

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
(Civil revisional Jurisdiction)
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 118 of 2023
M/S. Jaldhaka Cold Storage Pvt. Ltd. & Ors.
Vs.
UCO Bank

For the petitioners : Mr. Rahul Mishra
Mr. Deborshi Dhar

For the Respondent Bank : Mr. Bikramaditya Ghosh
Ms. Supriya Singh
Mr. Somraj Paul

Heard on : 30.11.2023

Judgment on : 11.01.2024

Ajoy Kumar Mukherjee, J.

1. The instant Application Under Article 227 of the constitution of India has been preferred against the order dated 04th August, 2023 passed by the learned Debt Recovery Appellant Tribunal (in short DRAT) Kolkata in Misc. Appeal No. 06 of 2023. Petitioners' case in brief is that the petitioners filed an application under section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (herein after called as SARFAESI Act, 2002) being SA 25 of 2021 before the learned Debt Recovery Tribunal (in short DRT) Siliguri challenging the classification of the petitioners loan Accounts as non performing assets and also against measures taken by the opposite party/Bank under section 13 (2) and 13(4)

of the SARFAESI Act, 2002 with regard to the mortgaged property of the petitioners.

2. During pendency of the said application before the Tribunal , the opposite party/bank filed an application under section 14 of the SARFAESI Act 2002 before the District Magistrate Jalpaiguri for taking physical possession of the mortgaged property of the petitioners. By the orders dated 05.01.2023 and 16.02.2023, the District Magistrate, Jalpaiguri was pleased to pass order under section 14 of the said Act in favour of the Bank for taking physical possession of the mortgage property of the petitioners.

3. Being aggrieved by that order, the petitioner filed an interim application being I.A. No. 130 of 2023 before the self-same Tribunal contending that despite the fact of payment of certain amount to the bank authority, there was no occasion for the Bank to declare the loan account of the petitioners as non performing assets (NPA). It was further alleged in the said interim application that the Reserve Bank of India (RBI) directed to grant moratorium of six months in respect of installments falling due between March 01, 2020 and August, 31st 2020 and the 90 days NPA norm was directed to be excluded for the said period and there was an asset classification standstill during that period but the Bank authorities ignoring all these have initiated proceedings under section 13 of the said Act against the petitioners.

4. It is further alleged that the District Magistrate did not record in his aforesaid order as to whether the secured creditor/ defendant bank has submitted any affidavit accompanied with the application under section 14 of the SARFAESI Act duly affirmed by the authorized officer of the secured

creditor containing the 9 (Nine) points as specifically laid down under the first proviso to section 14 (1) of the SARFAESI Act. In support of said intervening application it was further argued that the satisfaction of the magistrate as required under section 14(1) is to examine the factual correctness of the assertions made in such an affidavit, but not the legal niceties of the transaction. Unfortunately it is apparent from the said order passed by the District Magistrate that there is no whisper of 9(Nine) points on affidavit or the satisfaction thereof. In absence of reflection of any recording of satisfaction in the order itself, makes such order ex facie illegal.

5. Petitioner's further case is after contested hearing the DRT by an order dated 10.04.2023 was pleased to allow the petitioner's intervening application and set aside the aforesaid order of taking possession of secured Asset passed by the learned District Magistrate. Being aggrieved by that order dated 10.04.2024, the opposite party herein/Bank preferred an appeal before the learned DRAT, Kolkata being, Misc. Appeal No. 6 of 2023. Learned DRAT by the impugned order has been pleased to set aside the order dated 10th April, 2023 passed by the learned DRT, Siliguri, in aforesaid I.A. No. 130 of 2023 in connection with SA 25 of 2021 on the very first date of hearing, in the absence of present petitioners and without giving any opportunity to the petitioner herein to file their written objection.

