



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-29981-2025(O&M)
Reserved on: 31.10.2025
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Whether only operative part of the judgment is pronounced or the full Judgment is pronounced.

Full Judgment

ASREC (INDIA) LTD

PETITIONER

VS.

STATE OF PUNJAB AND ORS

RESPONDENTS

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

Present:- Mr. K.P.S. Dhillon, Advocate
for the petitioners.

Mr. Vipin Pal Yadav, Additional A.G. Punjab.

Mr. I.S. Ratta, Advocate for respondents No.3 to 5.

SANJIV BERRY, J.

1. The instant petition under Article 226/227 of the Constitution has been preferred by the petitioner Company seeking issuance of a writ for quashing the impugned order dated 26.05.2024 (Annexure P-14) passed by respondent No.2, allegedly in violation of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act), with further prayer seeking writ of mandamus directing respondent No.2 to pass order under Section 14 of the SARFAESI, Act without entering into any adjudicatory process and in a time bound manner.



2. In nutshell, the case of the petitioner is that respondent No.3 through its proprietor respondent No.4 along with respondent No.5 as guarantor had availed extensive credit facilities from Allahabad Bank including different term loans, FITL etc. amounting to ₹7,97,24,000/- by mortgaging the property which was under exclusive charge of secured creditor. Since the respondent borrower did not maintain the financial discipline the account was declared Non-Performing Asset (NPA) on 26.06.2013 in accordance with RBI guidelines. Further, the original lender Allahabad Bank invoked measures under SARFAESI Act including demand notice and possession notice under Section 13(2) and 13(4) of the Act, respectively. The private respondent-borrower preferred petition before the learned Debt Recovery Tribunal under Section 17 of the Act whereas the original lender Allahabad Bank also filed its Original Application under Section 19 of the Recovery of Debts and Bankruptcy Act 1993, in OA NO. 767/2017. There is no dispute regarding the mortgage right of the secured creditor over the secured asset as the same stood upheld by the learned Debt Recovery Tribunal-III, Chandigarh vide judgment (Annexure P-4) dated 12.07.2017, and accordingly recovery certificate was issued with no challenge till date. The Allahabad Bank preferred an application under Section 14 of the Act before the respondent No.2 but the same was declined vide Annexures P-10 to P-14.

3. It is averred that the petitioner has entered into Assignment Agreement dated 27.02.2018 (Annexure P-1) registered on 16.04.2018 entered into between the original lender Allahabad Bank(now Indian Bank) whereby the financial asset/loan/debt of respondent No.3 has been assigned to the petitioner.

The petitioner has therefore stepped into the shoes of original lender, Allahabad Bank, and is in possession of original documents including the title deed of the



borrower guarantor. It is averred that on application moved by the petitioner under Section 14 of the Act, the Additional District Magistrate, Ludhiana passed impugned order dated 26.05.2024 (Annexure P-14) dismissing the application under Section 14 of the SARFAESI Act. Hence the petition.

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

5. Considering the rival contentions and perusing the record, it is observed that the case put forth by the petitioner is that the private respondents had availed the loan facility amounting to ₹7,97,24,000/- from Allahabad Bank by mortgaging the secured assets. Since the private respondents failed to maintain the financial discipline as such the account was declared as “Non Performing Asset” (NPA) and the securitization proceedings were initiated. Original Application No. 767/2017 was filed by the Allahabad Bank which was decided on 12.07.2017 (Annexure P-4) in favour of the Bank and recovery certificate dated 12.07.2017 was issued. It is claimed that in the meanwhile, the petitioner, ASERC (India) Ltd. entered into an Assignment Agreement with Allahabad Bank on 27.02.2018 (Annexure P-1), whereby acquiring the rights and liability qua the aforesaid loan agreement.

6. The grievance of the petitioner is that despite the application under Section 14 of the SARFAESI Act being lawfully made, the respondent No.2 has failed to pass an appropriate order thereon and has wrongly dismissed the application by adjudicating thereupon of which he had no right.

7. The relevant provision in this regard laid down under Section 14 of the SARFAESI Act, providing the Chief Metropolitan Magistrate or District Magistrate to assist the secured creditor in taking possession of the secured



“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]:

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8. As regards the power conferred upon the Chief Metropolitan magistrate/District Magistrate under Section 14 of the SARFAESI, Act is concerned, there is no doubt that these authorities are not supposed to adjudicate the dispute between the borrower or secured creditor or third party, however, once an application to this effect is moved, complying with all the requirements as laid down under Section 14 of the SARFAESI Act, secured creditor is entitled to obtain the possession of the secured assets. In this regard reference is made to the judgment of Hon’ble Supreme Court in **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.**

9. The relevant portion of which reference has been made by Hon’ble Supreme Court in R.D. Jains case (supra) 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.***



10. It is also not disputed that the concerned 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 third party and the secured creditor with regard to the secured asset as has been observed in the case of ***Balakrishna's case (supra)***.

