IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-8100-2019(O&M)
Reserved on: 26.09.2025
Pronounced on:19.12.2025
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Whether only operative part of the judgment is pronounced or the full Judgment is pronounced. ***Full Judgment***

CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LTD

PETITIONER

VS.

DISTRICT MAGISTRATE CUM DEPUTY COMMISSIONER LUDHIANA AND ORS

RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Ms. Puja Chopra, Senior Advocate with
Ms. Palak, Sharma, Advocate for the petitioner.

Mr. Aalok Jagga, Advocate (Arguing counsel)
Mr. Sahil Lohan, Advocate,
Mr. Harkirat S. Jagdev, Advocate
Mr. Vibhu Aggarwal, Advocate and
Mr. Karan Inder Singh, Advocate for the respondent No.4, 6 to 8.

Mr. I.S. Ratta, Advocate, for the respondent No.5.

Mr. Vipin Pal Yadav, Addl. Advocate General Punjab.

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SANJIV BERRY, J.

1. The petitioner herein, a Non-Banking Financial Company duly incorporated under the Companies Act and authorized to do finance business, has preferred the present writ petition in the nature of certiorari seeking to quash the impugned order dated 01.03.2019 (Annexure P-9) passed by respondent No.2, Additional District Magistrate, Ludhiana, rejecting the

application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act) so moved by the petitioner.

2. Briefly stating the facts of the case are that private respondents No. 4 to 8 approached the financial institution namely HDFC Bank for home equity loans amounting to ₹4,70,00,000/- and ₹34,00,000/- the same were sanctioned and disbursed vide agreements dated 02.07.2012 and 05.02.2013 and created equitable mortgage by depositing two title deeds bearing Wasika No.21076 dated 28.01.1992 and Wasika No. 21170 dated 29.01.1992 in favour of respondent No.7 and 6 respectively. Both the sale deeds were also deposited by the respective respondents with the Financial Institution, which comprises area of 424 square yards each in the entire area of the suit property measuring 848 sq yards comprising in house property No.29/1, The Mall, Ludhiana (i.e. the secured assets) the copies of sale deeds are annexed as (Annexure P-2 and P-3) respectively. Thereafter, the aforesaid loan account of the respective respondents were declared non-performing assets (NPA) and the proceedings under SARFAESI, Act were initiated, the civil suit preferred by the respondent No.5 was dismissed by Civil Court, Ludhiana on 24.05.2018 (Annexure P-12). The Securitization Application No.453/17 was also dismissed by DRT(III), Chandigarh on 09.03.2018 (Annexure P-13). The petitioner moved an application under Section 14 of the SARFAESI Act before the District Magistrate, Ludhiana (Annexure P-8A) which was rejected vide impugned order dated 01.03.2019 (Annexure P-9) and aggrieved there from the instant petition has been filed.

3. We have heard learned counsel for the parties and also perused the record.

4. It is *inter alia* contended by learned counsel for the petitioner that the District Magistrate while dealing with the application under Section 14 of the SARFAESI Act moved by the petitioner has exceeded its jurisdiction vide impugned order dated 01.03.2019 (Annexure P-9) by adopting the adjudicative process of which he was not authorized. She contends that the earlier application filed by the petitioner was dismissed by the District Magistrate vide order dated 20.07.2017 against which **CWP No. 36818-2018** was preferred before the High Court, however the same was dismissed as withdrawn vide order dated 20.12.2018 (Annexure P-8) with liberty to file a fresh application under Section 14 of the SARFAESI Act after removing objections on the basis of which earlier application was rejected vide order dated 20.07.2017.

