Item Nos.16& 17
23.09.2024
Court. No. 9
Cp

W.P.A. No. 21924 of 2023

Indian Overseas Bank & Anr.
Vs.
The State of West Bengal & Ors.

With

W.P.A. No. 15605 of 2024

Mr. Debabrata Mondal
Vs.
Indian Overseas Bank & Ors.

Mr. Rahul Sarkar,
Ms. Dipika Sarkar,
… for the Petitioners.
(in WPA 21924 of 2023)
for the respondent bank
(in WPA 15605 of 2024)

Mr. Abir Mondal
… for the petitioner
(in WPA 15605 of 2024)
for the Respondent No.6.
(in WPA 21924 of 2023)

Mr. Priyankar Saha
Ms. Rajyashree Mukherjee
….for the State
(in WPA 21924 of 2023)

Re: (WPA No.21924 of 2023)

1. None appears on behalf of the respondent no.4 despite repeated service. Affidavit of service is taken on record.
2. The respondent no.5 expired. He was a co-borrower with the respondent no. 4. The bank has submitted that despite several efforts to obtain the names of the heirs of the respondent

no.5, no information in this regard could be gathered. In any event, the property has been sold and the respondent No.4 and the heirs of the respondent No.5 will not have any chance to redeem the property. The respondent No.4 is the wife of the respondent No.5.

3. The petitioner is aggrieved by an order dated February 23, 2023, passed by the Additional District Magistrate (General), Birbhum. The Additional District Magistrate was of the view that the application under Section 14 of the SARFAESI Act was not maintainable as the property had been sold.

4. Learned advocate for the State submits that once the property was sold, resort to Section 14 of the said Act could not be taken. Only when the possession of any secured asset was required to be taken by the secured creditor for sale or transfer thereof, the secured creditor could approach the District Magistrate within whose jurisdiction the secured asset was situated with a request for taking over possession of the secured asset.

5. Upon an interpretation of this Section, it appears to this court that the bank being the secured creditor may approach the District Magistrate in order to take possession of the secured asset.

6. The decision of the Hon'ble Apex Court in the matter of R. D. Jain and Company vs. Capital First Limited & Ors., reported in (2023) 1 SCC 675, records that the scheme of the SARFAESI Act made it explicitly clear that possession of the secured asset could be taken by the secured creditor before confirmation of sale of the secured assets as well as post-confirmation of sale. The Hon'ble Apex Court in paragraphs 22 to 26 has discussed the method and mechanism to be followed by the District Magistrate.

7. The relevant paragraphs of the said judgment are quoted below:-

> '**22.** Thus, considering the scheme of the SARFAESI Act, it is explicit and crystal clear that possession of the secured assets can be taken by the secured creditor before confirmation of sale of the secured assets as well as post-confirmation of sale. For taking possession of the secured assets, it could be done by the "authorised officer" of the Bank as noted in Rule 8 of the Security Interest (Enforcement) Rules, 2002.
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> **23.** 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.

24. 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.

25. As observed and held by this Court in *NKGSB Coop. Bank* [*NKGSB Coop. Bank Ltd.* v. *Subir Chakravarty*, (2022) 10 SCC 286 : (2023) 1 SCC (Cri) 157] , 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 quasi-judicial 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.

26. Thus, in view of the scheme of the SARFAESI Act, more particularly, Section 14 of the SARFAESI Act and the nature of the powers to be exercised by the learned Chief Metropolitan Magistrate/learned District Magistrate, the High Court in the impugned judgment and order has rightly observed and held that the power vested in the learned Chief Metropolitan Magistrate/learned District Magistrate is not by way of persona designata.'

8. Under such circumstances, the order impugned is set aside.

9. The Additional District Magistrate (General), Birbhum/the District Magistrate, Birbhum is directed to hear the application and dispose of the same in accordance with law and upon verification of the compliance of the formalities as per the proviso to Section 14(1) of the said Act, by the secured creditor.

10. The decision shall be taken within a month from date without any delay.

11. Under such circumstances, the writ petition is disposed. This order will be communicated to the respondent No.4 and affixed in a conspicuous

place of the property for knowledge of all the family members.

12. In view of such disposal, W.P.A. No. 15605 of 2024 is also disposed of.
13. There shall be no order as to costs.
14. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)