11. In the light of the provisions contained under Section 14 of the Act and the abovementioned judgments of Hon'ble Supreme Court on the subject, it would be apt to peruse the impugned order dated 26.05.2024 (Annexure P-14) passed by Additional District Magistrate, which reads as under :-

“ The Hon'ble Chief Judicial Magistrate, Ludhiana, dismissed the application filed by the applicant financial company under Section 14 of the SARFAESI Act, 2002, vide order dated 11-03-2024, as the Hon'ble Court was of the view that the parties case had already been dismissed by the District Magistrate, Ludhiana. Therefore, the learned court cannot decide on a fresh application filed for the same action and purpose by reviewing the orders of the District Magistrate. Subsequently, the applicant financial company ASREC India ltd. Filed the present application in the court.

According to the facts presented by the debtor firm, the Fast Track Court (Additional District Judge) has issued prohibitory orders against alienation of the property vide order dated 09-03-2012 in the case titled: Punjab Kashmir Finance Ltd. vs. Dr. Jatinder Gambhir, etc., filed under Section 9 of the Arbitration and Conciliation Act. In this case also, the applicant company should appear before the Hon'ble Court and get the stay orders vacated, just as it had filed objections in 2022 in pending Execution No. 428/2017 before the court of Hon'ble Jagdeep Sood, Additional District Judge, Ludhiana, and also before Hon'ble DRT-2, Chandigarh, in ICICI Bank vs. Dr. Jatinder Gambhir, so that no legal impediment arises due to the said orders at the time of possession proceedings.

Furthermore, the Assignment Deed dated 27-2-2018, registered on 16-4-2018, based on which the applicant financial company is claiming its right in the loan case of Jatinder Gambhir Hospital in place of Allahabad Bank, has not yet been approved by the Hon'ble DRT-3, Chandigarh, and the Hon'ble



Additional District Judge, Ludhiana. Ignoring the pending proceedings for approval of the Assignment Deed before the Hon'ble DRT-3 and the Hon'ble Court, this authority/court cannot accept the Assignment Deed.

Therefore, in light of the above facts, the application dated 12-6-2024 filed by the applicant ASREC India Ltd. under Section 14 of the SARFAESI Act is dismissed. The authorized officer of ASREC India Ltd. may file a fresh application after completing the necessary actions under the Act and removing the said deficiencies/legal impediments. The file be consigned to the record.”

12. As has been discussed above, no doubt that the Chief Metropolitan Magistrate or District Magistrate, as the case may be, while deciding the application under Section 14 of the SARFAESI Act is not supposed to adjudicate the dispute *inter se* borrower, creditor or any third party but at the same time it is required from the concerned Magistrate to satisfy himself, so far as the compliance of the provisions contained in proviso to Section 14 of the SARFAESI Act as mentioned (*supra*), are strictly adhered to.

12.1 Therefore, assessing the impugned order dated 26.05.2024 (Annexure P-14) in the context of requisite compliance of the proviso to Section 14 which the concerned Magistrate is duty bound to be satisfied, it is observed that in the present case an application under Section 14 moved by the petitioner has been declined primarily on the ground that originally the loan was taken from Allahabad Bank while the petitioner claimed right on the secured assets on the basis of Assignment Agreement, it transpires from the order that the Assignment in favour of the petitioner was pending approval qua which the proceedings were pending before the Debt Recovery Tribunal-III, Chandigarh and in the absence of any finality being accorded thereof, the Magistrate could not have accepted the Assignment deed. Another ground of rejection was to the



effect that earlier application under Section 14 moved by the petitioner was dismissed by the Court of Chief Judicial Magistrate vide order dated 11.03.2024 as such the recourse upon to the petitioner was to seek review of the order rather than filing of the application afresh.

13. In the backdrop of the aforesaid observations made in the impugned order, learned counsel for the petitioner has not been able to apprise this Court as to whether the assignment from the Allahabad Bank in favour of the petitioner vide Assignment Agreement dated 27.02.2018, has been finalized by the DRT or not. It was the duty of the concerned Magistrate to satisfy himself with regard to the right/title of the petitioner company to be a *bonafide* creditor which the petitioner claimed to be so under Assignment Agreement dated 27.02.2018 which was pending approval before the DRT. Therefore, in the absence of specific order of DRT approving the assignment in favour of the petitioner, no infirmity can be observed in the impugned order dismissing the application.

14. Therefore, in these circumstances, it is observed that the Additional District Magistrate has not exceeded its jurisdiction as conferred under Section 14 of the Act while passing the impugned order, but has only ensured compliance of the mandatory requirements under Section 14 of the Act. At the same time the concerned Magistrate vide the impugned order has also granted liberty to the petitioners to file a fresh application after completing the requisite formalities under the Act and after removing the deficiency or legal impediment mentioned in the order.

15. Resultantly, we find no infirmity in the impugned order so as to interfere therein in any manner.



16. As a consequence to the above discussion, finding no merits, the petition is hereby dismissed. However, the petitioner Bank is at liberty to move an appropriate application under Section 14 of the SARFAESI Act afresh after complying with all the requisite documents/ requirements envisaged under the Act, which if made complete in all respects, will be considered in accordance with law by the concerned Magistrate.

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

(SANJIV BERRY)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

Dated: 24.12.2025
Gyan

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