

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**C.O. 3813 of 2024
M/s. Only Wheel & Ors.
VS.
Bank of Baroda & Ors.**

For the Petitioner	: Mr. Saptansu Basu, Sr. Adv. Mr. Siddhartha Banerjee Ms. Susmita Nath advocates
For the Opposite Party	: Mr. Arabinda Chatterjee, Sr. Adv. Mr. Surajit Auddy Mr. Swapnalekha Auddy advocates
Reserved on	: 25.06.2025
Judgment on	: 04.09.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the borrowers and is directed against a judgment and order dated August 30, 2024 passed by the Debts Recovery Appellate Tribunal at Kolkata in Misc Appeal No. 17 of 2024.
2. By the judgment and order impugned, the order dated January 16, 2024 passed by the learned Debts Recovery Tribunal-III, Kolkata in S.A No. 229 of 2023 was set aside and the secured creditor was given liberty to proceed in accordance with law.
3. The predecessor-in-interest of the petitioners namely Sailendranath Ghosh availed overdraft facilities for Rs. 300.00 lakhs from the opposite party/bank. Since there was failure on the part of the petitioners to repay

the loan amount, notice under Section 13(2) and 13(4) of the SARFAESI Act, 2002 was issued. Proposal for one time settlement was also made which did not materialize. Thereafter, the opposite party/bank filed an application under Section 14 of the SARFAESI Act, 2002 and the District Magistrate, 24 Parganas (South) at Alipore passed an order on 6th October, 2023 under Section 14 of the SARFAESI Act, 2002 directing the Inspector-in-Charge, Tiljala Police Station to take necessary action. Subsequently, the District Magistrate, 24 Parganas (South), Alipore passed another order dated November 28, 2023 directing the Inspector-in-Charge of the Pragati Maidan Police Station to take necessary action.

4. Challenging the recovery proceedings, petitioners filed an application under Section 17 of the SARFAESI Act, 2002 before the learned Debts Recovery Tribunal-III, Kolkata (for short “DRT”) which is registered as S.A. No. 229 of 2023. In connection with the said SARFAESI Application, the petitioners filed an Interlocutory Application being I.A. 3645 of 2023 praying for stay of operation of the order dated November 28, 2023 passed by the District Magistrate, 24 Parganas (South). The learned DRT disposed of the Interlocutory Application being I.A. no. 3645 of 2023 thereby allowing the prayer for stay of operation of the orders dated 06.10.2023 and 28.11.2023, both passed by the District Magistrate 24 Parganas (South), Alipore and restrained the opposite party/bank from taking any coercive steps in respect of the secured property on the basis of the impugned orders dated 06.10.2023 and 28.11.2023 passed by the District Magistrate without the leave of the Tribunal till the next date of hearing. Being aggrieved by such order the opposite party/bank preferred an appeal before the learned Debts Recovery Appellate Tribunal, Kolkata (for short “DRAT”) which was registered as Misc Appeal no. 17 of 2024. The learned DRAT, by a judgment and order dated August 30, 2024, allowed the said appeal thereby setting aside the order dated January 16, 2024 passed by the learned DRT thus giving liberty to the secured creditor to proceed in accordance with law.

5. Being aggrieved by the order dated August 30, 2024 passed by the learned DRAT dated August 30, 2024 the borrowers have approached this Court under Article 227 of the Constitution of India.
6. Mr. Saptansu Basu, learned Senior Advocate appearing for the petitioners contended that the District Magistrate became *functus officio* after passing the order dated October 6, 2023 and, therefore, the subsequent order passed the District Magistrate on November 28, 2023 is illegal, void, ab initio and non est in the eye of law. Mr. Basu contended that an application under Section 14 of the SARFAESI Act by the secured creditor shall have to be accompanied by an affidavit affirmed by the authorized officer of the secured creditor declaring the nine points as specifically mentioned under Section 14(1) of the 2002 Act. He further contended that the District Magistrate is under a statutory obligation to verify the contents of the said affidavit and upon being satisfied with the correctness of the contents of the said affidavit pass orders for the purpose of taking possession of the secured assets. He further contended that the District Magistrate without recording its satisfaction with regard to the contents of the affidavit passed the order under Section 14 of the SARFAESI Act. Mr. Basu placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***R.D. Jain & Co. v. Capital First Ltd.***, reported at **(2023) 1 SCC 675** in support of his contention that the District Magistrate miserably failed to discharge the duties cast upon him under Section 14 of the 2002 Act. He further contended that the District Magistrate while passing the order under Section 14 of the 2002 Act failed to take into account the exact amount of loan sanctioned and the nature and description of the property mortgaged. He further contended that the loan account in question was wrongly classified as non-performing asset on multiple occasions and multiple notices under Section 13(2) of the 2002 Act were issued. On the issue that once an order is passed under Section 14 of the 2002 Act the District Magistrate becomes *functus officio* and has no jurisdiction or authority to review, modify or revisit its own order, Mr. Basu placed reliance upon the decisions in the case of ***Prime Co-operative Bank Ltd. v. District Magistrate/Chief***

