30.04.2025
Sl. No.2
akd

W. P. A. 7445 of 2023
(CAN 1 of 2025)

[Central Bank of India -Vs- Union of India & Ors.]

Mr. Devajyoti Barman
Mr. Sudhir Kumar Senapati
Ms. Sanjukta Basu Mallick
… … for the petitioner

Mr. Dhiraj Trivedi .. Sr. Advocate
Mr. Subhajit Chatterjee
Mr. Rudra Dev Bagchi
Ms. Swapna Jha
Mr. Bikash Singh
… … for respondent no.5

Mr. Ayan Kumar Boral
Mr. Debabrati Basu Roy
… for respondent nos.4A to 4D

1. In the present writ petition, the petitioner-Bank challenges the order dated 02.02.2023 passed by the Debts Recovery Appellate Tribunal at Kolkata (DRAT) in Appeal No.263 of 2018 whereby the learned DRAT confirmed the order dated 01.10.2018 passed by the learned Debts Recovery Tribunal 1, Kolkata (DRT) in S.A. 158 of 2015. By the said order, the learned DRT had quashed the order dated 23.07.2015 passed by the learned District Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*hereinafter referred to as the 'SARFAESI Act'*). Though the learned DRAT found that the reasoning of the DRT was faulty, it nevertheless proceeded to confirm the order of the DRT on a different ground.

<u>Facts of the case</u>:-

2. The petitioner-Bank had sanctioned a house building loan of Rs.6,00,000/- in favour of the respondent no.4 (now

deceased), against the mortgage of immovable property situated at Premises No.56/3/3, Jay Narayan Babu Ananda Dutta Lane, P.S. Bantra, Dist. Howrah. Thereafter, M/s Howrah Light Steel Casting, a partnership firm represented by one of its partner namely Sri Partha Mondal (respondent no. 4) availed the loan/credit facilities of Rs. 8, 00,000/- under Cash Credit Account from the petitioner Bank for business and said credit facility was sanctioned by the petitioner Bank vide letter of Sanction dated 09.03.2009. The said loan accounts were not serviced regularly, as a result, were classified as Non-performing Assets (NPA) by the petitioner-Bank.

3. Consequently, a demand notice under Section 13(2) of the SARFAESI Act was issued on 19.01.2012. No objection to the said notice was either filed by the borrower or by the guarantor. Thereafter, possession notice under Section 13(4) of the SARFAESI Act was issued on 12.07.2012, which was duly published in newspapers. Subsequently, the petitioner-Bank obtained a valuation report of the secured assets from their empanelled valuer. Thereafter, a sale notice was published on 30.03.2014 in two leading newspapers i.e. The Times of India and Aajkaal involving the auction of the mortgaged property. A copy of the newspaper notice was also served upon the borrower. Pursuant thereto, the auction sale was confirmed in favour of respondent no.5 viz. Smt. Bhagabati Ojha for a total sale consideration of Rs.25,35,000/- and a sale certificate was issued in her favour on 30.05.2014. Neither the borrower nor the guarantor have challenged the possession notice and said e-

auction sale notice dated 30.03.2014 within the limitation period. Accordingly, the loan account was closed.

4. The petitioner-Bank in accordance with the provisions of Section 14 of the SARFAESI Act, 2002 filed an application before the District Magistrate, seeking assistance for taking physical possession of the secured asset. Upon consideration of the said application, the learned District Magistrate was pleased to pass order dated 23.07.2015 directing taking of physical possession of the secured asset in favour of the petitioner-Bank. The said order reads as follows :-

