17.03.2026
SL No.1
Court No.12
(gc)

MAT 6 of 2026
CAN 1 of 2026
CAN 3 of 2026

Mr. Binay Chaudhary & Ors.
Vs.
AU Small Finance Bank Ltd. & Ors.

Mr. Arabinda Chatterjee, Sr. Adv.
Mr. Rajan Nagelia,
Ms. Moumita Roy
.....for the Appellants.
Mr. Subhankar Nag,
Mr. Sayak Ranjan Ganguly,
Ms. Srijani Ghosh,
Ms. Ankita Jha,
Ms. Kripa Kami
...for the Respondent Nos.1 & 2.
Mr. Swapan Kr. Datta, Ld. G.P.,
Mr. Rajat Dutta
...for the State.

1. Instead of taking up the applications individually, we propose to take up the appeal.

2. Mr. Chatterjee, learned Senior Advocate for the appellants assails an order dated December 17, 2025 passed by the learned Single Judge in WPA 28319 of 2025. By the order impugned, the learned Judge held that the decision under challenge was rendered by the Chief Judicial Magistrate, Alipore (CJM) in discharging ministerial functions under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the “SARFAESI Act”). The decision was not rendered by a Civil Court, but by an

executive, and the CJM could not stay the implementation of his own order on the ground that an order of injunction had been passed by a civil court.

3. The bank was aggrieved by an order dated November 18, 2025, passed by the CJM while exercising his power under Section 14 of the SARFAESI Act. By the order dated November 18, 2025, the CJM accepted the explanations given by the police authorities, as to why possession of the mortgaged property could not be taken over and directed the bank/secured creditor to take steps in respect of the order of injunction that was passed by the Civil Court in Title Suit No.1523 of 2024. By an order dated November 22, 2024, the Civil Court passed an order of status quo. Both the plaintiff and the defendants were directed to maintain status quo on material points as on the date of the order till January 22, 2025.

4. When the order of status quo was pointed out to the CJM, who had initially passed the order under Section 14 allowing the bank/secured creditor to take over possession of the mortgaged property with the assistance of the seal bailiff and the police authorities, restrained himself from proceeding any further in order to implement the order under Section 14 of the said Act. This order was under challenge in the writ petition.

5. The scope of the writ petition was narrow, that is, whether the authority exercising powers under Section 14 could have stayed his own order or stayed the proceeding, thereby, denying the implementation of the order passed under Section 14 of the SARFAESI Act, and relegating the secured creditor to avail of its reliefs in the suit in which the secured creditor was not a party. The suit was between the appellants and the third party, for specific performance of an agreement allegedly entered into between the appellants and the third party.

6. His Lordship considered the provisions of Section 14 of the SARFAESI Act and the decisions of the Hon'ble Apex Court to arrive at a finding that the CJM was discharging a ministerial function and not a judicial function. The Hon'ble Apex Court had held time and again that the proceeding under Section 14 either before the District Magistrate or the CJM or the CMM, as the case may be, was not akin to a judicial or quasi-judicial proceeding. A ministerial function can be exercised in order to aid the secured creditor to take possession of the mortgaged property in the manner prescribed. All that the CJM was required to ascertain was whether the nine points as stated under the first proviso to Section 14(1) were covered in the affidavit of the bank. Being satisfied that those nine points were

covered and the application was in order, the CJM initially passed an order directing the police authorities to assist the secured creditor to take over possession of the mortgaged property. A suit was filed by the third party against the appellants for specific performance of contract and an order of status quo was passed on November 22, 2024 which is still subsisting. The bank was not aware of such proceeding. The bank was not a party to the proceeding. The bank had approached the CJM by filing an application under Section 14 of the said Act and on January 21, 2025, the CJM passed the following order:-

> *"Hence based on the above facts and circumstances and upon satisfaction as to the fulfillment of the statutory requirements, the application filed u/s. 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred to as SARFAESI Act), which has since been amended vide the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 is allowed.*
>
> *On relying the judgment dt. 06/11/2019 passed by the Hon'ble Bombay High Court in case of Mr. Subir Chakravarty & Anr. V/s. Kotak Mahindra Bank Ltd. & Anr. delivered in Writ Petition (L) No. 28480 of 2019, an officer subordinate to this court has to be appointed to take possession of the secured assets.*

Hence it is

ORDERED

that the seal bailiff of this court is hereby appointed as court commissioner to take possession of the secured assets situated as mentioned above.