Metropolitan Magistrate, reported at **2009 SCC Online Guj 10656**, and **India Shelter Finance Corpn. Branch v. State of M.P.**, reported at **2022 SCC Online MP 6062**, order dated 11.03.2022 in CWP 31871 of 2019 in the case of **Shriram Housing Finance Limited vs. State of Haryana and others**.

7. Mr. Basu placed reliance upon the decision of the Hon'ble Supreme Court in the case **of Kalabharati Advertising vs. Hemant Vimalnath Narichania and others** reported at **(2010) 9 SCC 437** in support of his contention that review application is not maintainable unless the statute or rules so permit.
8. The decision of the Hon'ble Supreme Court in the case of **Mool Chand Yadav and Another vs. Raza Buland Sugar Company Limited** reported at **(1982) 3 SCC 484** was cited for the proposition that during the pendency of the appeal, the operation of an order having serious civil consequences must be suspended. The learned advocate for the petitioner submitted that since the order passed under Section 14 of the 2002 Act has serious civil consequences, such order was rightly suspended by the DRT.
9. Mr. Basu thus contended that the learned DRAT failed to appreciate that the order of the District Magistrate dated 28.11.2023 modifying the earlier order is illegal, void, ab initio and non est in the eye of law.
10. Mr. Chatterjee, learned Senior Advocate appearing for the opposite party/Bank seriously disputed the submission made by Mr. Basu. He submitted that the only issue raised by the petitioner before the learned DRAT was that the District Magistrate after passing the order dated 06.10.2023 became *functus officio* and, therefore, could not have passed the subsequent order dated November 28, 2023 thereby changing the name of the Officer and the Police Station. Mr. Chatterjee contended that the power exercisable by the Chief Metropolitan Magistrate/District Magistrate under Section 14 of the SARFAESI Act is a ministerial step and Section 14 does not contemplate any adjudicatory process. In support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in the case

of **R.D. Jain & Co. v. Capital First Ltd.**, reported at **(2023) 1 SCC 675** and **Balkrishna Rama Tarle v. Phoenix ARC (P) Ltd.**, reported at **(2023) 1 SCC 662**. He contended that the District Magistrate has the power to modify its earlier order and in support of such contention he placed reliance upon a decision of the Hon'ble High Court of Andhra Pradesh at **Maruthi Minerals Pvt. Ltd. v. Union of India**, reported at **AIR 2021 AP 81**. He further contended that the District Magistrate is vested with the jurisdiction to pass further orders even after passing an order under Section 14 of the SARFAESI Act and in support of such contention he placed reliance upon the decision of the Hon'ble Division Bench of the High Court of Madhya Pradesh in the case **Mishri Bai Ai v. Shubh Laxmimahila Coop. Bank Ltd.**, reported at **(2022) SCC Online MP 5883** and the decision of the Hon'ble Division Bench of the High Court of Kerala at Arnakulam in the case of **Thahira vs. Federal Bank Limited and others**. Mr. Chatterjee also placed reliance on an order dated **13.02.2024** passed by a co-ordinate bench in **WPA 8066 of 2023** in the case of **State Bank of India vs. State of West Bengal and ors.** in support of his contention that the District Magistrate cannot become *functus officio* upon passing an order under Section 14(1) of the 2002 Act and has the power and jurisdiction to pass further orders to implement the same.

