

Item No. 09.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 22.01.2025

DELIVERED ON: 22.01.2025

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
(CHIEF JUSTICE)
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**MAT 2119 of 2024
with
IA No. CAN 1 of 2024**

**Mrs. Susmi Dasgupta
Vs.
Bank of Baroda & ors.**

Appearance:-

Mr. Siddhartha Banerjee
Mr. Sambuddha Dutta
Mr. Rahul Kr. Singh

... For the Appellant

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee

... For the State

Mr. Dipanjan Datta
Ms. Sukanya Datta

... For Bank of Baroda

Mr. N. Srinivas
Mr. Sayantan Kar

... For the private respondents

JUDGMENT

(Judgment of the Court was delivered by T. S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioner is directed against the order dated 18.11.2024 passed in WPA 27490 of 2024 filed by the appellant. The appellant filed the said writ petition praying for issuance of certiorari to quash the order passed by the learned Additional Chief Judicial Magistrate dated 06.01.2024 exercising power under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short the SARFAESI Act) and in nine-point affidavit filed by the respondent bank under Section 14 of the said Act.

2. The learned Single Judge upon considering the facts and circumstances of the case took note of the submissions of the appellant that she is neither the borrower nor the guarantor and that no money is due and payable by the appellant/writ petitioner and the asset of the property has already been taken over by the respondent bank and, therefore, remedy was sought for. The learned writ court noted that according to Section 17(1) of the Act any person aggrieved by any measures referred to in Section 13(4) of the Act taken by the secured creditor or his authorized officer under the Chapter may make an application alongwith such fee as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within a period of 45 days from the date on which such measure had been taken. Further, the learned Single Judge observed that there are several judicial pronouncements that “any person” mentioned in Sub-section 1 of Section 17 of the Act brings within its fold not only the borrower or the guarantor but also any other person who may be

affected by any action under Section 13(4) or Section 14 of the said Act. Taking note of the grievance expressed by the appellant/writ petitioner that she is aggrieved by the action taken under Sections 13 and 14 of the Act, it will be open to the appellant/writ petitioner to approach the Debts Recovery Tribunal for relief and, in the event, an application is filed before the Debts Recovery Tribunal, the same to be adjudicated by the Tribunal in accordance with law.

3. Learned counsel appearing for the appellant has elaborately taken us through the factual averments including the loan documents which were filed by the respondent bank before the Tribunal to demonstrate that the property which has now been taken possession pursuant to the order passed under Section 14 of the Act was never mortgaged to the bank to secure a loan availed by a partnership firm in which the husband of the appellant/writ petitioner was a partner. In this regard, elaborate reference was made to the sanction letter issued by the respondent bank in favour of the partnership firm and other documents concerning the housing loan availed by the appellant as a principal borrower and her husband as a co-borrower in respect of the flat which according to the appellant was exclusively owned by her and the property stood in the name of the appellant and her husband was only a co-borrower. Therefore, it is submitted that there were several facilities extended out of which the facilities extended in WCDL-6 pertain to the flat on which a housing loan was availed by the appellant and that facility viz. WCDL-6 had already been closed as the amount payable was repaid to the respondent bank. It is submitted that in respect of the facilities extended by the bank in WCDL-7 for which action has been taken under the provisions of the SARFAESI Act the flat

owned by the appellant was not the subject matter of mortgage. The other documents were also referred to show that the flat owned by the appellant which was taken possession by the respondent bank was not a secured asset. Further, it is submitted by the learned counsel appearing for the appellant that the respondent bank is enjoined upon a duty to disclose correct particulars/information in an application filed under Section 14 of the said Act before the learned Chief Judicial Magistrate, however, erroneously they have shown the flat owned by the appellant as property no. 2 in the schedule of assets and have made a statement before the learned Chief Judicial Magistrate that the property flat one of the secured asset to secure the loan transaction. Learned counsel also took us through the nine-point affidavit filed by the respondent bank before the learned Chief Judicial Magistrate to address the same submissions. Therefore, it is submitted that incorrect particulars were furnished in the application filed under Section 14 and whether any fraud has been committed or not cannot be adjudicated by the Debts Recovery Tribunal and, therefore, the appellant had approached the learned writ court, however, the learned writ court did not entertain the writ petition and consequently, the appellant is before us by way of this appeal.