4.1 The petitioner again preferred a fresh application (Annexure P-8A) after removing objections which, however was again dismissed vide impugned order dated 01.03.2019 (Annexure P-9) by the Additional District Magistrate exceeding its jurisdiction and as such the impugned order is liable to be set aside. In support of her contentions, she has referred to the judgments cited as ***M/s R.D.Jain and Co. vs. Capital First Ltd. & Ors, 2022(3) R.C.R. (Civil) 781;*** *and* ***Balkrishna Rama Tarle Dead Thr Lrs & Anr. vs. Phoenix ARC Private Limited & Ors.; Law Finder Doc ID # 2040117.***

5. *Per contra,* learned counsel for the respondents has assailed these arguments by submitting that in the present case the arbitration proceedings had already culminated vide ex-parte award on the application moved by the petitioner itself vide award dated 14.11.2014. He contends that the SARFAESI proceedings are in the nature of enforcement proceedings, while arbitration is an adjudicatory process as has been held in ***M.D Frozen Food Exports Private Limited vs. Hero Fincorp Limited, 2017 AIR-SC-4481***. He contended that the

impugned order has rightly been passed by the Additional District Magistrate as the factual correctness of the affidavit filed by the petitioner failed to satisfy the concerned Magistrate to pass the appropriate orders regarding the possession of the secured assets to the effect that it does not suffer from any infirmities and in no manner the concerned authority had used the quasi judicial power in pasing the impugned order. He contended that the petitioner is estopped from filing the petition on account of its own conduct after arbitration award having already been passed on its petition. He contended that no case for grant of issuance of writ is made out in favour of the petitioner, as such prays for dismissal of the petition.

6. After considering the rival contentions and perusing the record, it has been the case of the petitioner that the private respondents had availed two loans amounting to ₹4,70,00,000/- and ₹34,00,000/-. The same were sanctioned and disbursed vide agreements dated 02.07.2012 and 05.02.2013 respectively from HDFC Bank and they created equitable mortgage by depositing of two title deeds bearing Wasika No.21076 dated 28.01.1992 and Wasika No. 21170 dated 29.01.1992. It is not disputed that the loan has been taken over by the petitioner Company. It is further the case of the petitioners that the aforesaid respondents being owner to the extent of 424 square yards each in the secured asset i.e house No.29/1, The Mall, Ludhiana vide sale deed bearing Wasika No.21076 dated 28.01.1992 and Wasika No. 21170 dated 29.01.1992 and both original title deed dated 28.01.1992 and 29.01.1992 (supra) are in possession of the petitioner company till date and there is no case or litigation by the aforesaid respondents till date to reclaim the said title deeds of the borrowers and co-borrowers and had signed the sanction letter dated 30.06.2012 (Annexure P-4A)

regarding the loan transfer from HDFC Bank to the present petitioner on 30.06.2012 thus admitting their liability.

7. Thereafter on account of default, the accounts having been declared as non-performing assets (NPA), the Securitazation proceedings were initiated by the secured creditors which were challenged before the DRT(III), Chandigarh by filing SA No. 453/2017 and the same was dismissed vide order dated 09.03.2018 (Annexure P-13). As stated above, the petitioner preferred an application under Section 14 of the SARFAESI Act before the District Magistrate, Ludhiana for taking the possession of the secured asset which was dismissed on 20.07.2017. The petitioner preferred Civil Writ Petition before this Court which was later withdrawn vide order dated 20.12.2018 (Annexure P-8) with liberty to move afresh application after removing the objections before the District Magistrate.

8. Consequently a fresh application under Section 14 of the SARFAESI Act (Annexure P-8A) was filed by the petitioner which was however again rejected vide impugned order dated 01.03.2019 (Annexure P-9) by Additional District Magistrate, Ludhiana.

9. It is evident from the perusal of impugned order that the earlier application under Section 14 of the SARFAESI Act moved by the petitioner was dismissed by the District Magistrate vide order dated 20.07.2017 on account of the following reasons:-

> *"1. The details of the property recorded in the Bank Loan Agreement (Page No.60 and Page No. 82), was not tallying with the affidavit of the Authorised Officer.*
>
> *2. The stamp duty had not been affixed on the affidavit.*
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> *3. Cutting had been done in the detail of the property recorded in this affidavi*t."