11. Heard the learned advocates for the parties and perused the materials placed.
12. Record reveals that the District Magistrate, 24 Parganas (South) passed an order dated 06.10.2023 on an application filed by the Authorised Officer, Bank of Baroda under Section 14 of the SARFAESI Act. The said order records that the petition along with affidavits and other relevant documents have been submitted by the authorized officer of Bank of Baroda seeking administrative assistance in terms of Section 14(1) of the 2002 Act for taking over physical possession of the secured asset. The District Magistrate after considering the documents and the status report submitted by the authorised officer observed that it transpires that the secured creditor

granted a loan of Rs. 3,08,00,000/- (Rs. Three crore eight lakhs) only on 29.04.2014 to the borrower upon creation of an equitable mortgage of the entire G+3 storied structure.

13. The District Magistrate in the said order noted that the borrower has committed default in repayment of the financial assistance and consequent upon such default the account of the borrower was classified as NPA on December 10, 2020. Notice under Section 13(2) of the SARFAESI Act 2002 demanding payment of the outstanding amount of Rs. 2,73,52,482. 92 (Rs. Two crores seventy three lakh fifty two thousand four hundred eighty two and ninety two paisa) only was served upon the defaulting borrower and in reply to the said notice the representation from the borrower was received by the authorised officer of the secured creditor and the secured creditor duly replied by a letter dated 06.02.2023.
14. The secured creditor issued the possession notice dated November 14, 2023 under Section 13(4) of the SARFAESI Act 2002 for taking possession of the secured asset of the borrower and the same was also duly published in the daily newspapers on February 15, 2023.
15. The District Magistrate in the said order further recorded that the secured asset is within the jurisdiction of the District Magistrate, 24 Parganas (South) and there is no stay order from any court of law as submitted by the authorised officer in his affidavit and also that the property is not under lease and tenancy as per the affidavit and deed(s) records or all other relevant documents, as submitted by the authorised officer in the said affidavit.
16. After going through the order dated 06.10.2023, this Court finds that the District Magistrate recorded that after careful consideration of the contents of the affidavit including the nine clauses mentioned under Section 14(1) of the 2002 Act and all other relevant documents which the secured creditor has filed duly affirmed by the authorised officer of the Bank of Baroda and being satisfied. passed an order authorizing Smt. Mohua Bandopadhyay,

WBCS (EXE) to take possession of the asset and documents relating thereto and to forward such assets and documents to the secured creditor with police assistance and the authorised officer of the Bank of Baroda was directed to intimate the date of possession of the secured asset to the Commissioner of Police, Kolkata as well as to the authorised officer Smt. Mohua Bandopadhyay, WBCS(EXE) well in advance for taking physical possession of the secured assets/property of the secured creditor on behalf of the District Magistrate 24 Parganas (South). The Commissioner of Police was also directed to instruct the local police station for maintenance of law and order as and when approached and the secured creditor was directed to remain present at the time of taking over the physical possession.

17. The said order dated 06.10.2023 was forwarded for information and taking necessary action to the Commissioner of Police, Kolkata, Smt. Mohua Bandopadhyay, WBCS(EXE) Inspector-in-Charge /Officer-in-Charge, Tiljala Police Station, Authorized Officer of the Bank of Baroda as well as the borrower.
18. Subsequently, an order dated November 28, 2023 was passed wherefrom it appears that the name of the person authorised to take possession was changed and in place of Smt. Mohua Bandopadhyay, WBCS (EXE), Smt. Runu Roy WBCS(EXE) was authorised to take possession of the assets. The said order dated 28th November, 2023 was directed to be forwarded for information and necessary action to Smt. Runu Roy WBCS(EXE), the Inspector-in-Charge /Officer-in-Charge Pragati Maidan Police Station, apart from the Commissioner of Police, Kolkata, the authorised officer, Bank of Baroda of the borrower.
19. The learned Senior advocate for the petitioner would contend that after passing the order dated October 6, 2023, the District Magistrate became *functus officio* and, therefore, the subsequent order dated November 28, 2023 was without jurisdiction. The learned senior advocate would further contend that under such circumstances the secured creditor was required to file a fresh application along with an affidavit as contemplated under Section

14(1) of the 2002 Act and the District Magistrate was under a statutory obligation to consider such application and the affidavit afresh prior to passing an order authorizing a person to take possession of the secured asset.