- *Appointed commissioner shall give possession notice to the Authorized Officer of the secured creditor and the borrowers, to be served personally/speed post at least seven days in advance. A copy of such seven-days' advance notice shall also be affixed on the main door or other conspicuous part of the said property. A copy of this order be also affixed along with such notice.*

- *After expiry of the notice, the seal bailiff shall take possession of the aforesaid property and handover it to the aforesaid authorized officer namely Anil Kumar Agarwalla of creditor under proper receipts to that effect. The entire proceedings shall be photographed or video-recorded as per the demand of the situation.*

- *The court commissioner to take such steps and use such force including breaking open the lock or any hurdle thereof by taking assistance of police if required at the expenses of the applicant and if any articles/documents found in the secured asset, then deliver its possession to the authorized officer of the creditor after preparing list of articles and making inventory. Photographs be also taken as* *proof of the same. Copies of the inventory shall be handed over to the borrowers if present at the site under acknowledgment and also to the Authorized Officer of the Cholamandalam Investment and Finance Company Limited V/s. Rajeev Chawla & Anr. Dated 22/10/2021.*

It is requirement of Section 14 of SARFAESI Act that authorized officer of creditor has to file affidavit containing therein facts mentioned in Section 14(1)(b)(1) to 14(1)(b)(ix) of the SARFAESI Act. Accordingly, authorized officer had filed the affidavit. In addition to affidavit, copies of certain documents were also filed with the petition.

On the date of hearing i.e., today, authorized officer has also tendered original documents before this court, for verification with copies on record. Such documents are loan sanction order, loan agreement, memorandum of deposit of title deed, title deed of mortgage property, notice given u/s. 13(2) of SARFAESI Act to the borrowers, proof of delivery of notice, paper publication and letters issued by the borrowers etc.

I have perused the same and those are in conformity with the facts affirmed in the affidavit by the authorized representative of the creditor as required by the first proviso to Section 14(1) of SARFAESI Act.

From the petition as well as the affidavit submitted as per requirement of the SARFAESI Act the property (secured asset) is an Immovable properties described as above.

The description is same in security agreement and the title documents submitted by the opposite parties. It is also within territorial jurisdiction of this court. It is stated to be in the name of borrowers. The original title documents in respect of said property are with the creditor thereby creating equitable mortgage. The amount due is not less than twenty percent of the principal amount and interest as per clause (j) and the property is not the one hit by other clauses of Section 31 of SARFAESI Act.

Sixty-days' notice given u/s. 13(2) of SARFAESI Act has been seen, giving details of outstanding amount and details of secured asset, along with postal documents and the newspaper publication. The creditor has stated that no objections have been received from anyone and that the borrowers has failed to repay the outstanding amount in full.

As all such requirements being fulfilled, it becomes mandatory for the undersigned being the Chief Judicial Magistrate under whom the property is situated to order taking possession of the assets mortgaged with the creditor and the documents related thereto, and forward the

> *same to the secured creditor. As per Section 14 of the SARFAESI Act, the court may take or cause to be taken such steps as use of cause to be used such force as may be necessary."*

7. It appears from the order that, the CJM considered the requirements of Section 14 of the SARFAESI Act and found the application to be in order from the affidavit filed by the authorized officer. Those documents filed with the affidavit were considered. All requirements of the law being fulfilled, the CJM held that it was mandatory that the CJM would take steps in accordance with the provisions of Section 14. The seal bailiff from the Court was appointed as the Court Commissioner to take possession of the secured assets, namely:-

> *"all that piece and parcel of the property flat/unit No.C – 8D, measuring about 1584 sq. ft. on the western side of the 8th floor of the block – "C", together with one store room being no. 11 on the ground floor of the said block having a covered area of 98 sq. ft., together with one covered car parking space bearing no. 103 on the ground floor and open car parking space bearing no. 85 in the said block along with proportionate undivided share and interest on the same premises upon which the said building known as "Ideal Towers" lying and situated at premises no. 57, Diamond Harbour Road, PS - Ekbalpore, Ward No. 78, under KMC, Kolkata, West Bengal - 700023."*

8. The CJM thereafter refused to proceed to implement the order when the police informed the CJM of the order of status quo.

