

**03.12.2025.
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Ct.No.24.
as**

WPA 25644 of 2025

**S. M. Ashique
Vs.
Union of India & Ors.**

Mr. Dilipl Kr. Samanta,
Mr. Biswapriya Samanta.
...for the Petitioner.

Ms. Sipra Chanda.
...for the Respondent No.1.

Mr. Aman Agarwal,
Mr. Adil Rashid.
...for the Respondent Nos.3 & 6.

1. Affidavit of service as filed, be kept on record.
2. Mr. Samanta files two supplementary affidavits, which are kept on record.
3. The petitioner's only grievance is that the order under Section 14 of Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act), has been passed by a Chief Judicial Magistrate of North 24-Paraganas, Barasat on June 9, 2025.
4. This order, as submitted by Mr. Samanta, ought to have been passed by the District Magistrate of the concerned District as stipulated under the SARFAESI Act. He submits that Section 14 of the said Act specifies that the jurisdiction under Section 14 of the said Act is to be exercised by the Chief Metropolitan Magistrate in a metropolitan area and by the District Magistrate in a non-metropolitan area. There

can be no deviation from these designated authorities as stipulated in the Act. Hence, the exercise of jurisdiction by the Chief Judicial Magistrate, in the place and stead of the District Magistrate of North 24-Paraganas is *ex facie* erroneous, hence liable to be set aside.

5. He has relied upon the age-old and accepted proposition that once the statute stipulates a particular thing to be done in a particular way, it has to be done in that way or not at all. This proposition has been laid down in the much celebrated decision of ***Nazir Ahmad Vs. King Emperor***, reported in ***A.I.R. 1936 Privy Council 253***. The Hon'ble Supreme Court of India has also followed such proposition of law, as will appear from the decisions in ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors.***, reported in ***(2003) 2 SCC 111***, ***Meera Sahni Vs. Lieutenant Governor of Delhi & Ors.***, reported in ***(2008) 9 SCC 177*** and ***Kanwar Singh Saini Vs. High Court of Delhi***, reported in ***(2012) 4 SCC 307***, all of which were relied upon by Mr. Samanta.

6. Mr. Agarwal appears for the Financial Institution and submits that the Chief Judicial Magistrate is equally empowered under the Act, as interpreted by the Hon'ble Apex Court to receive and entertain an application under Section 14 of the said Act, as held by the Hon'ble Supreme Court of India in the decision in ***Authorised Officer, Indian Bank Vs. D. Visalakshi & Anr.*** reported in ***(2019) 20 SCC 47***. He has placed elaborate reliance on

this decision particularly on paragraphs, 1, 34, 35 to 37, 47, 48, 52 and 54.

7. Mr. Agarwal has also submitted that under the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the Sanhita, 2023), has omitted the classification of a Chief Metropolitan Magistrate and Section 8 of the Criminal Procedure Code, 1973, defining metropolitan areas, has also been omitted in the said Sanhita, 2023. He submits that in view of such modifications in the Criminal Procedure Code in the present Sanhita, 2023, and particularly in view of the Hon'ble Supreme Court decision, as reported in ***Authorised Officer, Indian Bank*** (Supra), there can be no doubt that the Chief Judicial Magistrate is equally empowered to deal with an application under Section 14 of the said Act.

8. I have heard the learned Counsel for the parties and perused the records as well as considered the decision relied upon by them.

9. The provision of Section 14 of the said Act that in a metropolitan area, it is the Chief Metropolitan Magistrate and in a non-metropolitan area, it is the District Magistrate, who is empowered to receive and deal with an application under Section 14 of the said Act is not in dispute.

10. It is only that the interpretation of the designated authority has been given a purposive and expansive interpretation by the Hon'ble Supreme Court of India to further the legislative intent which is to be considered.

11. It is not in dispute that prior to 2019, there were two views on this issue.

12. One set of Hon'ble High Courts of this country were of the view that the District Magistrate was the only designated person in a non-metropolitan area who could entertain an application under Section 14 of the said Act. There was another view, held by another set of Hon'ble High Courts of this country, that along with the District Magistrate in a non-metropolitan area, the Chief Judicial Magistrate was also equally empowered to deal with an application under Section 14 of the said Act.