20. The petitioner filed I.A. 3645 of 2023 in SA 229 of 2023 before the learned Debts Recovery Tribunal III, Kolkata challenging the orders dated 06.10.2023 and 28.11.2023 both passed by the District Magistrate 24 Parganas (South).
21. The learned DRT disposed of IA 3645 of 2023 by an order dated January 16, 2024 upon holding that once the order is passed by the District Magistrate on an application under Section 14 of the SARFAESI Act it attains finality and there is no further scope to amend, modify and vary its own order and pass any order afresh in connection thereto as the District Magistrate became *functus officio*. In the light of the aforesaid observation the orders dated 06.10.2023 and 28.11.2023 were held to be unlawful and bad in law and the operation of the aforesaid orders was stayed and the bank was restrained from taking any coercive steps in respect of the secured property on the basis of the aforesaid orders.
22. On an appeal being preferred by the Bank under Section 18 of the 2002 Act, the learned DRAT, by an order dated August 30, 2024, allowed the said appeal thereby setting aside the order dated January 16, 2024 passed by the learned DRT with an observation that the secured creditor would be at liberty to proceed in accordance with law.
23. In order to decide the issues raised in this application it would be profitable to take note of some of the provisions of the SARFAESI Act 2002 for which the same are extracted hereinafter-

“13. Enforcement of security interest:

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.”

“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 assets 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.]

[(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 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.”

24. The Hon’ble Supreme Court in ***R.D. Jain and Company (supra)*** after considering the provisions of Section 14 of the 2002 Act reiterated the well settled proposition of law that the step taken by the Chief Metropolitan Magistrate/District Magistrate in taking possession of the secured assets and documents relating thereto is a ministerial step. It was further held 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 and the Magistrate is to adjudicate and decide the correctness of the information given in the application and nothing more. It was further held that Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of the secured assets. The Hon’ble Supreme Court held thus-

“18. Now so far as the powers exercisable by DM and CMM under Section 14 of the Sarfaesi Act are concerned, Statement of Objects and Reasons for which the Sarfaesi Act has been enacted reads as under:

“Statement of Objects and Reasons

The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international

prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on 21-6-2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance would enable banks and financial institutions to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction.”

19. *Thus, the underlying purpose of the SARFAESI Act is to empower the financial institutions in India to have similar powers as enjoyed by their counterparts, namely, international banks in other countries. One such feature is to empower the financial institutions to take possession of securities and sell them. The same has been translated into provisions falling under Chapter III of the SARFAESI Act. Section 13 deals with enforcement of security interest. Sub-section (4) thereof envisages that in the event a default is committed by the borrower in discharging his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the measures provided in sub-section (4). One of the measures is to take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset. That, they could do through their “authorised officer” as defined in Rule 2(a) of the Security Interest (Enforcement) Rules, 2002.*

20. *After taking over possession of the secured assets, further steps to lease, assign or sell the same could also be taken by the secured creditor. However, Section 14 of the SARFAESI Act predicates that if the secured creditor intends to take possession of the secured assets, it*

must approach the CMM/DM by way of an application in writing, and on receipt of such request, the CMM/DM must move into action in right earnest. After passing an order thereon, he/she (CMM/DM) must proceed to take possession of the secured assets and documents relating thereto for being forwarded to the secured creditor in terms of Section 14(1) read with Section 14(2) of the SARFAESI Act. As noted earlier, Section 14(2) is an enabling provision and permits the CMM/DM to take such steps and use force, as may, in his opinion, be necessary.

21. *At this stage, it is required to be noted that along with insertion of sub-section (1-A), a proviso has also been inserted in sub-section (1) of Section 14 of the SARFAESI Act whereby the secured creditor is now required to comply with certain conditions and to disclose that by way of an application accompanied by affidavit duly affirmed by its authorised officer in that regard. Sub-section (1-A) is in the nature of an explanatory provision and it merely restates the implicit power of the CMM/DM in taking services of any officer subordinate to him. 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 insertion of sub-section (1-A) is not to invest a new power for the first time in the CMM/DM as such.*

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.*

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.”*

25. The aforesaid proposition of law laid down in **R.D.Jain (supra)** was reiterated by the Hon’ble Supreme Court in **Phoenix ARC (supra)**. In the said reports it was held that the nature of inquiry to be conducted by the Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the 2002 Act is limited to the verification of compliance of the proviso to Section 14(1) of the 2002 Act. The powers of the Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the 2002 Act are essentially administrative or executive functions. The Chief Metropolitan Magistrate or the District Magistrate is not required to adjudicate the dispute between the borrower and the secured creditor and or between the third party and the secured creditor with respect to the secured asset and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act before the DRT.
26. From the aforesaid discussion it follows that the powers of the Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the 2002 Act are administrative or executive functions. Such authorities do not exercise judicial or quasi judicial functions under the 2002 Act.