> "*The Authorised Officer of the Central Bank of India, South Regional Office, 33, Netaji Subhas Road, Kolkata – 700001 secured creditor, submitted an application to the undersigned praying for taking over possession of secured property under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). It appears on scrutiny of documents submitted with the application that the said Bank sanctioned a cash credit facility in favour of M/s. Howrah Light Steel Casting, Prop. Sri Partha Mondal, son of Sri Arun Kumar Mondal of 56/3/3, Joy Narayan Babu Ananda Dutta Lane, P.S. Bantra, Dist. Howrah-711101 (borrower) and Sri Arun Kumar Mondal of 56/3/3, Joy Narayan Babu Ananda Dutta Lane, P.S. Bantra, Dist. Howrah-711101 & Smt. Malati Mondal of 56/3/3, Joy Narayan Babu Ananda Dutta Lane, P.S. Bantra, Dist. Howrah-711101 (Guarantors) against secured property.*
>
> *Property. All the piece and parcel of the equitable mortgage of a Bastu Land measuring 3 cottahs more or less together with One Storied Building thereon comprised within Howrah Municipal, Holding No.56/3/3, Joy Narayan Babu Ananda Dutta Lane, P.S. Bantra, Dist. Howrah-711101, W.B. H.M.C. Ward No. 24.*
>
> *Butted and bounded :-*
>
> *On the North : By property of Sambhu Charan Singh & Reba Rani Singh*
> *On the East : By common passage*
> *On the South : By premises No. 56/3/3, Joy Narayan Babu Ananda Dutta Lane*
> *On the West : By Khurut Investigation Centre.*
>
> *It also appears that the borrower defaulted in repayment of loan and interest accrued thereon and so aforesaid secured creditor issued notice(s) under Section 13(2) of the SARFAESI Act, 2002 to the borrower for repayment of the dues. Statutory period of 60 days reportedly had been covered since the date of service of notice(s) but the borrower has failed to discharge his liability in full.*
>
> *In view of the above, the undersigned being the authority u/s. 14 of the SARFAESI Act, 2002 read with Rule 8(1) of Security*

Interest (Enforcement) Rules, 2002 authorises to take over possession of the secured property mentioned above making necessary inventory.

You are requested to render Police assistance as and when required for the purpose."

5. The borrower challenged the order of the District Magistrate before this court in W.P. 18626(W) of 2015. This Court vide order dated 06.08.2015 dismissed the said writ petition by granting liberty to the borrower to approach the Debts Recovery Tribunal, Kolkata. The relevant portion of the order is set out hereinbelow :-

"*.........I have considered the decisions cited by the learned advocate for the petitioners. Bearing in mind the nature of challenge thrown to the impugned order, I have also ascertained from the learned advocate representing the Bank (the secured creditor) that it had indeed filed an affidavit of the nature required by the first proviso to Section 14 of the Act together with the application that was filed thereunder.*

Having heard learned advocates for the parties, I find no reason to interfere at this stage in view of the alternative remedy that is available to the petitioners under Section 17 of the Act. The decisions of the Supreme Court reported in (2011) 2 SCC 782 (Kanaiyalal Lalchand Sachdev & Ors. vs. State of Maharashtra & Ors. (2013) 9 SCC 620 (Standard Chartered Bank vs. V. Noble Kumar) have laid down the law that an appeal is available under Section 17 of the Act against an order passed under Section 14 thereof.

In Pratima Roy (supra), this Bench had interfered with the order passed by the District Magistrate, Burdwan on the ground that the district magistrate could not have abdicated his duty by directing the superintendent of the district police force to provide assistance to the secured creditor for the purpose of taking over possession of the secured asset. Such direction, it was held, could not have been issued despite introduction of Sub-section (1A) in Section 14 of the Act.

In the present case, the Commissioner of Police, Howrah has been directed as follows:

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In view of the above, the undersigned being the authority U/S 14 of the SARFAESI Act, 2002 read with Rule 8(1) of Security Interest (Enforcement) Rules, 2002 authorizes to take over possession of the secured property mentioned above making necessary inventory.

You are requested to render Police assistance as and when required for the purpose."

There is no direction that the possession of the secured asset shall be taken by the secured creditor; instead the direction appears to be on the Commissioner to take possession with police [14:58, 4/30/2025] ARUP DAS:

assistance. Therefore, the decision in Pratima Roy (supra) is distinguishable.

Insofar as M/s. Swastyayan Agro Industries (supra) is concerned, the learned Judge had interfered on the ground that the additional district magistrate without having the necessary authorization to make an order under Section 14 of the Act had authorized a resolution agent of the secured creditor to take over possession of the secured asset with the assistance of the police and an officer of the Land & Land Reforms Department. That is definitely not the case here…….."