9. November 18, 2025 was fixed for necessary orders. On perusal of the report of the Officer-in-Charge of Ekbalpore Police Station, the CJM took notice of the order of injunction passed by the Civil Court and the fact that the police station was in a dilemma whether they should obey the order of the Civil Court or the order of the CJM passed under Section 14. After considering the submissions of the police and the fact that there was an order of status quo with regard to the property in question, the CJM held as follows:-

> *"In this score, it appears that an injunction order has been passed in respect of the property and though at the time of hearing it was the submission of the Ld. Advocate for the petitioner that in the said civil suit the petitioner was not a party and so, the said order will not be applicable or affect the petitioner. In this respect this Court is of the view that it is the principle of law that existence of injunction order is not over the parties, but over the property concerned and admittedly, there is an order of injunction over the suit property regarding possession and thus, the order dt. 21.01.2025, directing for delivery of possession certainly gets hindered on the ground of the existence of order of injunction. Moreover, on the basis of the report so submitted by the concerned police station, the existence of the order*

of the injunction has come to the knowledge of the petitioner and thus, it is the duty of the petitioner to take necessary steps in respect of the said order of Injunction "to get the delivery of possession executed as per law".

So, in such a situation, this Court is of the view that the written explanation so submitted by the Officer-in-charge of Ekbalpore P.S. is hereby accepted and the petitioner of this case is hereby directed to take appropriate steps in respect of the order of injunction which is in existence in respect of the property in question.

It is to be borne in mind that this Court acting u/s 14 of the SARFARSI Act is not in a capacity to determine the question of title or possession which is certainly within the ambit of the civil court. Merely having authority to cause execution of delivery of possession is being crumbled due to the existence of an order of the civil court.

The petitioner is directed to take appropriate steps in this regard keeping in mind the mandate of the Hon'ble High Court at Calcutta to complete the procedure within the time frame so prescribed by the Hon'ble Court.

Fix 05.12.25 for taking appropriate steps by the petitioner."

10. This order was under challenge in the writ court on the ground that the CJM did not have the jurisdiction under the law to decide whether the order of injunction by the Civil Court would operate as a bar to the implementation of the order under Section 14 through

the Court Commissioner, with the assistance of the police. The CJM erred in holding that once the order of injunction had come to the knowledge of the bank, the proper course of action would be for the secured creditor to approach the Civil Court and take necessary steps to "get the delivery of possession executed as per law". We are in agreement with the learned Single Judge. The learned Judge rightly held that the order of injunction would not bind the secured creditor. The SARFAESI Act has a specific provision which permits the secured creditor to take over possession of the secured asset. Section 14 of the said Act provides that the Chief Metropolitan Magistrate or the District Magistrate shall assist the secured creditor in taking possession of the secured asset. The provisions of Section 14 of the SARFAESI Act are quoted below:-

> ***"S.14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.*** *- (1) Where the possession of any secured asset 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 asset, 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 nonperforming 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 secl1red 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 [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 [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."*

11. The section mandates that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor with certain declarations enumerated under Clauses (i) to (ix) to the proviso under Section 14(1) which have been quoted above. Section 14(1A) permits the District Magistrate or the Chief Metropolitan Magistrate to authorize any officer subordinate to him, to take possession of the assets and documents relating thereto and to forward such assets and documents to the secured creditor. The appellants had a right of appeal from the initial order passed under Section 14. They filed an I.A. in the pending S.A. An S.A. had been filed by the appellants challenging the proceedings initiated by the bank under the SARFAESI Act. An interim stay was granted in the I.A. by the Debts Recovery Tribunal – III, but the said order was challenged by the bank before the Debts Recovery Appellate Tribunal and the appeal was allowed. From such appeal, a civil revision is pending.

12. Mr. Chatterjee submits that unless the fate of the civil revision is decided, the bank cannot proceed with the

auction as the auction notice was issued by the bank immediately after possession was taken, on the strength of the order impugned before us.