4. In support of his contention, learned counsel appearing for the appellant has placed reliance on certain decisions of the Hon'ble Supreme Court in the cases of **Balakrishna Rama Tarle vs. Phoenix ARC Pvt. Ltd. & Ors.** reported at **(2023) 1 SCC 662** to explain as to in what manner the power under Section 14 of the Act should be exercised by the learned District Magistrate or the learned Chief Metropolitan Magistrate. Reliance was also placed on the

decision in the case of **Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Limited & ors.** reported at **(2014) 6 SCC 1** to support the contention that the writ petition was maintainable before this Court challenging the order passed under Section 14 of the SARFAESI Act. For the same proposition, the decision of the Hon'ble Division Bench of this Court in the case of **Debasree Das vs. State of West Bengal & ors.** reported at **(2010) SCC OnLine Cal 2357** was also relied upon. Reliance was also placed on the decision in **PHR Invent Educational Society vs. UCO Bank & ors.** reported at **(2024) 6 SCC 579** for the proposition that the appellant need not avail the alternate remedy under the SARFAESI Act and, in this regard, reliance was placed on the decision of the Hon'ble Supreme Court in the case of **M/s. Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer-cum-Assessing Authority & ors.** reported at **(2023) LiveLaw SC 70**.

5. We have heard the learned advocate for the respondent on the above submission. Firstly, we need to point out that the appellant has not questioned the order passed under Section 13(4) of the Act prior to which notice under Section 13(2) of the Act was issued. The explanation given before us is that the appellant is presently residing at Bengaluru and the notice as well as the order were not served on the appellant. This submission is unacceptable for the simple reason that the notice under Section 13(2) was sent to two addresses of the appellant in Kolkata. If the appellant had changed her address it is her duty to intimate the bank regarding such change of address. Under such specious plea the appellant cannot challenge a proceeding which has already been initiated under the provisions of SARFAESI Act culminating in an order passed under

Section 13(4) of the Act. If that be the position, the flat in question is undoubtedly a secured asset which has been shown in the schedule of assets in 13(2) notice as well as Section 13(4) order. Consequently, the bank cannot be faulted for having shown the flat as one of the secured assets in the schedule of assets appended to the application filed under Section 14 of the Act before the learned Chief Judicial Magistrate. Thus, the plea raised by the appellant that the asset is no longer a secured asset cannot be countenanced.

6. The next question is more important with regard to the mode and manner the learned Chief Judicial Magistrate should exercise his power under Section 14 of the Act. For this proposition reference was made to the decision in the case of **Balakrishna Rama Tarle (supra)**. The Hon'ble Supreme Court in the said decision has referred an earlier decision in the case of **R.D. Jain & Co. vs. Capital First Ltd.** reported in **(2023) 1 SCC 675** and pointed out that a secured creditor is required to comply with certain conditions and to disclose that by way of Statement of Objects accompanied an affidavit duly affirmed by the authorised officer in that manner. Further, it was held that for taking physical possession of all the secured assets in terms of Section 14(1) of the Act the secured creditor is obliged to approach the Chief Metropolitan Magistrate /Judicial Magistrate or the District Magistrate by way of a written application requesting for taking possession of the secured asset and documents relating thereto and that being forwarded to the secured creditor for further action. This observation is contained in paragraph 23 of the said judgement. In paragraph 16, the Hon'ble Supreme Court has referred to an earlier decision in the case of **NKGSB Coop. Bank Ltd. vs. Subir Chakravarty** reported in **(2022) 10 SCC 286** wherein it was

held that the step taken by the Chief Metropolitan Magistrate/District Magistrate under Section 14 of the Act is a ministerial step. In the very same decision in paragraph 18, it has been pointed out that at the relevant stage 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 any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act, before the Debt Recovery Tribunal.