6. The borrower challenged the order of the District Magistrate before the learned DRT in S.A. 158 of 2015. The learned Debts Recovery Tribunal 1, Kolkata vide order dated 23.07.2018 allowed the said appeal whereby setting aside the order of the learned District Magistrate. The said order reads, inter alia, as follows :-

"*I have heard the Learned Counsel for the parties and gone through the papers and documents. My observation and finding are as under:*

(i) The Applicants have filed the present SA on 07.08.2015 challenging the District Magistrate's order dated 23.07.2015. The Respondent Bank has issued possession notice dated 12.07.2012, copy annexed to the SA. The Respondent Bank has issued E auction sale notice dated 30.03.2014, copy annexed to the SA. The Applicants have not challenged the possession notice dated 12.07.2012 and E auction sale notice dated 30.03.2014 within limitation period. Hence, the Tribunal is of the opinion that the Applicants are not entitled to raise irregularities/illegalities in the possession notice dated 12.07.2012 and E auction sale notice dated 30.03.2014 in the present SA since the purpose of availing the statutory remedy under Section 17 of the Act has lapsed.

(ii) Hence, the scope of the SA is only with regard to District Magistrate's order dated 23.07.2018. On the issue of irregularities/illegalities of the District Magistrate's order dated 23.07.2015, the District Magistrate, However, in his said order Learned District Magistrate has directed that "In view of the above, the undersigned being the authority U/S 14 of the SARFAESI Act, 2002 read with Rule 8(1) of Security Interest (Enforcement) Rules, 2002, authorizes to take over possession of the secured property mentioned above making necessary inventory"

The District Magistrate has forwarded the copy of the order to the Authorized Officer of the Respondent Bank. The material issue before the Tribunal for scrutiny/examination is whether the District Magistrate is authorized to give authority to the Authorized Officer of the Respondent Bank to take possession of the secured assets under Section 14 of the Act. In this connection, Hon'ble High Court at Calcutta vide decision dated 24.07.2014 in W.P. No. 379(W) of 2013 in the *matter of M/s Swastyayan Agro Industries & another Vs Union of India & others, in the matter of Pratima Roy & Another Vs Union of India & Others vide decision dated 24.02.2014 (W.P. 2545(W) of 2014) has held that in terms of Section 14(1) of the SARFAESI Act, the District Magistrate shall take possession of the secured assets and hand over the same to authorized Officer of the Respondent Bank.*

(iii) The Tribunal is of the opinion that the order dated 23.07.2015 passed by District Magistrate, Howrah is not in compliance of the provisions of Section 14 of the Act and also not in compliance of the decisions of the Hon'ble High Court at Calcutta as aforesaid. The District Magistrate's order dated 23.07.2015 suffers from irregularity/illegality and is liable to be set aside.

(iv) The Tribunal scrutinised/examined the District Magistrate's order dated 23.07.2015 and accordingly vide order dated 26.08.2015 directed the Respondent Bank not to take physical possession of the property till next date of hearing.

(v) However, since the issue of E auction sale notice dated 30.03.2014 has been raised during the pendency of the SA, the Tribunal is of the opinion that there is judicial necessity to record its finding on the E auction sale notice dated 30.03.2014(sale conducted on 07.05.2014) for deciding the issue of refund of sale amount of Rs. 25,35,000/- to the auction purchaser/added party in the present SA. The Applicants filed the present SA on 07.08.2015. Hoh'ble High Court at Calcutta vide order dated 05.02.2015 in the matter of Central Bank of India Vs Debasish Nandy & others held that the security creditor is not entitled to proceed for sale of the secured assets without physical possession of the secured assets. In the present matter, the sale was conducted on 07.05.2014 vide sale notice dated 30.03.2014 i.e. prior to the decision of the Hon'ble High Court at Calcutta in the matter of Central Bank of India Vs Debasish Nandy(the sale notice dated 30.03.2014 was issued and sale was conducted on 07.05.2014.) The Applicants have not challenged the sale notice dated 30.03.2014 within limitation period. The Applicants are not entitled to raise irregularities/illegalities in the sale notice dated 30.03.2014 being time barred.

(vi) The Tribunal has already observed herein above that the District Magistrate's order dated 23.07.2015 suffers from irregularities/illegalities and is liable to be set aside. The Respondent Bank is not entitled to take physical possession of the property in question in view of the District Magistrate's order dated 23.07.2015.