6. Mr. Mishra learned counsel appearing on behalf of the petitioners submits that on bare perusal of the order passed by the District Magistrate Jalpaiguri, it appears that he has only endorsed the statements made in the application under section 14, without recording his satisfaction to such statements and as such the order passed by the District Magistrate,

Jalpaiguri is ex facie illegal. The satisfaction of the magistrate contemplated under section 14(1) requires the magistrate to examine the factual correctness of the assertions made in such an affidavit. He further contended that the affidavit affirmed by the authorized officer of the secured creditor mandatorily has to contain a declaration comprised of 9 (nine) points as above, but in the present case District Magistrate did not advert to almost any of such 9 (nine) preconditions. It is well settled that an authority exercising a power conferred by a statute has to exercise such power strictly in accordance with the provisions of the statute empowering it to do so.

7. Mr. Mishra further contended that District Magistrate while considering the application under section 14, ought to have ascertain correctness of the declaration as to whether the borrower has committed any default so that the account can be declared as NPA. In fact due to the moratorium granted and the instruction given by the RBI for the period from 01.03.2020 till 31.08.2020, due to the outbreak of the pandemic, the loan account could not have been classified as NPA on 30.06.2020. A loan account is classified as NPA for non-payment of installments for three consecutive months. As Moratorium was granted by the RBI for the said period, there could not have been any failure to pay the installments, since the RBI had clearly instructed that the bank would not downgrade a loan account for non- payment of installments during the moratorium period. He further contended that Non filing of the 9(nine) point affidavit is a serious lapse, committed by the creditor/Bank and the same has been completely overlooked by the District Magistrate, Jalpaiguri. In fact the usage of the word “shall” in the proviso, makes it mandatory for the District Magistrate to

record his satisfaction on the 9 point affidavit and it has been made compulsory, in terms of the amended provision and as such while passing order in respect of interim application the D.R.T rightly pointed out that the District Magistrate has passed a concise order only in one sentence and the entire order disclose nothing even about filing of the 9 (Nine) points affidavit by the secured creditor. The DRT ought not to have decided the Appeal on very first day itself but he ought to have given opportunity to the borrowers to present their case. The DRT has erred in fact in holding that the order of the District Magistrate shows that he has recorded his satisfaction which is pre-requisites for assessment of secured creditor to take possession. Accordingly the petitioner has prayed for setting aside the order impugned. Petitioner in this context has relied upon following case laws

- 1) ***Standard Chartered Bank Vs. V. Noble Kumar and others*** reported in **(2013) 9 SCC 620**
- 2) ***Allahabad Bank Vs. District Magistrate Ludhiana and others*** reported in **(2021) SCC Online Punjab & Haryana 2858.**
- 3) ***Krishna Builders and Developers and another Vs. Shriram Housing Finance Limited and another*** reported in **2019 SCC Online Cal 342**
- 4) ***Bajaj Finance Ltd Vs. Ali Agency and others*** reported in **2022 SCC Online Ori 4133.**
- 5) ***R.D. Jain and company Vs. Capital first ltd and others*** reported in **(2023) 1 SCC 675**

8. Mr. Bikramaditya Ghosh learned counsel appearing on behalf of the Opposite party/Bank submits that it is true that proviso to Section 14 has been newly incorporated which provides that prior to passing any order under section 14, the District Magistrate ought to satisfy himself as regards the details and particulars furnished in such Affidavit. However the manner and mode of recording of such satisfaction has neither been prescribed in the Act nor in the Rules. In fact the said amendment has only made explicit what was earlier implied. Even prior to the insertion of said proviso in section 14, it was the duty incumbent upon the learned District Magistrate to satisfy himself as regards the facts and figures as has been laid down under section 14 in terms of the affidavit to be submitted by the Bank. It only explicit that the learned District Magistrate must apply his mind and satisfy himself as regards such facts and particulars prior to passing such order.

9. In such view of the matter the order of learned District Magistrate dated 16th February, 2023, cannot be read in isolation. Mr. Ghosh further contended that a bare perusal of the 9 (nine) points as transpires from section 14, it shall appear that such requirements and facts and figures has been substantially recorded in the order dated 05th January, 2023 and after recording of such facts and particulars in connection with said 9(nine) points as prescribed in the proviso to section 14, the order dated 16th February, 2023 is nothing but a continuation thereof wherein the District Magistrate has recorded that having gone through the case carefully, he is fully satisfied that the pre-requisites before assisting the secured creditor in taking possession of the secured assets, have been duly complied with. In

fact while passing the said order under section 14 the concerned officer had duly taken note of all such facts and particulars which were supposed to be disclosed by the Bank in their affidavit as contemplated under section 14 of the Act.

