(125)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17791-2025 (O&M)
Date of decision:- 24.07.2025

HDB Financial Services Ltd.

...Petitioner(s)

Versus

Additional District Magistrate, Mansa and others

...Respondent(s)

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

Present:- Mr. Vipul Dharmani, Advocate,
for the petitioner.

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

Mr. Sherry K. Singla, Advocate,
for respondents No. 5, 6, 7, 9 & 10.

* * * *

SHEEL NAGU, C.J. (ORAL)

1. The present petition has been filed by the petitioner-bank being aggrieved by failure of respondent No. 1 – Additional District Magistrate, Mansa and respondent No. 2 – Tehsildar-cum-Executive Magistrate, Mansa to execute the order dated 24.10.2024 (Annexure P-3) passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 against the borrowers (respondents No. 4 to 10 herein).

2. Learned State counsel to justify the in-action on the part of the Additional District Magistrate as well as Tehsildar-cum-Executive Magistrate, Mansa, has drawn the attention of this Court to a restraint order dated 21.03.2024 passed by Permanent Lok Adalat, Mansa, which was to the following extent:-

> *"No one has appeared on behalf of the respondent despite repeated calls since morning.*
>
> *An application filed by the applicant for restraining the respondent for taking any forcible steps for recovery of the loan amount is pending on record. The ground taken by the applicant is that he is ready and willing to make the entire payment of the remaining loan amount. The only contention of the applicant is that at the time of foreclosure the respondent shall not charge the foreclosure charges and other illegally charged expenses and interest thereupon, against the rules.*
>
> *There is another application filed by the respondent under Section 5 and 8 Arbitration and Conciliation Act for directing the applicant to resort to the Arbitration Clause. It has been submitted by the applicant that he has been paying the installments of the loan from the date of sanction of the loan regularly hence there is no dispute arising out of the loan agreement dated 30.09.2017.*
>
> *The agreement dated 30.09.2017 is not terminated by the Parties nor there is any dispute hence referring the matter to Arbitrator does not arise at this stage.*
>
> *Considering the submissions of the Ld. Counsel for the applicant and circumstances that despite direction to the Manager of the respondent, he has not appeared. Thus we find it appropriate that the respondents be restrained from forcibly recovering the loan amount till the next date of hearing and respondents are further directed to file the detail of amount due towards the applicant foreclosure of the loan account.*
>
> *Now the case adjourned to 09.05.2024 for filing details of the loan amount to be deposited by the applicant for foreclosure of loan and further proceedings."*

3. Learned counsel for the petitioner-bank has produced the order-sheets of hearings (from 02.11.2023 to 07.07.2025) which took place before the Permanent Lok Adalat, Mansa.

4. We have gone through all the order-sheets and we find that at no point of time any stay order was granted in favour of the borrowers by the Permanent Lok Adalat, Mansa, except for passing the order dated 21.03.2024 restraining the petitioner-bank from forcibly recovering the loan amount from the borrower(s) till the next date of hearing i.e. 09.05.2024. It is also noticeable that the restraint order was not continued/extended by the Permanent Lok Adalat, Mansa either on 09.05.2024 or subsequently till the latest order dated 07.07.2025. Therefore, the Additional District Magistrate and Tehsildar-

cum-Executive Magistrate concerned were bound to carry out their statutory duty under Section 14 of the SARFAESI Act, which they failed to do.

4.1 The Apex Court in **R.D. Jain & Co. Versus Capital First Limited and Others, 2023 (1) SCC 675,** while explaining the width of jurisdiction under Section 14 SARFAESI Act held thus:-

> *"**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."*

5. In view of above, this Court directs respondents No. 1 and 2 to execute the order dated 24.10.2024 passed under Section 14 of the SARFAESI Act by handing over physical possession of the secured asset to the petitioner-bank as expeditiously as possible, preferably, within a period of 30 days. The

petitioner-bank, thereafter, can proceed to adopt all possible legitimate means to liquidate the secured asset to recover the due amount.

6. Compliance report be filed by respondents No. 1 and 2 latest by 01.09.2025 failing which Registry is directed to list this case before appropriate Bench for ensuring compliance.

7. The petition stands disposed of in the terms aforesaid.

(SHEEL NAGU)
CHIEF JUSTICE

(SANJIV BERRY)
JUDGE

24.07.2025
Amodh Sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No