10. While filing a fresh application (Annexure P-8A) the petitioner company had removed the objections, so far as serial No. 2 and 3 are concerned, however qua the objection at serial No.1, on the failure of the petitioner Company to clarify its position in that regard, the Additional District Magistrate had declined the application vide impugned order dated 01.03.2019 by observing as under:-

> *" In view of the above mentioned discussion, the present application of the finance company is dismissed with these instructions that firstly finance company after removing the above mentioned objections, thereafter the finance company after filing an application afresh can obtain the requisite order, the order has been pronounced."*

11. Learned counsel for the petitioner has termed the rejection of application, under Section 14 of the SARFAESI Act by the Additional District Miagistrate, Ludhiana vide impugned order dated 01.03.2019 (Annexure P-9), to be adjudicatory act of which it had no power and therefore, claimed the order to have been passed by exceeding its jurisdiction.

12. The relevant provision Section 14 of the SARFAESI Act provides as under:-

> *"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]:

Xxxx xxxx xxxx "

13. The judicial decisions on the subject have by now settled the preposition that the steps to be taken by the District Magistrate or Chief

Metropolitan Magistrate under Section 14 of the SARFAESI Act are ministerial in nature and does not involve any adjudication and no element of quasi judicial functions. Reference in this regard has been made by Hon'ble Supreme Court in para 8.1 of the **R.D. Jains's case (supra)** which reads as under:-

> *" 8.1 However, for taking physical possession of the secured assets in terms of 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 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 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. As mandated by 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. As observed and held by this Court in the case of NKGSB Cooperative Bank Ltd. (supra), 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. 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 14 of the SARFAESI Act, is a ministerial step. While disposing of the application under 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, 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets.****"*

14. Similarly, it has also been held in ***Balakrishna's case (supra)*** that the Chief Metropolitan Magistrate/ District Magistrate for the purpose of Section 14 of the SARFAESI Act is not required to adjudicate the dispute between the borrower and secured creditor and /or between any 3rd party and secured creditor with respect to secured assets.

15. So far as the power under Section 14 of the SARFAESI Act exclusively by the Chief Metropolitan Magistrate/District Magistrate, or for that matter by Chief Judicial Magistrate/Additional District Magistrate are concerned, there is no doubt about the fact that they are not supposed to adjudicate the dispute between the borrower or secured creditor or third party for that matter but once all the requirements under Section 14 of the SARFAESI Act are complied with/satisfied by the secured creditor by moving an application to that fact, it is the duty of the concerned Magistrate to assist the secured creditor to obtain the possession of the secured asset. The remedy available to the aggrieved party is to raise objections under Section 17 of the SARFAESI Act before the DRT.

16. No doubt in the present case arbitration proceedings had already taken place vide award dated 14.11.2024. It is not disputed that arbitration and SARFAESI proceedings can go together as has been observed in ***R.D. Jain's case (supra)***.

17. In the light of the above discussion, it transpires that the power given to Chief Metropolitan Magistrate/District Magistrate to deal with application under Section 14 of the SARFAESI ACT is not adjudicative power in any manner, however at the same time the concerned Magistrate has to satisfy itself, so far as compliance of the provisions contained in proviso of Section 14 of the SARFAESI Act are concerned.

18. In the backdrop of above discussion, coming to the impugned order dated 01.03.2019 (Annexure P-9), it is evident that Additional District Magistrate in the instant case has not adjudicated the dispute in any manner but has referred to the compliance of the objections as enumerated in the impugned order, viz. "*the details of property recorded in the Bank Loan Agreement (Page No.60 and Page No.82) was not tallying with the affidavit of the Authorized Officer*". The concerned Magistrate in the impugned order has also granted the liberty to the finance company to the extent that after removing the above objections, it can file the application afresh to obtain the requisite order.

19. Resultantly, the instant petition is hereby disposed of with the liberty to the petitioner Company to move an application under SARFAESI Act afresh to the concerned District Magistrate/Additional District Magistrate accompanying the affidavit of its Managing Director, explaining the description of the property as per the record and if such an application is filed with the aforesaid affidavit, then the concerned District Magistrate/Additional District

Magistrate is directed to consider the same in accordance with law as per provisions laid down under Section 14 of the SARFAESI Act.

20. With the aforesaid observations, the writ petition stands disposed of.

(SANJIV BERRY) **JUDGE**	**(SHEEL NAGU)** **CHIEF JUSTICE**

Dated: 19.12.2025
Gyan

i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No