shall obtain possession or recover the debt by service of notice as under:-

- (i) in the case of a debt, prohibiting the borrower from recovering the debt or any interest thereon and the debtor from making payment thereof and directing the debtor to make such payment to the authorised officer, or
- (ii) in the case of the shares in a body corporate, directing the borrower to transfer the same to the secured creditor and also the body corporate from not transferring such shares in favour of any person other than the secured creditor. A copy of the notice so sent

may be endorsed to the concerned body corporate's Registrar to the issue or share transfer agents, if any;
 (iii) in the case of other movable property (except as aforesaid), calling upon the borrowers and the person in possession to hand over the same to the authorised officer and the authorised officer shall take custody of such movable property in the same manner as provided in sub-rules (1) to (3) above;
 (iv) movable secured assets other than those covered in this rule shall be taken possession of by the authorised officer by taking possession of the documents evidencing title to such secured assets.”

17. Appendix I and II which is *panchnama* and inventory would show that the Bank has to take the necessary action under Section 13 (4). The provisions of Section 14 would come into play thereafter. Under Section 14 the duty entrusted to a District Magistrate is akin to an executing agency designated for the aid and assistance of a Bank or financial institution to secure physical possession of the secured asset when it cannot be taken over in the ordinary process under Section 13(4) of the Act as has been held by the Coordinate Bench in **Asset Reconstruction Company India Ltd. Vs. State of Haryana, 2018 (1) PLR 473.**

18. In **M/s R.D. Jain & Co. V. Capital First Ltd. & others, 2022 AIR (SC) 4820** the amendment of Section 14(1A) was noticed that 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. Thus, it is apparent that possession can only be taken under Section 14 firstly by resorting to the measures under Section 13(4) and the proceedings under Section 14 is a ministerial step and there is no element of *quasi judicial*

functions as has been held by the Apex Court. Thus, it has been held that order under Section 14 is rather an administrative order for taking possession of secured asset.

19. The said view has been reiterated by the Division Bench of this Court in **Allahabad Bank Vs. District Magistrate, Ludhiana and others'**, 2021 (4) RCR (Civil) 571, which has further gone on to hold that if a person is aggrieved of an order passed under Section 13 (4) he has cause of action to challenge the same by filing an application under Section 17 of the Act. Relevant portion of the said judgment reads as under:-

30.....It thus clear, that the District Magistrate does not assume any adjudicatory function while examining the application of the secured creditor under Section 14 of the Act, 2002. For the same reason, we find that it would amount to no illegality if an order is passed without effective service upon the borrowers being in the nature of execution process pursuant to statutory notices served under Section 13(2) and (4) as envisaged under the scheme of the Act, 2002. Though, it would be desirable that before proceeding to take actual physical possession by the officer so deputed by the District Magistrate, a reasonable notice of say 15 days be served on the occupant so that they are not taken by surprise. It is also to be noticed that in case, a person who is aggrieved of such order, is not remediless as an order under Section 14, has been held to be an action under Section 13(4) of the Act, 2002 and any person aggrieved of the same, shall have a cause of action to challenge the same by filing an application under Section 17 of the Act, 2002. [refer to Para 20 of the judgment of Hon'ble Supreme Court in Kaniyalal Lalchand Sachdev vs. State of Maharashtra 2011 (2) SCC 782]. Similarly, we find that in case if the secured creditor is aggrieved of any action of the District Magistrate or the manner and mode of its enforcement, not involving adjudication of rights of any other secured creditor, the remedy under writ jurisdiction would be available to such a secured creditor. This is because, Section 17 of

the Act, 2002 can be invoked only in case, if the applicant is aggrieved of the action of the secured creditor, while in the instant case, the grievance of the secured creditor is against the non-implementation of its rights under Section 14 of the Act, 2002.”

20. Thus, reliance placed by the respondent-Bank upon the judgment of this Court passed in the case of **Bank of India (supra)** would be of no avail, as the said judgment has not considered the subsequent judgment of the Apex Court passed in **Hindon Forge Pvt. Ltd. (supra)** and neither reference was made to the above mentioned judgment of **M/s Shree Shayam Cotex (supra)** and the judgment of the Division Bench passed in **Allahabad Bank (supra)** regarding filing of the nine point affidavit. Even otherwise the judgment passed in the case of **Bank of India (supra)** was on a proposition where the Bank as such had approached this Court on the ground that Section 14 application had been dismissed on the ground that notice under Section 13 (4) was not issued to the borrowers/guarantors regarding the service of notice. The writ petition was, thus, allowed to the extent that the petitioner cannot be deprived of the remedy under Section 14 and it was only a procedural method and the District Magistrate was directed to restore the application and pass a fresh order in accordance with law declared by the Supreme Court. Therefore, the facts of the said judgment would not be applicable in the present case, especially once the Bank does not state that any measures under Section 13 (4) were taken.

21. Resultantly, keeping in view the above and also law laid down by the Apex Court in **M/s South Indian Bank Ltd. & others Vs. Naveen Mathew Philip & another, 2023 (2) RCR (Civil) 771**, wherein also it has been held that where the issue of jurisdiction arises the Writ

Court has a right to step in, whereas the Tribunal could only have been approached after measures under Section 13(4) had been taken.

22. Resultantly, we are of the considered opinion that the respondent-Bank could not have resorted to Section 14 proceedings leaving the petitioner remedy-less to approach the Tribunal and, therefore, for another reason we feel that the present writ petition would be maintainable, in view of the law laid down by the Apex Court. Resultantly, we answer the question against the Bank and hold that without taking recourse to Section 13 (4) and the rules thereunder the Bank could not have proceeded straightway to Section 14.

23. Even otherwise the District Magistrate could not have further modified the order under Section 14, wherein he allowed the application and granted the Bank an absolute right to possess the property at any other premises or any course of transit as prayed for by the Bank, which apparently also was done without even granting the petitioner an opportunity in view of the law laid down by the Division Bench of this Court in **Allahabad Bank (supra)**, wherein it has been held that for taking physical possession of the secured asset at least 15 days notice would be given. In the said case the Division Bench was not dealing with the case of the movable property, but fact remains that the petitioner could not be left remedy-less as has been sought to by the Bank in the present case and without making an effort to make a *panchnama* and inventory it could not have rushed straightway to the District Magistrate under Section 14 without invoking the provisions of Section 13 (4).

24. Resultantly, we quash the order dated 30.05.2022 (Annexure P-4) and resultant order dated 14.11.2022, which was passed during the

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pendency of the present writ petition after notice of motion was issued on 28.07.2022. Liberty is given to the Bank to proceed in accordance with law.

25. The petition stands allowed, in the above terms.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

03.05.2023
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	