10. Mr. Ghosh accordingly submits that from the order dated 16th February, 2023 read with the earlier order dated 5th January, 2023, it shall be evident that the learned Additional District Magistrate discharging functions of the District Magistrate has duly applied his mind as regards the facts and particulars prescribed under the 9(nine) points laid down in section 14 of the Act.

11. Mr. Ghosh while contradicting petitioners argument contended that the case law relied by the petitioner in **Krishna Builder & Developers (Supra)** does not support the case of the petitioner since it appears from the said judgment that the court has noted that it was not reflected even in a single sentence of the District Magistrate's order that the learned District Magistrate was satisfied with such 9(nine) points having been mentioned in the affidavit filed by the secured creditor. Accordingly in the instant case it appears that the officer concerned has specifically stated that he is fully satisfied that the pre-requisites before assisting the secured creditor have been duly complied with. Such observation of the officer in the order dated 16th February, 2023 read with its earlier order dated 5th January, 2023, reflects that the concerned officer was fully aware of his obligations as existed upon him under section 14 and he has duly recorded the necessary facts and particulars in the order dated 5th January, 2023 as envisaged in 9(nine) points in section 14 of the Act. Accordingly Mr. Ghosh submits

merely by not recording in explicit terms that he has satisfied himself on all the said 9(nine) points, such order cannot be faulted since the order ex facie demonstrate substantial compliance.

12. Mr. Ghosh further pointed out that the submissions of the petitioners as regards non fulfillment of point no. (V) and (VI) of the said 9(nine) points is absolutely misplaced since it shall appear from the record that the proposal for restructuring, which was offered to the petitioner being the borrower was only with regard to the principal amount. Such proposal of repayment have never exempted the petitioner from continuing to pay the interest amount as was accruing on monthly basis. Moreover the exemption as granted by the RBI in view of the COVID 19 pandemic was also for a very limited period and such benefit was duly granted in favour of the petitioner but despite availing such benefit, since the petitioner failed and neglected to repay their outstanding liabilities and its interest components, the bank was compelled to declare the account as NPA w.e.f. 31st March 2020 and as such there has been no violation of any statutory notification and/or terms and conditions. In this context Mr. Ghosh further argued that the case law relied by the petitioner reported in **(2023) 1 SCC 662** is not relevant since said judgment does not disclose any manner or form as to how the District Magistrate is required to his satisfaction. In such view of the matter Mr. Ghosh concluded by saying that the instant Civil Revisional Application has been preferred only to cause delay and to drag the repayment obligation of the petitioner and as such the petitioner prayed for dismissal of the application.

13. In view of aforesaid submissions made by the parties the moot point which needs to be considered in the present context is whether the District Magistrate , Jalpaiguri has passed the order of taking possession of secured Asset in accordance with section 14 of the SARFAESI Act, 2002, as amended or not. Now in order to consider the aforesaid issue involved in the present dispute in connection with the jurisdiction of the District Magistrate, let me first reproduce section 14 of the SARFAESI Act, which reads as follows:-

“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 asset 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 repayment of 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.]

(1-A) 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.”

14. On a plain reading of the said provision it is clear that such provisions provides that for taking possession of the secured assets in terms of section 14(1) of the SARFAESI Act, the Bank is obliged to approach the concerned magistrate by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to bank for further action. In fact the concerned magistrate is empowered immediately to move an action after receipt of written application and the concerned Magistrate under the said provision 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 bank/secured creditor at the earliest opportunity.

15. Since time mandated in the amended second proviso to section 14, it has been held time and again that the powers conferred upon the concerned magistrate under the said section is a ministerial Act for passing 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 in 60 days.

16. It was also held by the Apex Court in ***Balkrishna Rama Tarle Vs. Phoenix Arc private limited and others*** reported in **(2023) 1 SCC 662** that 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 quo points raised by the borrower against the secured creditor/bank taking possession of the secured assets. It was further held in the said judgment that at that stage the concerned magistrate is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under section 17 of the SARFAESI Act before Debt Recovery Tribunal. The legislative purpose

therefore for inserting such proviso appears to eliminate and prevent mechanical issuance of orders under section 14 of the SARFAESI Act, 2002 and nothing more.

