

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21946-2021
DATE OF DECISION: 04.05.2023

PUNJAB NATIONAL BANK

.....PETITIONER

VS.

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

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

Present: Mr. Gaurav Goel , Advocate, for the petitioner.

Mr. Gurpreet Singh, Addl. A.G., Punjab.

Mr. Shikhar Sarin, Advocate,for respondents No. 3 to 9.

HARPREET KAUR JEEWAN, J.

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of 'mandamus' directing the Additional District Magistrate, Khanna (respondent No. 2) to decide the application dated 12.12.2019 (Annexure P-1) under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act').
2. The claim in the petition is that respondent No. 3-M/s Ahuja Cotspin Pvt. Ltd (respondent No. 3) is the borrower and respondents No. 4 to 9 are the guarantors. The loan was sanctioned to respondent No. 3 as consortium loan and the Cash Credit Facilities were also availed by respondent No. 3. There are following outstandings against respondent No. 3.

Sr. No.	Bank Name	Total outstandings	As on
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1	Punjab National Bank, Large Corporate Branch, PNB House, 1 st Floor, Industrial Area-A, Near Manju Cinema, Ludhiana (Punjab) 141003	₹48,90,08,887.90/-	31.07.2019
2	State Bank of India, Stressed Assets Management Branch, Civil Lines, Ludhiana	₹75,66,85,588.44/-	28.05.2019
3	Central Bank of India, C-145, Bindra Complex, Phase V, Focal Point, Ludhiana	₹24,21,64,320.89	29.05.2019
4	United Bank of India, 202, Sai Tower, Industrial Area-1, Ludhiana	₹17,45,53,151.38	30.06.2019
5	Union Bank of India, B-23/1700, Industrial Area-A Link Road, Near Cheema Chowk, Ludhiana	₹13,95,31,100/-	31.08.2019
6	Punjab National Bank & e-United Bank of India	₹97,69,45,749.53	31.08.2021

3. The Punjab National Bank is a secured creditor and the account of respondent No. 3 was classified as NPA on 31.07.2019 by the Punjab National Bank. Thereafter, notice under Section 13 (2) of the Act was issued on 05.08.2019 (Annexure P-2), demanding the outstanding dues. The symbolic possession of the property was taken on 09.12.2019 and thereafter, the petitioner-Bank filed an application dated 12.12.2019 (Annexure P-1) under Section 14 of the Act before respondent No. 2 seeking possession of various movable and immovable properties owned by respondent No. 2.
4. The learned counsel for the petitioner submitted that respondent No. 2 has been adjourning the matter time and again without recording any reasons and no order has been passed on the said application, whereas an application under Section 14 of the Act is required to be expeditiously decided within 60 days.
5. Respondent No. 2 filed a short reply wherein it was submitted

that notice of the application under Section 14 of the Act was given to respondent No. 3. However, in the meantime, the lockdown/curfew was imposed w.e.f. 22.03.2020 due to COVID-19, as such effective proceedings could not be conducted. On 23.02.2021 neither the applicant-Bank nor the respondent appeared. Therefore, the proceedings were further adjourned. On 23.03.2021, respondent No. 3 filed written objections to the application under Section 14 of the Act, wherein it was mentioned that wrong '*Khasra*' numbers of the secured assets are mentioned in the affidavit Annexure R-1. Mentioning of wrong '*khasra*' numbers for the application would have caused issue at the time of delivery of actual possession to the secured creditors, as such the copy of the objections was supplied to the representatives of the ARC agency of the petitioner-Bank. The Bank had been taking adjournment to file reply to the said objections and the delay in execution application was only on account of lockdown due to COVID-19 and non-filing of the reply to the objections by the Bank.

6. We have heard learned counsel for the parties.

7. The object of SARFAESI Act is to empower the Bank and the financial institutions “to take possession of securities given for financial assistance and sell or lease the same or take over the management in the event of default, i.e. classification of the borrowers account as non-performing assets.....”.

8. The co-ordinate Bench of this Court in **Allahabad Bank, Branch at Industrial Area vs. District Magistrate, Ludhiana and others** 2021 (4) RCR (Civil) 571, has held that the scope of powers of the District Magistrate in exercise of its jurisdiction under Section 14 of the SARFAESI

Act is not adjudicatory and it was held that as per the provisions of Section 14 of the Act, it requires the District Magistrate to pass an order within a period of 30 days from the date of application which period can be extended by another 30 days, i.e. a maximum period of 60 days are available. It was held that though the said period is directory in nature, it is still to be noticed that the discernible intent of a Legislature while providing for such timeline was to ensure that the applications filed by the secured creditors are not unduly delayed. It was further observed that though there is no similar provisions for the officer so deputed by the District Magistrate in terms of Section 14 (1A) of the Act to implement the order in a time bound but keeping in view the object of the Act which is for ensuring speedier recovery of public money of, the co-ordinate Bench observed that there ought to have been time limits provided for such officers as well which would ensure that orders passed by the District Magistrate are not frustrated by undue delay by implementing officers. It was observed that the intent of timely action under Section 14 would be complete only when time lines are equally provided at the stage of execution as well.

The relevant portion of the judgment reads as under:-

“31. Further, as per proviso to Section 14 of the Act, 2002 it requires the District Magistrate to pass an order within a period of thirty days from the date of application which period can be extended by another 30 days i.e. maximum period 60 days are available. We are conscious of the legal position that the time period of 60 days within which an order is to be passed by the District Magistrate is directory in nature. Hon’ble Supreme Court in C. Bright V/s District Collector 2021 (2) SCC 392 held in para 12 and 20 as under:-

“ 12. This Court distinguished between failure of an individual to act in a given time frame and the time frame provided to a public authority, for the purposes of determining whether a provision was mandatory or directory, when this Court held that it is a well settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified *Nasiruddin & Ors. v. Sita Ram Agarwal*, (2003) 2 SCC 577.

