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IN THE HIGH COURT AT CALCUTTA

CIRCUIT BENCH AT JALPAIGURI

CONSTITUTIONAL WRIT JURISDICTION

HEARD ON: 19.06.2025
DELIVERED ON: 19.06.2025

PRESENT:

THE HON'BLE JUSTICE GAURANG KANTH

W. P. A. 56 OF 2025

UCO BANK
VERSUS
DISTRICT MAGISTRATE AND COLLECTOR, COOCH BEHAR & ANR.

Appearance:-

Mr. Rahul Mishra, Adv
Mr. Deborshi Dhar, Adv
...........For the Petitioner

Mr. Nabankur Paul, Adv
Mr. Bikash Singha, Adv
.... **For the State**

Mr. Debabrata Saha Roy, Adv
Mr. Neil Basu, Adv
Mr. Subhasish Misra, Adv
Ms. Shreya Sarkar, Adv .... **For the added respondent**

JUDGMENT

Gaurang Kanth, J. :-

1. The petitioner in the present writ petition is challenging the order dated 04.12.2024 passed by the District Magistrate, Cooch Behar, whereby the application filed by the petitioner under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Act) was rejected.

2. It is the case of the petitioner that respondent no. 2, the borrower had availed a loan facility from the petitioner-bank and failed to repay the same. In order to secure the said credit facilities, respondent no. 2 mortgaged certain

immovable properties as described in the writ petition in favour of the petitioner. The loan account was classified as Non Performing Asset (NPA) on 30.06.2019. The petitioner accordingly initiated proceedings under the Act and issued a demand notice under Section 13(2) of the Act. The borrower submitted his reply thereto. After complying with the statutory requirements under Section 13(2) and 13(3A) of the Act, the petitioner proceeded to take symbolic possession of the mortgaged property and issued a possession notice under Section 13(4) of the Act. Thereafter on 06.07.2021, the petitioner filed an application before the District Magistrate, Cooch Behar under Section 14 of the Act seeking assistance for taking physical possession of the mortgaged property. In the meantime, the respondent no. 2 approached the Debt Recovery Tribunal under Section 17 of the Act and the said proceedings are still pending. In the meanwhile, as the District Magistrate failed to dispose of the application under Section 14 of the Act, the petitioner approached this Court by filing WPA 208 of 2024. This Court by order dated 07.03.2024 directed the District Magistrate to dispose of the said application within 30 days. However, despite the said direction, the District Magistrate failed to pass any order, compelling the petitioner to file a contempt application. This Court by order dated 06.12.2024 issued notice in the said contempt proceeding. Meanwhile, the District Magistrate passed the impugned order on 04.12.2024, rejecting the petitioner's application under Section 14 of the Act.

3. This Court has perused the application filed by the petitioner under Section 14 of the Act along with affidavit submitted in support thereof and has also examined the impugned order passed by the District Magistrate on 4.12.2024.

4. A perusal of the impugned order reveals that the District Magistrate has pointed out material deficiencies in the affidavit submitted by the petitioner

which go to the root of the statutory compliance required under Section 14 of the Act. The relevant portion of the impugned order dated 04.12.2024 reads as follows :

> *"Now, after careful scrutiny of the affidavit dated July 06, 2021 submitted by the Authorized Officer, UCO Bank, it appears to the undersigned that :-*
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> *a) The loan was taken by M/s. Haran Chandra Cold Storage on 24/12/2019, whereas as per Para 12 of the affidavit the NPA was declared on 30/06/2019, that is prior to the date of sanction of the loan. The bank authority has failed to substantiate such issue. Thus, it could be presumed that there may have some misrepresentation of fact on the part of the Authorized Officer.*
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> *b) Secondly, as per Para 23 of the affidavit, it has been claimed that no security interest is created in agricultural land, whereas it appears from Para 8 that the Plot No. LR 768 under Mouza Kalarayer Kuthi, JL No. 09, land measuring 8 decimal, being one of the secured assets on which security interest has been created is agriculture in nature. This plot is classified as 'Duyem'. As per 31(i) of the SARFAESI Act. 2002, the provisions of this Act shall not apply to any security interest created in agricultural land.*
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> *c) Thirdly, in Para 20(a) of the affidavit, it has been claimed by the bank that the borrower submitted representation to the bank after getting the notice under section 13(2) of the SARFAESI Act, 2002 and the bank replied to the borrower. But, in fact, the Authorized Officer failed to produce any document substantiating that the representation in reply to the notice received from the*