27. In order to decide whether such authority has the power to amend or vary its order, it would be beneficial to take note of the provisions laid down under Section 21 of the General Clauses Act, 1897, which reads as follows:

“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.—Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.”

28. Section 14 of the 2002 Act vests power upon the Chief Metropolitan Magistrate and the District Magistrate to pass an order for taking possession of the secured asset and the documents relating thereto and to forward such asset and documents to the secured creditor. By applying the provisions of Section 21 of the General Clauses Act, this Court holds that the power conferred upon the aforesaid authorities under Section 14 of the 2002 Act would also include the power to amend, modify and vary the said order.

29. The Hon’ble Division Bench of the High Court of Andhra Pradesh in ***Maruthi Minerals (supra)*** held that Section 21 of the General Clauses Act 1897 vests power upon the Magistrate to recall or modify its earlier order. The Hon’ble Division Bench held thus-

“24. We are not unmindful of the fact that the aforesaid provision would not apply to an authority exercising judicial/quasi judicial functions under the statute. The Magistrate while exercising powers under Section 14 of the 2002 Act essentially performs administrative or executive functions save the limited verification of compliance of proviso to Section 14(1) of the 2002 Act prior to issuance of warrant of possession. Receipt of Advocate Commissioner's report, therefore, wholly partakes an executive/ministerial act. As the act of the Magistrate in recalling or modifying its earlier order to enable the Advocate Commissioner to submit his report was essentially ministerial in nature, source of such power may be traced to Section 21 of the General Clauses Act, 1897. Hence, we hold that there was no error of law on the part of the learned Magistrate to permit the ministerial act of filing the report of the Advocate Commissioner notwithstanding its earlier order of closing the proceeding.”

30. In the case on hand, the District Magistrate passed the order dated November 28, 2023 only changing the name of the officer authorised to take possession of the secured asset as the earlier officer has been transferred and also the name of the police station.
31. The learned DRAT noted that transfer of a public servant is an incidence of service and an officer authorised by the District Magistrate to take possession is authorised in its official capacity. The learned DRAT was right in observing that the object of the 2002 Act would be frustrated if the officer nominated by the District Magistrate to take possession of the secured asset is transferred and the new incumbent cannot be substituted in its place by modifying the order to that extent. It is also not in dispute that the secured asset, possession of which was directed to be taken over by an order passed under Section 14, is presently situated within the jurisdiction of Pragati Maidan police station. In the order dated 28th November 2023 the name of the police station was changed from Tiljala Police Station to Pragati Maidan police station.
32. Change of name of the authorised officer to take over possession of the secured asset and the police station within whose jurisdiction the secured asset is situated partakes the character of executive/ministerial act.
33. This Court, therefore, holds that no error was committed by the District Magistrate by amending/substituting the name of the authorised officer and the police station notwithstanding the order passed on October 6, 2023.
34. In view of the well settled proposition of law that the District Magistrate while deciding an application under Section 14 is not required to adjudicate the dispute between the borrower and the secured creditor with respect to the secured assets, this Court is not inclined to enter into the issues sought to be canvassed by the learned Senior Advocate for the petitioner in course of his argument touching upon the dispute between the petitioner and the secured creditor with respect to the secured asset. The petitioner is left free

to raise objections in the proceedings under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal in accordance with law.

