IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.37177-2019 (O&M)
Reserved on: 12.09.2025
Pronounced on: 16.09.2025

AUTHORISED OFFICER, IDBI BANK LTD. AND ANOTHER

... PETITIONERS

Versus

DISTRICT MAGISTRATE PANIPAT AND OTHERS

... RESPONDENTS

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

Present:- Mr. Tajender K. Joshi, Advocate
for the petitioners.

Mr. Deepak Balyan, Addl, A.G., Haryana.

Mr. Ashwani Talwar, Advocate, for respondent No.2.

Mr. Divij Datt, Advocate
for the applicant-proposed respondent No.5
(in CM-9149-CWP-2025)

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SANJIV BERRY, J.

1. By way of the present petition, the petitioners have sought issuance of writ of mandamus directing the respondent No.1 to provide proper assistance to the petitioners for taking physical possession of the mortgaged assets as per Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Act, 2002 (hereinafter referred to 'SARFAESI Act, 2002').

2. As per the case of the petitioners, in *nut shell* is that the respondent No.1 a private Company, through its Directors respondent No.2 and 3 had approached the petitioner Bank for financial assistance of ₹2 crores, which was sanctioned vide letter dated 07.11.2009. On default by the borrowers, the petitioner Bank availed remedies under the 'SARFAESI Act, 2002' wherein the respondent No.1 District Magistrate Panipat had passed order dated 22.09.2017under Section 14 of the 'SARFAESI Act, 2002'. Later on petitioner came to know that the District Magistrate had recalled the order dated 22.09.2017 passed under Section 14 of the 'SARFAESI Act, 2002' vide subsequent order dated 05.09.2019 on the basis of a Civil Court decree dated 27.10.2017(Annexure P-9) passed by the Court of Civil Judge (Jr. Div.) Panipat, produced by the sister of respondent No.3 of which the District Magistrate had no power or jurisdiction.

3. Learned counsel representing the parties have been heard.

4. The contention of the learned counsel for the petitioner *inter alia* is that once the order under Section 14 of the 'SARFAESI Act, 2002' has been passed by the respondent No.1, there is no occasion left for respondent No.1 to recall the order on the basis of production of any decree by 3rd party. He submits that the said decree is infact a collusion between the respondent No.3 and his sister just to scuttle the petitioner Bank proceeding with the 'SARFAESI ' proceedings to secure the physical possession of the secured asset.

5. After considering the rival contentions and perusing the record, the issue which arises in the present petition is as to 'whether the District Magistrate after having passed the order under Section 14 of the 'SARFAESI

Act, 2002' is having any power to recall or review its own order". The answer thereto is in negative. There is no such provision under 'SARFAESI Act, 2002' available for the District Magistrate to review or recall its own order passed under Section 14 of the 'SARFAESI Act, 2002'.

6. It will be apt to reproduce the relevant provisions contained in Section 14 of the 'SARFAESI Act, 2002' which reads 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 assets1 [within a period of thirty days from the date of application]:

[Provided also 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.]

[(1A) 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 1 [any officer authorised 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"

7. The Hon'ble Apex Court in ***Balkrishna Rama Tarle (D) through L.Rs. and another vs. Phoenix ARC Pvt. Ltd. and others, 2022 AIR (SC) 4756***, had categorically held that there is no element of quasi judicial function or application of mind by the Magistrate while passing the order on an application moved by the secured creditor under Section 14 of the SARFAESI Act, 2002' as the Magistrate is just to decide the correctness of the information given in the application and nothing more. The relevant para of the judgment reads as under:-

*"**8.1** 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. 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. 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. 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 quasijudicial 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.****"*

8. Further, the Coordinate Division Bench of this Court in ***Shriram***

Housing Finance Ltd. vs. State of Haryana and others, 2022 (2) RCR (Civil) 510 had also observed that once the order under Section 14 SARFAESI Act, 2002' has been passed by the District Magistrate, then subsequently the District Magistrate cannot stop the enforcement of the order by an subsequent order for whatsoever reasons.