(vii) As regard the prayer of the auction purchaser/added party for refund of sale amount of Rs. 25,35,000/-, the Tribunal has observed hereinabove that the property in question was sold vide sale notice dated 30.03.2014(sale conducted on 07.05.2014) and the Respondent Bank has issued the sale certificate on 30.05.2014. There was no SA filed within limitation period or pending before the Tribunal raising irregularities/illegalities in the sale notice dated 30.03.2014. Hence, the Tribunal is not inclined to scrutinize/examine whether the measure taken for sale of the secured assets are in accordance with the provisions of the Act.

(viii) The Respondent Bank issued sale notice dated 30.03.2014 (sale conducted on 07.05.2014), issued sale notice in favour of the auction purchaser accordingly. The auction purchaser/added party has not been able to get

physical possession of the property in question during the last four years. Hence, pursuant to the sale of the property in question and issuance of sale certificate as mentioned above, the Respondent Bank shall consider the legal issue whether Respondent Bank still holds the status of secured creditor and holds security interest over the property in question and accordingly shall decide the issue of refund of the sale amount to the auction purchaser/added party at their end. The Tribunal is not inclined to intervene in this issue and pass any order and leaves the issue to the Respondent Bank to decide judiciously for deciding the issue of refund of sale amount to the auction purchaser/added party.

(ix) Now in respect of the prayer of the auction/purchaser made in the 1A/904/2018 for refund of sale amount of Rs. 25,35,000/- the Tribunal is of the opinion that deciding the issue of refund of sale amount gives effect to the setting aside the sale notice dated 30.03.2014. As observed hereinabove, since the Tribunal declines to scrutinize/examine the illegalities/irregularities in the sale notice dated 30.03.2014 being not challenged by the Applicants within limitation period or the sale notice was not the subject matter of any SA pending before the Tribunal, the Tribunal is not inclined to pass any order on refund of sale amount to the auction purchaser/added party. In these circumstances, the Tribunal holds the view that the Tribunal is not the proper forum for adjudication on the issue of refund of sale amount as prayed for by the auction purchaser/added party in their IA/904/2018. The auction purchaser/added party may raise the issue in proper judicial forum for getting remedy.

(x) The Tribunal has observed that the Respondent Bank has not been diligent in taking steps for giving delivery of physical possession of the property in question to the auction purchaser/added party and having received the entire bid amount, it was the bounden duty of the Respondent Bank to do so.

In view of the submission made by the auction purchaser/added party, they deserve either physical possession of the property in question or refund of the total bid amount.

In view of above, the following order is passed:

(1) The order dated 23.07.2018 passed by the District Magistrate, Howrah, is liable to be set aside and hence, set aside.

(2) The SA being No. 158/2015 is allowed and accordingly disposed of.

(3) The Tribunal declines to pass any order on the prayer of the auction purchaser/added party made in the IA/904/2018 for refund of sale amount of Rs. 25,35,000/- being not the proper forum for adjudication on this issue and the IA is accordingly disposed of.

(4) The interim order stands vacated and all the IAs stand disposed of.

Copy of the order be given to the parties.

File be consigned to Record Room."

7. The petitioner-Bank as well as the auction purchaser preferred separate appeals before the learned Debts Recovery Appellate Tribunal (DRAT), being Appeal No.263 of 2018 and Appeal No.32 of 2020 respectively.

8. The learned DRAT by a common judgment dated 02.02.2023 was pleased to allow the appeal preferred by the auction purchaser, whereas the appeal preferred by the petitioner-Bank was dismissed. By the said judgment, learned DRAT upheld the order setting aside the proceedings initiated under Section 14 of the SARFAESI Act as passed by the learned District Magistrate.