13. The scope of Section 14 of the SARFAESI Act was discussed by the Hon'ble Apex Court in ***Standard Chartered Bank vs V. Noble Kumar and Ors.*** reported in ***(2013) 9 SCC 620***, the Hon'ble Apex Court held as follows:-

> **"21.** Under the scheme of Section 14, a secured creditor who desires to seek the assistance of the State's coercive power for obtaining possession of the secured asset is required to make a request in writing to the Chief Metropolitan Magistrate or District Magistrate within whose jurisdiction, the secured asset is located praying that the secured asset and other documents relating thereto may be taken possession thereof. The language of Section 14 originally enacted purportedly obliged the Magistrate receiving a request under Section 14 to take possession of the secured asset and documents, if any, related thereto in terms of the request received by him without any further scrutiny of the matter.
>
> **22.** However, the Bombay High Court in *Trade Well* v. *Indian Bank* [2007 Cri LJ 2544 (Bom)] opined:
>
> "*2.* … CMM/DM acting under Section 14 of the NPA Act is not required to give notice either to the borrower or to the third party.
>
> *3.* He has to only verify from the bank or financial institution whether notice under Section 13(2) of the NPA Act is given or not and whether the secured assets fall within his jurisdiction. *There is no adjudication of any kind at this stage.*
>
> *4.* It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under Section 14 of the NPA Act by recording that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under Section 14."
>
> (emphasis supplied)
>
> The said judgment was followed by the Madras High Court in *Indian Overseas Bank* v. *Sree*

Aravindh Steels Ltd. [AIR 2009 Mad 10] Subsequently, Parliament inserted a proviso to Section 14(1) [“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: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.”] and also sub-section (1-A) [“**14. (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 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."] by Act 1 of 2013.

23. We must make it clear that these provisions were not in existence on the date of the order impugned [*V. Noble Kumar* v. *Standard Chartered Bank*, (2010) 8 MLJ 282 : (2011) 1 CTC 513] in the instant proceedings. These amendments are made to provide safeguards to the interest of the borrower. These provisions stipulate that a secured creditor who is seeking the intervention of the Magistrate under Section 14 is required to file an affidavit furnishing the information contemplated under various sub-clauses (*i*) to (*ix*) of the proviso and obligates the Magistrate to pass suitable orders regarding taking of the possession of the secured assets *only after being satisfied* with the contents of the affidavits.

24. An analysis of the nine sub-clauses of the proviso which deal with the information that is required to be furnished in the affidavit filed by the secured creditor indicates in substance that:

24.1. (*i*) there was a loan transaction under which a borrower is liable to repay the loan amount with interest,

24.2. (*ii*) there is a security interest created in a secured asset belonging to the borrower,

24.3. (*iii*) that the borrower committed default in the repayment,

24.4. (*iv*) that a notice contemplated under Section 13(2) was in fact issued,

24.5. (*v*) in spite of such a notice, the borrower did not make the repayment,

24.6. (*vi*) the objections of the borrower had in fact been considered and rejected,

24.7. (*vii*) the reasons for such rejection had been communicated to the borrower, etc.

25. <u>The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset</u>.

26. It is in the abovementioned background of the legal frame of Sections 13 and 14, we are required to examine the correctness of the conclusions recorded by the High Court. Having regard to the scheme of Sections 13 and 14 and the object of the enactment, we do not see any warrant to record the conclusion that it is only after making an unsuccessful attempt to take possession of the secured asset, a secured creditor can approach the Magistrate. No doubt that a secured creditor may initially resort to the procedure under Section 13(4) and on facing resistance, he may still approach the Magistrate under Section 14. But, it is not mandatory for the secured creditor to make attempt to obtain possession on his own before approaching the Magistrate under Section 14. The submission that such a construction would deprive the borrower of a remedy under Section 17 is rooted in a misconception of the scope of Section 17.