13. This divergence of opinion/view amongst the High Courts, was finally resolved by the Hon'ble Supreme Court of India in its decision reported in **(2019) 20 SCC 47** (Supra) holding, inter alia, that the said Act is a self contained Code, under which the enquiry to be conducted by the designated authority is spelt out in Section 14 of the said Act and is duly circumscribed and limited to matters specified under Clauses (i) to (ix) of the first proviso to sub section (1) of Section 14 of the said Act.

14. The enquiry indicated in the said Act is not a judicial enquiry and is ministerial in nature, though, the authority has to display a judicial approach in considering the relevant factual issue, asserted by the authorities. Thus, it may be that such an enquiry assumes a quasi judicial approach, though through a non-judicial process.

15. The Hon'ble Supreme Court of India has in no uncertain terms held as under :

“37. Notably, the powers and functions of CMM and CJM are equivalent and similar, in relation to matters specified in CrPC. These expressions (CMM and CJM) are interchangeable and synonymous to each other. Moreover, Section 14 of the 2002 Act does not explicitly exclude CJM from dealing with the request of the secured creditor made thereunder. The power to be exercised under Section 14 of the 2002 Act by the authority concerned is, by its very nature, non-judicial or State's coercive power. Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy under Section 17 of the 2002 Act and/or judicial review under Article 226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lessee; nor is it possible to suggest that they are rendered remediless in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any advantage much less added advantage. Taking totality of all these aspects, there is nothing wrong in giving expansive meaning to the expression "CMM", as inclusive of CJM concerning non-metropolitan area, who is otherwise competent to discharge administrative as well as judicial functions as delineated in CrPC on the same terms as CMM. That interpretation would make the provision more meaningful. Such interpretation does not militate against the legislative intent nor it would be a case of allowing an unworthy person or authority to undertake inquiry which is limited to matters specified in Section 14 of the 2002 Act.”

16. By the aforestated decision of the Hon'ble Supreme Court of India, it has been made clear that the interpretation sought to be given to facilitate the State's coercive power in taking possession of the secured asset has

to be given a purposive and expansive interpretation, on account whereof, the view of the High Courts giving a narrow interpretation was set aside while upholding the view of those Hon'ble High Courts, which had adopted an expansive interpretation.

17. The decision relied upon by Mr. Samanta, appearing for the petitioner, did not relate to the provisions of Section 14 of the said Act. One of them relates to the Land Reform Act, (2008) 9 SCC 177, while the other relates to the Gujarat Town Planning and Urban Development Act, 1976, (2003) 2 SCC 111. The decision reported in (2012) 4 SCC 307 relates to a civil suit. The proposition espoused in all these decisions is not in dispute that acts under a statute have to be done in the manner specified in the Act.

18. In the present case, it is not in dispute that an application under Section 14 which had been duly filed has been disposed of in accordance with the provisions of Section 14(1) of the said Act.

19. The only issue is whether the designated authority, on a purposive and expansive interpretation, could mean and include the Chief Judicial Magistrate in addition to the District Magistrate in a non-metropolitan area. In view of the decision of the Hon'ble Supreme Court reported in (2019) 20 SCC 47 (supra), the Chief Judicial Magistrate is a designated authority along with the District Magistrate in

such non-metropolitan areas and is thus empowered to deal with such an application under Section 14 of the said Act.

20. The substitution of functionaries *qua* the administrative and executive designated authorities to carry out their non-judicial function cannot be inconsistent with the provisions of the Sanhita, 2023. In that light, it is clear that a meaningful purposive and contextual interpretation has to be given of Section 14 of the said Act.

21. In view of the aforestated, I hold that the Chief Judicial Magistrate is empowered to act as a designated authority under Section 14 of the said Act, to assist the secured creditor in taking possession under the provision of the said Act.

22. Reliance has also been placed on an unreported decision of this Hon'ble Court by a Co-ordinate Bench reported in ***Abu Taleb Mondal Vs. The State of West Bengal & Anr. in CRR 2465 of 2025***, which has also similarly held that the Chief Judicial Magistrate is entitled to exercise jurisdiction under Section 14 of the said Act.

23. I do not find any reason to limit or constrict the powers of the Chief Judicial Magistrate under the said Act and disrupt the process which has been laid down categorically by the Hon'ble Supreme Court of India and is being followed throughout the country.

24. In the circumstances aforestated, the writ petition fails and is, accordingly, dismissed.

25. There shall, however, be no order as to costs.

26. Since affidavits have not been called for, the allegations contained in the petition are deemed to have been denied.

27. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Rectobroto Kumar Mitra, J.)