



For Petitioner(s) : Mr. Jamesh Bedi, Adv.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

14/03/2024

Reportable

1. By way of filing this writ petition, the petitioner has assailed the order dated 09.01.2023 passed by the learned District Magistrate, Jaipur by which the application filed by the petitioner under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act of 2002') has been rejected.

2. By passing the impugned order dated 09.01.2023, the District Magistrate, Jaipur has observed in the order impugned that no document has been produced and annexed with the application filed by the petitioner under Section 14 of the SARFAESI Act of 2002 with regard to the fact that whether the agricultural land was mortgaged or not and the DLC rates of the sanctioned land were not submitted. While rejecting the application filed by the petitioner, a liberty was granted to the petitioner to file fresh application with appropriate documents.

3. Counsel for the petitioner submits that the learned Magistrate has failed to peruse the provisions contained under Section 14 of the SARFAESI Act of 2002. Counsel submits that while deciding the application under Section 14 of the SARFAESI Act of 2002, the Magistrate was supposed to decide the



application on its merits not on the technicalities niceties of law. Counsel submits that at the time of deciding the application under Section 14 of the SARFAESI Act of 2002, the Magistrate was required to see whether or not the secure assets falls within its territorial jurisdiction and whether notice under Section 13(2) of the SARFAESI Act of 2002 was furnished or not. Counsel submits that learned District Magistrate was not supposed to act beyond the aforesaid mandate of the SARFAESI Act of 2002. Hence, under these circumstances interference of this Court is warranted. In support of his contention, counsel has placed reliance upon the following judgments:-

(I) **R.D. Jain and Co. Vs. Capital First Ltd. and Ors. reported in (2023) 1 SCC 675;** and

(III) **Additional District Magistrate Vs. SMFG India Credit Company Ltd. and Ors. (Petitions for Special Leave to Appeal C Nos.1081/2024) reported in MANU/SCOR/13095/2024.**

Counsel submitted that in view of the submissions made hereinabove, the impugned order passed by the learned District Magistrate be quashed and set aside.

4. Heard and considered the submissions made at Bar and perused the material available on record.

5. The short question which is posed for consideration of this Court is "Whether while exercising the powers under Section 14 of the SARFAESI Act of 2002, the District Magistrate (for short 'DM') would act as an executing authority or adjudicating authority?"

6. While considering the aforesaid question, the scope, ambit and jurisdiction of DM under Section 14 of the SARFAESI Act of



2002 is required to be considered. For convenience, Section 14 of the SARFAESI Act of 2002 is reproduced and the same 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:

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 2[within a period of thirty days from the date of application:]

2[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.]

3[(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. On a fair reading of Section 14 of the SARFAESI Act of 2002, it appears that for taking possession of the secured assets in terms of Section 14(1) of the SARFAESI Act of 2002, the secured creditor is obliged to approach the District Magistrate/Chief Metropolitan Magistrate (for short 'DM/CMM') 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.





8. 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 of 2002 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 of 2002 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 observed and held by Hon'ble Supreme Court in the case of **NKGSB Cooperative Bank Limited Vs. Subir Chakravarty & Ors.** (Civil Appeal No. 1637/2022) decided on 25.02.2022, the aforesaid act is a ministerial act. It cannot brook delay. Time is of the essence and this is the spirit of the special enactment. In the recent decision in the case of **M/s R.D. Jain and Co. Vs. Capital First Ltd. & Ors.** (Civil Appeal No. 175/2022) decided on 27.07.2022, Hon'ble Supreme Court had an occasion to consider the powers exercisable by District Magistrate/Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act of 2002. After considering the object and purpose of Section 14 of the SARFAESI Act of 2002 and the Scheme of the Act under Section 14, it is observed and held in paragraphs 7 to 9 as under:

"7. Now so far as the powers exercisable by DM and CMM under Section 14 of the SARFAESI Act are concerned, statement of objects and reasons for which SARFAESI Act has been enacted reads as under:-

"STATEMENT OF OBJECTS AND REASONS





The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of nonperforming assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the 21st June, 2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance would enable banks and financial institutions to realise longterm assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and





reduce nonperforming assets by adopting measures for recovery or reconstruction.”

Thus, the underlying purpose of the SARFAESI Act is to empower the financial institutions in India to have similar powers as enjoyed by their counterparts, namely, international banks in other countries. One such feature is to empower the financial institutions to take possession of securities and sell them. The same has been translated into provisions falling under Chapter III of the SARFAESI Act. Section 13 deals with enforcement of security interest. Sub Section (4) thereof envisages that in the event a default is committed by the borrower in discharging his liability in full within the period specified in subsection (2), the secured creditor may take recourse to one or more of the measures provided in subsection (4). One of the measures is to take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset. That, they could do through their “authorised officer” as defined in Rule 2(a) of the Security Interest (Enforcement) Rules, 2002.