> “If we go to the order passed by the learned district magistrate dated 23.07.2015 we find that aggregate amount of financial assistance granted and total claim amount of the bank as on date of filing the application is no where mentioned in the order. There is also no "satisfaction" recorded by the learned district magistrate that the claim of the bank is within the limitation period as is required to be recorded under Clause 2 of the proviso. Clause 5 provides that there should be a declaration that consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a NPA. It is also not mentioned in the order by the learned district magistrate. Provisions of the Act of 2002 and Rules made thereunder were complied with or not also did not find place in the order. Further Rule 1A provides that District Magistrate may authorize any officer subordinate to him to take over possession of the asset. Impugned order shows that It was addressed to the Commissioner of Police, Howrah wherein it was stated that "Inview of the above, the undersigned being the authority u/s 14 of the Act of 2022 authorizes to take over possession of the secured property mentioned above making necessary inventory. You are requested to render Police assistance as and when required for the purpose." No specific authorization was given to any officer subordinate to the district magistrate, Howrah for taking possession of the secured asset, rather the "Subject" of the letter shows that "Police assistance to the secured creditor for taking over possession of secured property u/s 14 of the Act of 2002". It means that district magistrate wrote the letter to the Police Commissioner Howrah to provide police assistance, but no officer subordinate to

him was authorized subordinate to him to take possession. It is in violation of Section 14 sub-section (1A) of the Act of 2002. Accordingly, the order passed by learned district magistrate, Howrah is in contravention of specific provision of Section 14 which could not be sustained in the eye of law. Accordingly, learned DRT has set aside the order of the district magistrate, but on different ground. But as far as finding of quashing of the order of the district magistrate is concerned I do hereby confirm the finding, but on a different grounds mentioned in the body of the judgement.

18. Secondly, I am considering the submission made by learned counsel for the auction purchaser that learned DRT has failed to exercise its jurisdiction for passing order for refund of the sale price amount deposited by the auction Certified True Copy purchaser. Impugned order shows that learned DRT has not passed any order for refund of the amount being not appropriate forum for adjudication. I am not impressed with the finding recorded by learned DRT declining to pass any order for refund of the sale price deposited by the auction purchaser. No doubt SARFAESI proceeding was initiated by the bank wherein secured asset was put on sale by way of public auction wherein auction purchaser was the highest bidder and he deposited the amount to the bank. When the bank could not deliver possession of the secured asset to the auction purchaser then auction purchaser has every right to make a request for refund of the amount so deposited along with interest from the bank. Learned DRT is the appropriate authority under Act of 2002 to pass an appropriate order for refund. Decline to pass an order amounts to refusal to the relief of refund of the amount. When possession was not delivered to the auction purchaser, he is entitled to refund of the amount deposited by him along with interest.

19. It was held by the Hon'ble Apex Court in the case of ITC Limited Vs. Blue Coast Hotels Ltd. & Ors. [(2018) 15 SCC 99] in Para 50 the judgement as under:

> "50. In this case, the creditor did not have actual possession of the secured asset but only a constructive or symbolic possession. The transfer of the secured asset by the creditor therefore cannot be construed to be a complete transfer as contemplated by Section 8 of the Transfer of Property Act. The creditor nevertheless had a right to take actual possession of the secured assets and must therefore be held to be a secured creditor even after the limited transfer to the auction purchaser under the agreement 50. Thus, the entire Interest in the property not having been passed on to the creditor in the firstplace, the creditor in turn could not pass on the entire interest

> to the auction purchaser and thus remained a secured creditor in the Act."

Cited case law is squarely applies in the present case wherein refund of the amount deposited by the auction purchaser along with Interest has not been passed in favour of the auction purchaser. Accordingly, auction purchaser is entitled for the refund of the amount deposited by him.

20. On the basis of the discussion made above I am of the view that quashing of the order of the District Magistrate passed by learned DRT has to be confirmed although on different ground as set out in the body of the judgement. Accordingly appeal filed by the appellant bank is liable to be dismissed.
21. However, the auction purchaser would be entitled for refund of the amount deposited by him along with interest at the rate of fixed deposit interest prevalent in the bank. Accordingly, appeal filed by the appellant auction purchaser is liable to be allowed.

