Form No.J(2)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 1585 of 2025

State Bank of India & anr.
-versus
The Learned District Magistrate, Darjeeling & Ors.

For the petitioners	:	Mr. Milindo Paul Mr. Nabankur Paul Ms. Sutapa Sen Paul Ms. Bedshruti Bose Mr. Subham Das
For the State	:	Mr. Joyjit Choudhury, Ld. AAG Mr. Sumit Kumar Ms. Rima Sarkar
For the respondent Nos. 2-5	:	Mr. Rahul Mishra Mr. Sourav Sarkar
Heard on	:	19.08.2025.
Judgment on	:	**19.08.2025**

Raja Basu Chowdhury, J. (Oral):

1. The supplementary affidavit filed in Court today enclosing the order dated 6th December, 2024 is taken on record.

2. The instant writ petition has been filed challenging the above order dated 6th December, 2024 passed by the District Magistrate, Darjeeling.

3. Mr. Paul, learned advocate appearing in support of the writ petition by drawing attention of this Court to the provisions of Section

14 of the "SARFAESI" Act, 2002 would submit that notwithstanding there being no scope for the District Magistrate to direct payment of debt or to act de hors the provisions of Section 14 of the "SARFAESI" Act, 2002, the District Magistrate by the aforesaid order has directed the borrowers to deposit the amount of Rs.3,46,85,467.55p that has fallen due. According to Mr. Paul, there is no scope for the District Magistrate to issue such direction.

4. Mr. Choudhury, learned Additional Advocate General appears on behalf of the State respondent.

5. Mr. Sarkar, learned advocate appearing on behalf of the respondent nos. 2 to 7 would submit that the respondent nos. 2 to 7 were all along interested to reach to an amicable settlement. According to him, since the secured asset does not have an independent ingress and egress, the secured creditors so long could not take possession. He submits that if any direction is passed to resolve the issue by way of settlement, the respondent nos. 2 to 7 are ready and willing to adhere to the same.

6. Having heard the learned advocates appearing for the respective parties, I find that an application under Section 14 of the "SARFAESI" Act, 2002 had been filed pursuant to the leave granted by a Coordinate Bench of this Court on 5th April, 2023 in WPA 531 of 2023. Records would, however, reveal that the District Magistrate while deciding the petition under Section 14 of the "SARFAESI" Act, 2002 despite recording his satisfaction that the

proceedings may be initiated under Section 14 of the "SARFAESI" Act, 2002 has issued certain directions for deposit of the amount as noted above.

7. To test out the power to issue the above direction and to ascertain the scope of Section 14 of the "SARFAESI" Act, 2002, the said Section is reproduced 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 assets 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 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 further 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.]
> [(1-A) 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 authorized 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."

8. From the above, it would transpire that the very object of making an application under Section 14 of the "SARFAESI" Act, 2002 is to assist the secured creditors in taking possession of the secured asset. From the documents available on record and the submissions made by the parties, it is clear that the borrowers, being the respondent nos. 2 to 7 have not paid the dues. Mr. Sarkar would, however, submit that the borrowers are interested to an amicable settlement of the dispute.

9. Considering the above and noting the provisions of Section 14 of the "SARFAESI" Act, 2002, I find that there was no scope or opportunity available to the District Magistrate to pass an order directing the borrowers to secure the aforesaid amount. The conditional direction issued by the District Magistrate permitting the borrowers to secure the amount noted therein and only on failure to comply with such order that the secured creditor's right to take

possession would arise with the help of police, appears to be without jurisdiction and de hors the scheme of the Act.

10. Having regard to the above, I am of the view that the aforesaid order cannot be sustained and the same is accordingly set aside. The matter is remanded back to the respondent No. 1. The respondent no.1 is directed to hear out and dispose of the aforesaid proceedings under Section 14 of the “SARFAESI” Act, 2002 afresh, as expeditiously as possible preferably within a period of 10 days from the date of communication of this order.

12. With the above observations and directions, the writ petition is disposed of.

13. There shall be no order as to costs.

14. Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Raja Basu Chowdhury, J.)

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A.R. (Court)