7.1 After taking over possession of the secured assets, further steps to lease, assign or sale the same could also be taken by the secured creditor. However, Section 14 of the SARFAESI Act predicates that if the secured creditor intends to take possession of the secured assets, must approach the CMM/DM by way of an application in writing, and on receipt of such request, the CMM/DM must move into action in right earnest. After passing an order thereon, he/she (CMM/DM) must proceed to take possession of the secured assets and documents relating thereto for being forwarded to the secured creditor in terms of Section 14(1) read with Section 14(2) of the SARFAESI Act. As noted earlier, Section 14(2) is an enabling provision and permits the CMM/DM to take such steps and use force, as may, in his opinion, be necessary.

7.2 At this stage, it is required to be noted that along with insertion of subsection (1A), a





proviso has also been inserted in subsection (1) of Section 14 of the SARFAESI Act whereby the secured creditor is now required to comply certain conditions and to disclose that by way of an application accompanied by affidavit duly affirmed by its authorised officer in that regard. SubSection (1A) is in the nature of an explanatory provision and it merely restates the implicit power of the CMM/DM in taking services of any officer subordinate to him. As observed and held by this Court in the case of **NKGSB Cooperative Bank Ltd.** (supra), the insertion of subsection (1A) is not to invest a new power for the first time in the CMM/DM as such.

8. Thus, considering the scheme of the SARFAESI Act, it is explicit and crystal clear that possession of the secured assets can be taken by the secured creditor before confirmation of sale of the secured assets as well as post confirmation of sale. For taking possession of the secured assets, it could be done by the "authorised officer" of the Bank as noted in Rule 8 of the Security Interest (Enforcement) Rules, 2002.

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.

9. Thus, in view of the scheme of the SARFAESI Act, more particularly, Section 14 of the SARFAESI Act and the nature of the powers to be exercised by learned Chief Metropolitan Magistrate/learned District Magistrate, the High Court in the impugned judgment and order has rightly observed and held that the power vested in the learned Chief Metropolitan Magistrate/learned District Magistrate is not by way of persona designata."



9. Thus, the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act of 2002 are ministerial step and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section 14 of the SARFAESI Act of 2002 are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act of 2002, before Debts Recovery Tribunal.

10. A perusal of the aforesaid provision clearly indicates that nature of powers under Section 14 of the SARFAESI Act of 2002 is vested with the District Magistrate is ministerial and executory and not adjudicating as the Hon'ble Apex Court in the case of **Standard Chartered Bank & Ors. Vs. V. Noble Kumar and Ors.** reported in **MANU/SC/0874/2013** has held that the satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) of the SARFAESI Act of 2002 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 has been observed that the DM has exercised



the role of adjudicating authority by citing the reason. Hon'ble Apex Court has time and again reiterated that the role of DM is ministerial in nature so far as section 14 of the SARFAESI Act of 2002, is concerned and not that of adjudication. In number of cases, it is seen that the orders are being passed as per convenience of the officer concerned without following the mandate of the Apex Court.

11. In the considered opinion of this Court, the DM has travelled beyond the scope of Section 14 of the SARFAESI Act of 2002 and thereafter transgressed its jurisdiction by decding the application filed by the petitioner.

12. Keeping in view the aforesaid settled proposition of law, the order impugned is not sustainable in the eye of law and the same is liable to be quashed and set aside.

13. Accordingly, the order impugned dated 09.01.2023 stands quashed and set aside. The matter is remitted back to the learned District Magistrate, Jaipur to re-register the application filed by the petitioner under Section 14 of the SARFAESI Act of 2002 on its original number and proceed with the matter strictly in accordance with law.

14. The instant writ petition stands disposed of. Stay application and all application(s) (pending, if any) also stand disposed of.

15. As a word of caution, this Court expects that in future the Chief Metropolitan Magistrates/District Magistrates shall follow the orders passed by this Court as well as the Apex Court in its letter and spirit and shall not adventure in interpreting the order in their own way.



16. Registry is directed to send a copy of this order to the Additional Chief Secretary/Principal Secretary, Department of Revenue, Government of Rajasthan, so that the Officers may stop interpreting the provisions of Section 14 of the SARFAESI Act of 2002 in their own manner.

(ANOOP KUMAR DHAND),J

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