9. Being aggrieved by the same, the petitioner-Bank has preferred the present writ petition.

Arguments on behalf of the petitioner-Bank :-

10. It is the submission of the petitioner-Bank that there exists no provision under the SARFAESI Act which permits an auction purchaser to seek refund of the auction sale consideration after having voluntarily participated in a completed auction process. The auction purchaser acquires the secured asset on an '*as is where is*' basis and is presumed to be fully aware of the possibility of delay in obtaining actual physical possession of the property. Learned Advocate for the petitioner-Bank further submits that there is no infirmity or illegality in the order passed by the learned District Magistrate under Section 14 of the SARFAESI Act. The petitioner-Bank has duly submitted the requisite affidavit as mandated under the Act. Upon due consideration and satisfaction regarding the requirement of Section 14 of the SARFAESI Act, learned District Magistrate passed the order in accordance with law. Learned Advocate for the petitioner also submits that the orders passed by the learned

Debts Recovery Tribunal-1, Kolkata as well as the learned Debts Recovery Appellate Tribunal are erroneous, contrary to the settled position of law and therefore liable to be set aside.

11. This Court in W.P. 18626(W) of 2015, has already held that the order passed by the learned District Magistrate does not suffer from any illegality or procedural impropriety. It is also submitted that both the DRT and DRAT ought to have followed the view expressed by the learned single Judge in the aforesaid matter.

12. In support of the above submissions, learned Advocate for the petitioner-Bank has placed reliance on the judgments of the Apex Court in *Balkrishna Rama Tarle Dead Thr. LRS & Anr. Vs. Phoenix ARC Private Limited & Ors.*[1] and *M/s. Hindon Forge Pvt. Ltd. & Anr. Vs. The State of Uttar Pradesh*[2].

13. In view of the forgoing submissions, learned Advocate for the petitioner-Bank prays for setting aside of the impugned orders passed by the learned DRAT and DRT respectively.

Arguments on behalf of the respondents :-

14. Per contra, learned senior Advocate for the auction purchaser (respondent no.5) supports the order passed by the learned DRAT and submits that the auction purchaser acquired the secured asset vide sale certificate dated 30.05.2014. However, despite lapse of considerable time, actual physical possession of the property has not been handed over. Accordingly, the learned DRAT has rightly directed refund of the sale consideration to the auction purchaser.

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[1](2023) 1 SCC 662
[2](2019) 2 SCC 198

15. Learned Advocate for the borrower contends that the order passed by the learned District Magistrate is not in consonance with the provisions of Section 14 of the SARFAESI Act. He further submits that no satisfaction has been recorded by the learned District Magistrate to demonstrate compliance with the statutory requirement under the said section. Hence, no error can be found in the impugned order passed by the learned DRAT.

Legal analysis :-

16. This court has heard the arguments advanced by the learned Advocates for the respective parties and has examined the documents placed on record.

17. Before adverting to the facts of the present case, this Court deems it appropriate to examine the scope and purport of Section 14 of the SARFAESI Act.

18. The underlined purpose of the SARFAESI Act is to empower financial institutions in India with power akin to those enjoyed by their counterparts, namely, international banks in other countries. One such power is the authority to take possession of securities and sell them. This objective has been codified under Chapter-III of the SARFAESI Act.

19. Section 13 of the Act deals with enforcement of security interest. Section 13(4) envisages that in the event a borrower defaults in discharging his liability in full within the period specified under Section 13(2), the secured creditor may take recourse to one or more measures outlined in sub-section (4). One such measure includes a right to take possession of the secured assets of the borrower, including the right to transfer

such assets by way of lease, assignment or sale for purposes of realising the secured asset. This action can be undertaken through an '*authorised officer*' as defined under Rule 2(a) of the Security Interest (Enforcement) Rules, 2002.

20. After taking possession of the secured assets, further steps such as leasing, assigning or selling the same can be taken by the secured creditor. However, as per Section 14 of the SARFAESI Act, if the secured creditor intends to take possession of the secured assets, they must approach the Chief Metropolitan Magistrate or the District Magistrate through a written application.

21. Section 14 of the SARFAESI Act is set out hereinbelow :-

> "***14***. *Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.- (1) Where the possession of any secured asset 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 asset, 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 assets 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.]

[(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 of 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.*"

22. The statutory obligation casts upon the Chief Metropolitan Magistrate or the District Magistrate under Section 14(1) of the SARFAESI Act mandates immediate action upon receipt of a written application from the secured creditor. Upon such receipt the Chief Metropolitan Magistrate/District Magistrate is required to ensure that the secured creditor has complied with all procedural formalities as prescribed under the proviso of Section 14(1) of the SARFAESI Act. Once satisfied with the secured creditor's adherence to the statutory requirement, pass an appropriate order for taking possession of the secured assets and all documents relating thereto.