17. In an earlier judgment on this subject reported in ***Standard Chartered Bank Vs. V. Noble Kumar and others*** reported in **(2013) 9 SCC 620** Apex Court held that the satisfaction of the Magistrate contemplated under the second proviso to section 14 (1) necessarily requires the magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction, the Magistrate can pass the appropriate orders regarding taking of possession of the secured asset. In the same judgment after analyzing the nine sub clauses of the proviso which deals with the information that is required to be furnished by the Bank by way of an affidavit indicates in substance the following points as observed in para 24 of the judgment:-

24.1 (i) there was a loan transaction under which a borrower is liable to repay the loan amount with interest,

24.2 (ii) there is a security interest created in a secured asset belonging to the borrower,

24.3 (iii) that the borrower committed default in the repayment,

24.4 (iv) that a notice contemplated under Section 13(2) was in fact issued,

24.5 (v) in spite of such a notice, the borrower did not make the repayment,

24.6 (vi) the objections of the borrower had in fact been considered and rejected,

24.7 (vii) the reasons for such rejection had been communicated to the borrower, etc.

18. Now let me consider whether the District Magistrate before passing the order was satisfied about correctness of information in connection with the 9 (nine) points enumerated in nine sub-clauses of the proviso to section 14. Needless to say that in the absence of any format, it is not required that the Magistrate will record his satisfaction para wise or point wise but before passing order Magistrate is required to satisfy himself about correctness of information as contained in the aforesaid 9 (nine) points.

19. In the present context there is no dispute that there was a loan-transaction under which borrower is liable to pay the loan amount with interest and also there is no dispute that the secured asset belonging to the borrower which has been shown towards security interest. Secured creditor/bank by filing documents at least convinced the District Magistrate that there exists default of certain amount of repayment either by way of principal amount or interest accrued therein or both. No issue raised regarding issuance of the notice contemplated under section 13(2) of the Act. It is also not in dispute that entire loan amount which includes principal and/or interest amount, has not yet been repaid by the creditor. In fact dispute raised herein by the petitioner/borrower in the present context is about the classifying and declaring borrowers' account as NPA allegedly against the norms and that the objections of the borrower had not been allegedly considered and hastily rejected.

20. Petitioner in this context strenuously argued that the District Magistrate while considering application under section 14 ought to have

ascertained the correctness of the fact as to whether the borrower has committed any default and consequent upon such default the account has been correctly declared as NPA, since a loan account can be classified as NPA only when the payment of installments for three consecutive months have not been made. Petitioner also argued that in the present context as moratorium was granted by the RBI from the month of March, 2020 till August, 2020, District Magistrate ought to have held that there could not have been any failure to pay the installments, because it was the instruction of the RBI not to down grade a loan account for non-payment of installments during the moratorium period but the District Magistrate did not ascertain such correctness. In this context petitioner further argued that the bank is demanding a sum of Rs. 18,85,73, 931.79/- w.e.f. 02.10.2020, including the interest accrued upto 30.06.2020 which shows that the bank demanding the dues even before the amount actually became due. In reply the bank submitted that the order of the district Magistrate cannot be read in isolation . Prior to the issuance of the order dated 16th February, 2023, Learned Magistrate had also passed an order on 05.01.2023 and on conjoint reading of both the orders it appears that the satisfaction about 9 (nine) points has been duly recorded in the order dated 5th January, 2023 and as such, order dated 16th February, 2023 is nothing but a continuation of his earlier order.