9. In ***Asset Reconstruction Company (India) Ltd. vs. State of Hayana, 2018 (1) PLR 443*** the Division Bench of this Court had discussed the similar question, the relevant para of the judgment reads as under:-

> *"(27) The powers exercisable by a District Magistrate under Section 14 are creation of a Statute. Those powers are required to be exercised within the four corners of the said provision. In the case in hand, the then District Magistrate, Sonepat rightly exercised such power and passed the order dated 08.02.2016 thereby directing his subordinate officer, namely, Naib Tehsildar-cum-Executive Magistrate to take possession of the secured assets and hand over the same to ARCIL. It could not be disputed by the learned State counsel or senior counsel for the borrowers that there is no provision under the SARFAESI Act under which the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, can review, recall or modify his order. The successor District Magistrate, therefore, had no jurisdiction whatsoever either to entertain the borrower's application dated 12.06.2016 or to pass the impugned orders dated 14.06.2016 and 24.10.2016. These orders are totally without jurisdiction and void ab initio, for it is well settled that the power to review is not an inherent power and it must always be conferred by law either expressly or by necessary implication. The socalled reasons assigned by the successor District Magistrate, even if assumed to be correct, did not and cannot clothe him with a nonexistent power to review the order passed by him or his predecessor.* ***[Ref. (i) Patel Narshi Thakershi & Ors. vs. Shri Pradyumansinghji Arjunsinghji (1971) 3 SCC 844; (ii) Kewal Chand Mimani (D) By Lrs. Vs. S.K. Sen & Ors. (2001) 6 SCC 512]."***

(28) It would be apt to cite a Division Bench decision of Allahabad High Court in ***Writ-C No.30899 of 2016 (Kotak Mahindra Bank Ltd. vs. State of UP & 4 others) decided on 21.10.2016****, where an identical question came up for consideration and the High Court viewed as follows:-*

Be that it may, we are of the considered opinion that the District Magistrate has absolutely no jurisdiction to review his order dated 24.06.2013 passed under the Act, 2002 specifically when the order was subjected to challenge before the Debt Recovery Tribunal and such application was dismissed by a reasoned order holding therein that the borrower had not approached the Tribunal with clean hands. If they were not satisfied they had the remedy of approaching the Appellate Tribunal under Section 18 of the Act, 2002. We are, therefore, more than satisfied that such order of the District Magistrate cannot be permitted to stand on record. The order of the District Magistrate dated 27.04.2016 and dated 30.06.2016 are hereby quashed."

We are respectfully in agreement with the view taken by the Allahabad High Court. Consequently, it is held that the District Magistrate, Sonepat had no authority or power to review the order dated 08.02.2016 and his subsequent orders being without any authority of law, cannot sustain."

10. Considering the aforesaid provision, it is crystal clear that there is no power vested with the Magistrate to review or recall its own order passed under Section 14 of the 'SARFAESI Act, 2002' be it for any reason whatsoever. Admittedly, in the present case, the District Magistrate-respondent No.1 on the application moved by the secured creditor passed the order dated 22.09.2017 in order to assist the secured creditor for taking the possession of the secured asset. However on application allegedly moved by the sister of respondent No.3 intimating respondent No.1 regarding civil Court decree dated 27.10.2017 (Annexure P-9), the respondent No.1 had

recalled the aforesaid order dated 22.09.2017 lawfully passed earlier, by passing the subsequent order dated 05.09.2019 of which he had no legal power to adjudicate in any manner as the recourse open for such applicant was to approach the Debt Recovery Tribunal duly constituted under 'SARFAESI Act, 2002' for redressal of her grievances if any, in accordance with law. In this manner, the respondent No. 1 has acted without jurisdiction in passing the order dated 05.09.2019 thereby recalling the earlier order under Section 14 of the Act duly passed by him. Therefore, the subsequent order dated 05.09.2019 passed being without jurisdiction is liable to be set-aside, and is accordingly set-aside.

11. Consequently, the instant petition filed by the Creditor Bank is allowed, thereby setting-aside the subsequent order passed by respondent No.1 dated 05.09.2019, being without any jurisdiction and as a result thereof, the order dated 22.09.2017 passed by respondent No.1-District Magistrate under Section 14 of the 'SARFAESI Act, 2002' shall come into force which is ordered to be implemented in accordance with law.

12. Miscellaneous applications, if any shall also stands disposed of.

(SANJIV BERRY)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

Dated:16.09.2025
Gyan

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No