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borrower has been considered by the bank and reasons for non-acceptance of such objection or representation had been communicated to the borrower as required by clause (vii) of first proviso to sub-section (1) of section 14 of the Act.

d) Fourthly, as per Para 24 of the affidavit, it has been affirmed on oath by the Authorized Officer of the applicant bank that notice under section 13(4) of the SARFAESI Act, 2002 was issued by the bank, but the applicant bank did not submit the copy of that notice and also unable to mention the date of notice in the affidavit. The compliance of section 13(2), 13(4) are mandatory for the secured creditor to implement them.

e) Fifthly, Clause (ix) of first proviso to sub-section (1) of section 14 of the Act is mandatorily required to be affirmed in the affidavit being filed by the authorised officer of the secured creditor states, "that the provisions of this Act and the rules made there under had been complied with". It reveals that the Authorized Officer failed to incorporate such point. Moreover, in terms of sections 22, 23 and 24 of the Act, registration of security interest is to be 'created with the Central Registry for entering the particulars of transactions relating to creation of security interest. Further, as per section 26D of the Act, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry. The Authorized Officer did not mention such point and also failed to produce any evidence to this effect."

5. Under Section 14(1) of the Act, when a secured creditor requires the assistance of the District Magistrate or the Chief Metropolitan Magistrate as the

case may be, for taking possession of the secured assets, such assistance may be sought by making an application in writing.

6. The first proviso to Section 14 (1) mandates that the application must be accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor, containing the particulars as specified under Rule 8 of the Security Interest (Enforcement) Rules, 2002 and the central government notification dated 17.09.2013. The provisions of Rule 8 of the Security Interest (Enforcement) Rules, 2002 are as follows:

> *"(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.*
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> *(2) The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer.*
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> *(2A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8."*

The District Magistrate, while considering such an application, is not required to adjudicate upon any rights or objections raised by the borrower but is instead expected to confine himself to verifying whether the application is supported by a valid and complete affidavit and whether the conditions laid down under the statute, including those prescribed under Rule 8, have been duly complied with.

7. However, in the present case, the affidavit submitted by the Petitioner does not conform to the mandatory requirements laid down under the first proviso to Section 14(1) of the Act and the applicable rules. The District Magistrate has specifically recorded the absence of certain key disclosures and defects, which are

essential to invoke the ministerial jurisdiction under Section 14 of the Act. Such an inconsistency clearly demonstrates non application of mind and lack to statutory compliance which renders the affidavit unreliable. One of the crucial observations made by the District Magistrate, is that the loan was sanctioned on 24.12.2029 which is reflected from the application filed under Section 14 of the Act by the petitioner, whereas the account was classified as a Non Performing Asset (NPA) on 30.06.2019, i.e. prior to the sanction of the loan. The material irregularities have been duly pointed out by the District Magistrate in his impugned order dated 04.12.2024.

8. The absence of key particulars required under Rule 8 and the failure to submit a valid affidavit as mandated under first proviso to Section 14(1) vitiates the entire application. Since the jurisdiction of the District Magistrate under Section 14 of the Act, is not ministerial and not adjudicatory, such defects cannot be cured retrospectively or assumed to be merely procedural.

9. This Court is of the firm view that the District Magistrate was well within his jurisdiction and justified in refusing to entertain the application in its defective form.

10. The petitioner's contention that all relevant documents were submitted cannot be accepted as sufficient, particularly when the affidavit itself is deficient and there is non compliance with the requirements of the application filed under Section 14 of the Act. The power under Section 14 can be exercised only upon strict adherence to all the prescribed statutory conditions. Any deviation or incomplete compliance cannot be retrospectively cured merely by asserting that there has been specific compliance.

11. This Court is of the considered opinion that there is no infirmity in the impugned order dated 04.12.2024.

12. Accordingly, the present writ petition is dismissed.

13. However, this Court does not preclude the Petitioner from filing a fresh application under Section 14 of the SARFAESI Act before the District Magistrate, duly supported by an appropriate affidavit strictly in compliance with the first proviso to Section 14(1) of the Act, read with the relevant Rules and Notifications.

14. If such application is filed, the District Magistrate shall consider and dispose of the same in accordance with law within the time prescribed by the statute.

15. Since no affidavit is called for, allegations made in the petition are deemed to have been denied.

16. Certified copy of this judgment, if applied for, be given to the learned Advocates for the parties on usual undertaking.

(Gaurang Kanth, J.)

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