7. The learned advocate for the appellant had referred to the decision in **Harshad Govardhan Sondagar** (supra) for the proposition that the writ petition is maintainable. To be noted that the said decision in **Harshad Govardhan Sondagar** was referred to by the Hon'ble Supreme Court in paragraph 9.1 of **Balakrishna Rama Tarle** (supra). However, in paragraph 18 it has been categorically held that the aggrieved party has to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal. Therefore, the decision in **Harshad Govardhan Sondagar** (supra) may not be any assistance to the case of the appellant.

8. Insofar as the decision of the Hon'ble Division Bench of this Court in **Debasree Das** (supra) we find the decision to be distinguishable on facts. In paragraph 9 of the said judgement the Hon'ble Division Bench has noted that no deed could be produced showing that the then lawful owner of the property ever mortgaged the same in favour of the IDBI Home Finance Ltd. which appears to have been not disputed by the finance company. The Hon'ble Division Bench proceeded on the basis that there is valid encumbrances over the property in

question. However, in the instant case it is seen that the appellant is one of the guarantors in the loan given by the respondent bank. However, one of the loans stood discharged and which was mortgaged by the appellant in favour of the bank for availing a housing loan which property was once again offered as security for another loan in WCDL6, whether closure of such loan would automatically entitle the appellant to get the property released or to bring the property out of definition of secured assets is doubtful and more, particularly, when the bank can exercise the power of banker's lien. Therefore, we find the decision in *Debasree Das* (supra) cannot in any manner support the case of the appellant.

9. The learned advocate for the appellant places reliance on a decision in the case of **PHR Invent Educational Society** (supra). In the said decision the Hon'ble Supreme Court has clarified that the High Court will not entertain a petition under Article 226 of the Constitution of India if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. Further, the Hon'ble Supreme Court reminded the High Court by referring to the decision in the case of **United Bank of India vs. Satyawati Tondon** reported in **2020 (8) SCC 110** wherein the Hon'ble Supreme Court had held that it is a matter of serious concern that despite repeated pronouncement of this Court, the High Court continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. Further, the Hon'ble Supreme Court held that they hope and trust that in future the High

Courts will exercise their discretion in such matters with greater caution, care and circumspection.

10. As noted above, the learned Single Bench left it open to the appellant to avail the statutory remedy before the Debt Recovery Tribunal. However, before us the learned advocate for the appellant has made extensive submission on the matter which we have considered and dealt with in the preceding paragraphs. At the cost of repetition it is observed that the schedule of assets which was annexed to the application under Section 14 of the Act shows the flat in question as property no.2 and this property will remain as secured asset since the order passed under Section 13(4) remains unassailed by the appellant. Therefore, the plea that the property is not a secured asset can never be raised by the appellant and that too in a challenge to the order passed under Section 14 Act.

11. Lastly, the learned advocate for the appellant referred to the decision of the Hon'ble Supreme Court in **M/s. Godrej Sara Lee Ltd.** Firstly, the decision was rendered in a matter arising under the provisions of Value Added Tax and the Hon'ble Supreme Court noted the celebrated decision in **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors.** reported in **(1998) 8 SCC 1** wherein the Hon'ble Supreme Court carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. We find that the appellant's case would not be covered under any of the three exceptions which have been carved. To be noted that the Hon'ble Supreme Court in **PHR Invent Education Society** has noted the three exceptions which were carved by the Hon'ble Supreme Court in **Whirlpool**

Corporation (supra) and thereafter clarified that High Courts will not entertain a petition under Article 226 of the Constitution of India if any effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.

12. Thus, we have considered the entire matter on facts as put forth before us by the learned advocate appearing for the appellant. The question of giving any liberty to the appellant to once again approach the Debts Recovery Tribunal to maintain a challenge under Section 14 of the Act would not arise. Therefore, the appeal and the connected application are dismissed and the order passed under Section 14 of the Act is affirmed.

13. Urgent Photostat certified copy of this judgement be delivered to the learned advocate for the parties, if applied for, upon compliance of all formalities.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)