27. The "appeal" under Section 17 ["**17.** ***Right to appeal***.—(1) Any person (including the borrower) *aggrieved by any of the measures* referred to in sub-section (4) of Section 13 *taken by the secured creditor* or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower."(emphasis supplied)] is available to the borrower against any measure taken under Section 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under Section 13(4). Alienating the asset either by lease or sale, etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower (*sic* the secured creditor). Therefore, the borrower is always entitled to prefer an "appeal" [*Mardia Chemicals Ltd.* v. *Union of India*, (2004) 4 SCC 311. The expression "appeal" as originally existed in Section 17 is substituted by the word "representation" in view of the judgment of this Court in *Mardia Chemicals case*."*59.* We may like to observe that proceedings under Section 17 of the Act, in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in civil court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case." (*Mardia Chemicals case*, SCC p. 352, para 59)] under Section 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4)(*a*) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under Section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available."

14. In the matter of ***R.D. Jain & Co. v. Capital First Ltd.***, *reported in* ***(2023) 1 SCC 675***, the Hon'ble Apex Court held as follows:-

"29. In view of the above discussion and as observed hereinabove when the powers to be exercised by the Additional Chief Metropolitan Magistrate are on a par with the powers to be exercised by the Chief Metropolitan Magistrate

> [Section 17(2)CrPC] and the Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge (Section 19 CrPC) and the steps to be taken by the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act as observed hereinabove are ministerial in nature and does not involve any adjudicatory process and there is no element of any quasi-judicial function, we see no reason to take a different view than the view taken by the Bombay High Court in the impugned judgment [*Capital First Ltd.* v. *State of Maharashtra*, 2017 SCC OnLine Bom 9425] . We hold that the expression "Chief Metropolitan Magistrate" as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act."

15. The SARFAESI proceeding is admittedly under challenge. It is an admitted position that if the bank proceeds with the auction, the same shall abide by the result of the S.A. Section 17(3) of the SARFAESI Act provides so. Also, the result of the civil revision will be binding on any steps that are taken by the bank. Our jurisdiction is to decide whether the learned Single Judge erred in holding that the CJM did not have any authority under the law to refuse to proceed with the matter by not taking over of possession of the secured asset, as per his order dated January 21, 2025. We do not find any error in exercise of jurisdiction by the learned writ court, while holding that the CJM only performed a ministerial function and not a judicial function. Thus, the finding of the CJM that in view of the injunction order passed by the Civil Judge, the CJM could not proceed further with the delivery of

possession, and the order granting delivery of possession must be obtained from the civil court by the bank, is a wrongful exercise of jurisdiction. The bank who was not a party to the suit. The bank was wrongly directed to approach the suit court and obtain necessary orders. It appears that the suit was filed after the SARFAESI proceeding had been initiated. Notice under Section 13(2) of the said Act was issued on July 6, 2024 and the notice under Section 13(4) was issued on October 21, 2024. Section 13(13) of the SARFAESI Act provides that no borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise, any of the secured assets referred to in the notice, without prior written consent of the secured creditor, which means that, once a notice under Section 13(2) is received by the borrower, there is an injunction on all properties. The order of injunction passed by the learned Single Judge was subsequent to the notice under Section 13(2).

16. In any event, Mr. Chatterjee's contention that the borrower was wrongly described, and that, Partha Pratim Das was not connected with the transaction between the appellants and the bank, and all other alleged irregularities in the SARFAESI proceeding as well as in the order passed under Section 14, shall be decided in the appropriate proceeding. These issues are

subject to challenge in the S.A. as also in the civil revision, and can be urged by the appellants.

17. Under such circumstances, we are not inclined to express any opinion on the merits of the SARFAESI proceeding. This appeal is restricted to the decision of the learned Trial Judge, which, in our opinion, is correct. The CJM should have assisted the secured creditor to take over possession of the property. The fate of such property even if sold would be subject to the provision of law and the pending proceedings. If the appellants are successful in the S.A. or in the civil revision, the consequences will follow.

18. Under such circumstances, we are not inclined to interfere with the order impugned.

19. The appeal and connected applications are disposed of without interference with the order of the learned Single Judge. However, as the appellants have expressed a bona fide desire to settle the matter, we allow the appellants to approach the bank with the proposal and the bank will consider the same, as they deem proper. The offer will be made within a week and the bank shall not finalize the sale up to 25th April, 2026, in the event the auction is held. The auction if held will be subject to the S.A. and the civil revision.

20. The police report is taken on record.

21. There shall be no order as to costs.

22. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)