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20. The Act was enacted to provide a machinery for empowering banks and financial institutions, so that they may have the power to take possession of secured assets and to sell them. The DRT Act was first enacted to streamline the recovery of public dues but the proceedings under the said Act have not given desirous results. Therefore, the Act in question was enacted. This Court in *Mardia Chemical, Transcore and Hindon Forge Private Limited* has held that the purpose of the Act pertains to the speedy recovery of dues, by banks and financial institutions. The true intention of the Legislature is a determining factor herein. Keeping the objective of the Act in mind, the time limit to take action by the District Magistrate has been fixed to impress upon the authority to take possession of the secured assets. However, inability to take possession within time limit does not render the District Magistrate *Functus Officio*. The secured creditor has no control over the District Magistrate who is exercising jurisdiction under Section 14 of the Act for public good to facilitate recovery of public dues. Therefore, Section 14 of the Act is not to be interpreted literally without considering the object and

purpose of the Act. If any other interpretation is placed upon the language of Section 14, it would be contrary to the purpose of the Act. The time limit is to instill a confidence in creditors that the District Magistrate will make an attempt to deliver possession as well as to impose a duty on the District Magistrate to make an earnest effort to comply with the mandate of the statute to deliver the possession within 30 days and for reasons to be recorded within 60 days. In this light, the remedy under Section 14 of the Act is not rendered redundant if the District Magistrate is unable to handover the possession. The District Magistrate will still be enjoined upon, the duty to facilitate delivery of possession at the earliest.

[Emphasis supplied]

Even though the time provided under Section 14 to the District Magistrate to pass an order is directory, it is still to be noticed that the discernable intent of the legislature while providing for such time line was to ensure that the applications filed by the secured creditor are not unduly delayed. It is to be acknowledged that even after the order is passed by the District Magistrate, it is the implementation of the same which becomes the next hurdle for the secured creditor to complete the process of possession. Incidentally, even though the District Magistrate is required to pass an order within 60 days, but there is no similar provision for the officer so deputed by him in terms of Section 14(1A) of the Act, 2002 to implement the order in a time bound manner. Since the very object of the Act, 2002 is for ensuring speedier recovery of public money we find, that there ought to have been time limits provided for such officer as well. This would ensure that the orders passed, by the District Magistrate are not frustrated by undue delay by the implementing officer(s). Therefore, we find that the intent of timely action under Section 14 would be complete only when time lines are equally provided at the

stage of execution as well. It is only then, in our considered opinion would the real object of Act, 2002 be fully achieved.”

9. The following principles were laid down by the co-ordinate Bench in Allahabad Bank's case (supra) with regard to the scope of the functions of the District Magistrate while exercising powers under Section 14 of the Act.

“33. In view of the aforesaid discussion, in our opinion, following principles would emerge as regards the scope of functions of the District Magistrate while exercising powers under Section 14 of the Securitisation Act, 2002:-

(i) District Magistrate would not involve in any process of adjudication of any inter se rights of the parties, while examining any application under Section 14 of the Act, 2002.

(ii) Proviso to Section 14 makes it mandatory to record satisfaction by the District Magistrate which is to be restricted with regard to the factual correctness of the 9-point affidavit to be filed by the secured creditor. It cannot examine the legal validity of the steps so taken by the secured creditor as depicted in the affidavit. If the borrower is aggrieved of such steps the remedy would be to approach the DRT.

(iii) If any person is aggrieved of the order of the District Magistrate, the aggrieved person can approach the Debts Recovery Tribunal, under Section 17 of the Act, 2002 as an order passed under Section 14 is in pursuance to the steps provided under Section 13(4).

(iv) In case, if the District Magistrate fails to pass the order in terms of what is provided under Section 14 of the Act, 2002 or if the same is not being implemented, the secured creditor would have the remedy of

invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

(v) After the order is passed by the District Magistrate, the officer so deputed to execute the said order under Section 14(1A) of the Act, 2002 would also complete the process of its execution within 60 days from the date of receipt of such order. Further in case if for any reason, the order is unable to be executed, the officer shall report the matter back to the District

Magistrate, who would then pass such suitable orders as the situation may warrant.

(vi) Though, there is no provision for an advance notice to be given to the occupant / owner of the property before taking physical possession, but it would be desirable, that an advance notice of atleast 15 days be served on the occupant before taking physical possession by the officer so deputed by the District Magistrate, so that persons to be dispossessed are not caught unawares.”

10. 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.**

11. In **M/s R.D. Jain & Co. V. Capital First Ltd. & others, 2022 AIR (SC) 4820** the amendment of Section 14(1A) was noticed where 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 first 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.

12. Keeping in view the provisions of Section 14 of the Act and while noting the huge outstandings against the borrower (respondent No. 3), the District Magistrate, Ludhiana and the Additional District Magistrate, Khanna (respondent No. 2), have for no plausible reasons delayed the passing of the necessary orders. They are thus, directed to pass an appropriate order on the application filed by the petitioner-Bank dated 12.12.2019 (Annexure P-1) within a period of four weeks after the receipt of the certified copy of this order, in accordance with law. The observations made by the co-ordinate Bench in Allahabad Bank's case (*supra*) be kept in mind and thereafter, submit their compliance report with the Registrar General of this Court.

13. With the aforesaid observations, the present petition is disposed of.

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

(G.S. SANDHAWALIA)
JUDGE

May 04, 2023
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	Yes