23. It is the duty of the District Magistrate to ensure that possession of the said secured assets and documents is taken and handed over to the secured creditor at the earliest possible opportunity. This process is to be carried out expeditiously, in consonance with the object and scope of SARFAESI Act which seeks to enable efficient recovery of defaulted debts by secured creditors.

24. With the insertion of sub-section (1A), a proviso has also been added to sub-section (1) of Section 14 of the SARFAESI Act, whereby the secured creditor is now mandated to comply with certain conditions. These conditions must be disclosed by way of an application accompanied by an affidavit, duly affirmed by its authorized officer. Sub-section (1A) serves as an explanatory provision, and merely reiterates the inherent power of Chief Metropolitan Magistrate/District Magistrate that was already implicit in the statutory scheme.

25. The Hon'ble Supreme Court in *Balkrishna Rama Tarle* (Supra) examined the scope of Section 14 of the SARFAESI Act and held as follows :-

> "***8.1.*** *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. 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 ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment. As observed and held by this Court in the case of NKGSB Cooperative Bank Ltd. (supra), 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. In view of the detailed discussion herein, it is evident that the power exercised by the District Magistrate/Chief Metropolitan Magistrate is of a ministerial nature. Such exercise of power is not discretionary and cannot suffer delay. Time is of essence and this reflects the very spirit and intent of the special enactment.

27. Now adverting to the facts of the present case it is evident that the borrower/guarantor did not raise any objection to the proceeding initiated by the petitioner-Bank under the provisions of the SARFAESI Act. The auction sale was duly conducted, the sale certificate was issued, a symbolic possession was taken over by the bank and the loan account was closed upon adjustment of the sale consideration.

28. However, when the bank sought to obtain actual physical possession of the secured asset under Section 14 of the SARFAESI Act, and the learned District Magistrate (DM) passed an order to that effect, then only the borrower/guarantor woke up from his slumber sleep and preferred an appeal before the DRT and obtained a stay in their favour.

29. This Court is of the firm view that such a course of action has been adopted solely to prevent the bank from taking possession and to frustrate the very object and purpose of the SARFAESI Act.

30. A perusal of the order passed by the District Magistrate dated 23.07.2015 reveals that the learned Magistrate, duly examined all the documents submitted along with the application, including the mandatory affidavit filed by the petitioner-Bank. Upon being satisfied with the compliance of the statutory requirement under Section 14 of the SARFAESI Act, the said order was passed.

31. It must also be borne in mind that the District Magistrate, in such proceedings, exercises only a ministerial function and is required to apply its mind only to the extent of ensuring

compliance of Section 14 as it has been held by the Hon'ble Supreme Court in *Balkrishna Rama Tarle* (Supra).

32. Therefore, this Court is of the considered view that the orders passed by the Debts Recovery Tribunal-1 at Kolkata (DRT) and the Debts Recovery Appellate Tribunal, Kolkata (DRAT), are suffer from patent illegality and legally unsustainable and erroneous.

33. Another objection raised by the borrower/guarantor pertains to the fact that the District Magistrate did not appoint any authorized officer for taking possession. However, a plain reading of the order dated 23.07.2015 indicates that it was addressed to the Commissioner of Police. Accordingly, it can be reasonably presumed that the District Magistrate authorized the Commissioner of Police to take possession of the secured asset.

34. The SARFAESI Act permits the District Magistrate to appoint any subordinate officer for the purpose of taking possession. There is no statutory prohibition against appointing the Commissioner of Police as the authorized officer. This Court does not find any legal infirmity in such authorization.

35. In view of the detailed discussions hereinabove, this Court is of the considered opinion that the impugned order passed by the DRAT suffers from patent illegality, as Section 14 of the SARFAESI Act has been misinterpreted. Accordingly, the impugned order is set aside.

36. The authorized officer is directed to take possession of the asset as expeditiously as possible in accordance with law.

37. With the above directions, the present writ petition is disposed of.

38. In view of disposal of the present writ petition, connected application being CAN 1 of 2025 is also disposed of.

39. Interim orders, if any, shall stand vacated.

40. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

41. There shall be no order as to costs.

42. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)