21. At the cost of the repetition it is to be mentioned that in **Standard Chartered Bank Case (supra)** and in **Balkrishan Ram Tarle Vs. Phoenix Arc Pvt. Ltd. & others**, reported in **(2023) 1 SCC 662** it has been clearly held that at this stage the Magistrate is not required to adjudicate the

dispute between the borrower and the secured creditor and or between any other third party and the secured creditor with respect to the secured assets. The aggrieved party to be relegated to raise objections in the proceedings under section 17 of the said Act. The Magistrate at this stage is to examine the factual correctness of the assertion made in such affidavit but not the legal niceties of the transaction. The petitioner in the present case has not made any allegation that the bank has furnished any incorrect particulars in the affidavit. In fact as stated above Bank has disclosed all particulars supposed to be disclosed under section 14 of the Act and concerned Magistrate had duly taken note of all such facts and particulars and had passed the order. The question raised by the petitioner herein that due to directions made by the RBI during COVID-19 pandemic it does not authorize the Bank to classify petitioner's account as NPA and/or calculation of upto date interest in the outstanding account is faulty, is a question which involves the merit of the case and District Magistrate is not supposed to adjudicate veracity of such issues by following adjudicatory process and such dispute between borrower and secured creditor, if any, can very well be relegated to raise objections in the proceedings under section 17 of the SARFAESI Act. Even the judgment referred by the opposite parties in ***Krishna Builders and Developers and another Vs. Shriram Housing Finance Limited and another*** reported in **2019 SCC Online Cal 342**, also of the view, although no detailed enquiry as to the veracity of aforesaid nine points was perhaps required under the law but the Magistrate is duty bound to record satisfaction as to such points being mentioned in the affidavit. Though in the said case the Magistrate did not

record his satisfaction about 9 (Nine) points but in the present context the magistrate has recorded about his satisfaction and for which the Tribunal below on perusal of the order of the District Magistrate held that the Magistrate has recorded his satisfaction which shows that he has applied his mind to the materials placed before him and it is not necessary that all the ingredients of section 14 of the Act should have been copied in verbatim by the District Magistrate.

22. In this context a Divisions Bench of this court in ***Syndicate Bank and another Vs. M/S. Kaliji Engineering Works & Ors.***, reported in **2015 SCC Online Cal 875** observed that in the absence of any format or mandate envisaged under the Act requiring the District Magistrate to pass an order how and in what format, as long as it reflects that he had applied mind to the contents of the affidavit and if the affidavit contained all the requirements envisaged under section 14 of the Act, the order passed by the District Magistrate cannot be said to be a faulty.

23. In the instant case, it is not the case for the petitioner that the property in question is not a secured asset or that there is no outstanding amount. The objection is with regard to procedural steps taken by the bank to declare petitioners account as NPA and/or the genuineness of the actual amount claimed as outstanding. This is the matter I doubt whether falls within the jurisdiction of District Magistrate while dealing with an application under section 14, who is only vested with limited jurisdiction to provide necessary assistance to take over the physical possession of the property, if it is a secured asset.

24. Section 14 is in the nature of executing order and it does not contemplate notice to borrower of hearing him. The power of the Magistrate under this section is to render assistance to the secured creditor in taking possession of the secured asset. In fact no power, jurisdiction, competence or expertise is intended or vested with the magistrate to deal with any claim as to the nature of the property in question or as to the merits or demerits with regard to the other aspect involve in connection with the loan transaction but for the considering of the fact whether the property in respect of which the assistance of the magistrate is sought for under section 14 is a “secured asset” or not. Accordingly if it is found that the property is not a secured assets the District Magistrate can decline to interfere but if it is undoubtedly a secured assets, other meritorious disputes between the parties regarding claim are not to be adjudicated through an adjudicatory process by the magistrate. No elements of quasi-judicial function are to be performed by such magistrate while exercising power under section 14 of the Act. But he supposes to perform act of executory nature in taking possession, after being satisfied that the contents of the affidavit are not manufactured. Magistrate while dealing with such application has got no jurisdiction under section 14 to enter upon adjudication on merits of claim of bank. Even if there are demerits in disposing petitioner’s application, that by itself is no ground to refuse relief under section 14, since remedy is available to borrower under section 17. District Magistrate cannot be permitted to usurp statutory power vested in Tribunal and he is to perform only ministerial role in the form of rendering assistance.

25. In such view of the matter I do not find any substance in the petitioners contention that the Bank has not complied section 13 or 14 or that without satisfying about the contents of affidavit, Magistrate had passed the order impugned.

26. C.O. 118 of 2023 accordingly dismissed.

There will be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)