**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

Date of Decision: 12.11.2024.

115 <u>CWP-28305-2024</u>

PNB Housing Finance Ltd. ....Petitioner.
VERSUS
Ashish Sharma and others ....Respondents.
with
116 <u>CWP-28311-2024</u>

PNB Housing Finance Ltd. ....Petitioner.
VERSUS
Madan Lal Jangwal and others ....Respondents.
with
117 <u>CWP-28322-2024</u>

PNB Housing Finance Ltd. ....Petitioner.
VERSUS
Kamalpreet Singh and others ....Respondents.
with
118 <u>CWP-28328-2024</u>

PNB Housing Finance Ltd. ....Petitioner.
VERSUS
Gurdeep Singh and others ....Respondents.
and
119 <u>CWP-28339-2024</u>

PNB Housing Finance Ltd. ....Petitioner.
VERSUS
Jagdish Singh and others ....Respondents.
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**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. D.K. Singal, Advocate for the petitioner.

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<u>ANUPINDER SINGH GREWAL, J. (Oral)</u>

These writ petitions are being disposed of by this common judgment as common questions of law and facts are involved in the same.

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2. For facility of reference, the facts are being taken from **CWP-28305-2024** titled PNB Housing Finance Ltd. vs. Ashish Sharma and others.

3. This petition has been filed by the petitioner for quashing order dated 09.08.2024 (Annexure P-3) passed by respondent No.4 along with consequential proceedings while exercising powers under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'), whereby notice to respondents No.1 to 3 therein has been ordered to be issued.

4. Learned counsel for the petitioner submits that petitioner had preferred an application under Section 14 of the SARFAESI Act, before respondent No.4. However, respondent No.4 has issued notice to respondents No.1 to 3 therein although respondent No.4 does not have any adjudicatory power to delve on the merits of the issue. He further submits that respondent No.4 has erroneously disregarded the judgment of the Bombay High Court in the case of **Phoenix ARC Private Limited and others vs. The State of Maharashtra and others, 2022(6) AIR BomR 407**, on the ground that the order of the Chief Metropolitan Magistrate/District Magistrate has been challenged therein although it has been held by the Supreme Court in the case of **Authorised Officer, Indian Bank vs. D. Visalakshi and Anr., 2019(4) RCR (Civil) 952,** that the Chief Judicial Magistrate, Metropolitan Magistrate and District Magistrate would exercise the same power.

5. Issue notice to respondent No.4 only at this stage.

6. At the asking of the Court, Mr. Aftab Singh Khara, Senior Deputy Advocate General, Punjab, accepts notice on behalf of respondent No.4.

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7. It is trite that that Chief Judicial Magistrate exercises the same powers as the Metropolitan Magistrate/District Magistrate/Executive Magistrate. The Metropolitan Magistrate/District Magistrate/Executive Magistrate is not required to adjudicate on the merits of the issue while deciding an application under Section 14 of the SARFAESI Act. He has to only pass an administrative order on the basis of the pleadings set out in the application under Section 14 of the SARFAESI Act, after going into the contents of the notices issued under Sections 13(2) and 13(4) of the SARFAESI Act. Reference can be made to the judgment of the Supreme Court in the case of **D. Visalakshi** (supra) and the relevant extract of the said judgment is reproduced hereunder:-

> *"37. Concededly, the Court was not called upon to consider the specific issue that arises for our consideration, in this batch of cases. To wit, whether the CJM is competent to deal with the request made by the secured creditor under Section 14 of the 2002 Act in the same manner as can be done by the CMM in metropolitan areas and DM in non-metropolitan areas. Nevertheless, what is significant to note is that this decision clearly delineates the nature of inquiry required to be conducted by the authority referred to in the Section 14 of the 2002 Act. By its very nature the inquiry, is an administrative or executive measure and to borrow the phrase used in the said judgment, "State's coercive power" - for obtaining possession of the secured assets. It is possible to suggest that as the authority is required to make inquiry and pass an order, it would partake the colour of being a quasi-judicial inquiry. In any case, the stated authority is not empowered to adjudicate on any issue(s) that may be raised regarding the rights of the concerned parties.*
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> *xxx xxx xxx*
>
> *xxx xxx xxx*

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> *48. To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (Banks).”*

8. After hearing the counsel for the parties, we are of the considered view that the application preferred by the petitioner under Section 14 of the SARFAESI Act, is pending before respondent No.4 and final decision is yet to be taken, we deem it appropriate to dispose of the petition with a direction to respondent No.4 to consider and decide the application preferred by the petitioner under Section 14 of the SARFAESI Act, afresh expeditiously in accordance with law and keeping in view the judgment of the Supreme Court in the case of **D. Visalakshi** (supra).

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

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No

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