35. As observed hereinbefore the District Magistrate after considering the contents of the affidavit including the nine clauses and other relevant documents recorded its satisfaction as to the correctness thereof and passed the order under Section 14 of the 2002 Act. This Court does not find any infirmity in the orders dated 06.10.2023 and the order dated 28.11.2023.
36. The learned DRT without considering the purpose behind passing of the order dated November 28, 2023 and without considering the provisions of the Section 21 of the General Clauses Act passed an order of stay of operation of the orders dated 06.10.2023 and 28.11.2023.
37. The learned DRAT after considering the materials on record applied the provisions of law correctly and was thus right in setting aside the order passed by the DRT and by giving liberty to the secured creditor to proceed in accordance with law.
38. The co-ordinate bench in ***State bank of India (supra)*** after noting the provisions of Section 14(1) and 14(2) of the 2002 Act observed that the subsequent order passed after passing of the order under Section 14(1) was for the purpose of implementation of the order passed under Section 14(1) and, therefore, the Chief Metropolitan Magistrate cannot be said to be *functus officio* at the time of passing of the subsequent order. The said decision also recognized the jurisdiction of the Chief Metropolitan Magistrate and District Magistrate to pass subsequent orders in furtherance of the order passed under Section 14(1). Therefore, the Chief Metropolitan Magistrate or the District Magistrate cannot be said to be *functus officio* immediately upon passing of the order under Section 14(1).
39. In ***Misri Bai (supra)*** it was held that the secured creditor is not required to approach again and again before the District Magistrate or DRT for recovery of the amount, once the order has been passed under Section 14 of the

SARFAESI Act and unless the entire amount is recovered the order remains valid. In the case on hand, the entire amount is yet to be recovered.

40. In ***Thahira (supra)*** after the secured creditor took possession of the secured asset pursuant to an order passed under Section 14 of the SARFAESI Act the appellants therein trespassed into the property. The Hon'ble Division Bench of the Kerala High Court in the facts of the said case held that the learned Magistrate ought to have taken steps pursuant to Section 14(1) of the Act in order to deliver possession in favour of the bank.
41. In ***Authorised Officer, Bank of Maharashtra (supra)*** the borrower trespassed into the property after the order under Section 14 of the SARFAESI Act was passed and possession was handed over to the secured creditor. The Hon'ble Gujarat High Court held that the scheme of the SARFAESI Act does not provide any bar to re-exercise the power under Section 14 of the Act.
42. Thus, it is well settled that even after an order under Section 14(1) of the SARFAESI Act is passed, the Chief Metropolitan Magistrate or the District Magistrate can re-exercise the power under Section 14 of the said Act if the situation so demands.
43. In ***India Shelter Finance Corporation (supra)*** the order under Section 14 was passed after recording satisfaction that all the nine relevant points of the affidavit were considered by him and in the subsequent order reviewing the earlier order it was not stated that there was no procedural impropriety in the previous order. The said decision being distinguishable on facts cannot come to the aid of the petitioner.
44. The decision in the case of ***Prime Co-operative Bank Ltd. (supra)*** is distinguishable on facts as in the said case, the District Magistrate after passing an order under Section 14 directing taking over possession of the subject property subsequently issued a communication postponing the process of taking over possession till further orders.

45. There is no quarrel to the proposition of law laid down in ***Kalabharati Advertising*** (supra) that unless the statute or rules so permit, the review application is not maintainable in case of judicial or quasi judicial orders. The said decision cannot be applied to the case on hand as it has been observed that the authorities exercising power under Section 14 of the 2002 Act do not perform judicial or quasi judicial functions.
46. In ***Mulchand Yadav*** (supra) it was held that if orders are challenged and the appeals are pending, one cannot permit a swinging pendulum continuously taking place during the pendency of the appeal. The said decision also cannot come to the aid of the petitioner in the case on hand as the SARFAESI Act 2002 enables the secured creditor to apply under Section 14 of the 2002 Act for taking possession and the opposite party/ Bank has taken recourse available under the said statute. It is well settled that possession of the secured asset can be taken by the secured creditor before confirmation of sale of the secured assets as well as post confirmation of sale.
47. In ***Sriram Housing Finance*** (supra) the issue that fell for consideration was whether the District Magistrate after passing the order under Section 14 of the SARFAESI Act could stay the said order. The said decision being distinguishable on facts cannot come to the aid of the petitioner.
48. In the case on hand, the subsequent order passed by the District Magistrate was in furtherance to the order passed under Section 14 of the SARFAESI Act directing taking over possession of the secured asset. The subsequent order did not in any manner alter the nature and effect of the earlier order but carried out substitution of the new incumbent to act as Officer to take possession of the secured asset and the name of the Police Station which are purely administrative and ministerial acts.
49. In view of the aforesaid discussion this Court holds that the learned DRAT was right in setting aside the order passed by the DRT. The order impugned

does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

50. C.O. No. 3813 of 2024 stands dismissed. There shall be, however, no order as to costs.
51. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Sanchita)