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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI**

**&
HON'BLE SHRI JUSTICE HIRDESH**

ON THE 5th OF JULY, 2023

MISC. PETITION No. 3024 of 2023

BETWEEN:-

**KAMAL KISHORE GAUR S/O SHRI BUDDHISINGH
GAUR, AGED 67 YEARS, OCCUPATION: BUSINESS R/O
H.NO. 70 (OLD NO. 50) KAMLA NEHRU NAGAR,
KUMHAR KHEDI INDORE (MADHYA PRADESH)**

....PETITIONER

(SHRI RISHABH GUPTA, LEARNED COUNSEL FOR THE PETITIONER)

AND

- 1. IDFC FIRST BANK LIMITED REGD OFFICE KRM
TOWER 8TH FLOOR, HAIRINGTON ROAD
CHITPET CHENNAI 600031 (TAMIL NADU)**
- 2. PRAKASHCHANDRA S/O DALCHANDAR SOLANKI
R/O H.NO. 70, (OLD NO. 50) KAMLA NEHRU
NAGAR KUMHAR KHEDI ROAD INDORE
AND
GALI NO. 1 SAI SUMAN NAGAR NEAR GAYATRI
MANDIR INDORE
AND
KANHA SWEETS NAMKEEN 01-B KAMLA NEHRU
NAGAR INDORE (MADHYA PRADESH)**
- 3. SANGEETA W/O PRAKASHCHANDRA SOLANKI
R/O H.NO. 70, (OLD NO. 50) KAMLA NEHRU
NAGAR KUMHAR KHEDI ROAD INDORE
AND
GALI NO. 1 SAI SUMAN NAGAR NEAR GAYATRI
MANDIR INDORE AND KANHA SWEETS
AND
APNA CHAT CHOPATI 32 SAI SUMAN NAGAR
NEAR GAYATRI MANDIR INDORE (MADHYA
PRADESH)**

....RESPONDENTS

(SHRI ROHIT SABOO, LEARNED COUNSEL FOR THE RESPONDENT [R-1].

This petition coming on for admission this day, JUSTICE SUSHRUT ARVIND DHARMADHIKARI passed the following:

ORDER

Heard finally with the consent of both the parties.

In this petition under Article 227 of the Constitution of India, the petitioner has assailed the illegality, validity and propriety of the order dated 13.05.2023 (Annexure P-7) and 30.12.2022(Annexure P-2) passed by the Chief Judicial Magistrate(referred to as 'CJM' hereinafter), Indore as per Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(referred to as 'SARFAESI Act' hereinafter).

2. The brief facts of the case are that the petitioner is the erstwhile owner of the secured assets. The petitioner sold the property forming the secured assets to the borrowers of respondent no.1 on 20.09.2020. The borrowers in this case are respondent no.2 and 3. The borrowers took loan facility from respondent no.1/bank. When the borrowers failed to repay certain installments, the respondent no.1/bank took measures under the SARFAESI Act and ultimately, filed an application u/S 14 of the SARFAESI Act before the learned CJM, Indore to take administrative assistance for obtaining possession of the secured assets. The CJM, Indore passed the impugned order directing the respondent no.1 to take the physical possession of the secured assets. After the petitioner having sold the property is in occupation of the secured asset as a tenant. Accordingly, the instant petition is filed.

3. The petitioner in the present case is aggrieved by the actions taken by the respondent no.1/bank, in as much as, it is going to take possession of the

secured asset by virtue of the order passed by the CJM, Indore.

4. The contention of learned counsel for the petitioner is that according to Section 14 of SARFAESI Act, only the Chief Metropolitan Magistrate(referred to as 'CMM' hereinafter) or the District Magistrate(referred to as 'DM' hereinafter), as the case may be, can assist the secured creditors for taking possession of the secured assets, therefore, the impugned order passed by the CJM in this case is without jurisdiction.

5. Learned counsel for the respondent submitted that petitioner has not filed any document to show that he is the tenant and, therefore, if the tenant has any grievance, instead of objecting under Section 14 of SARFAESI Act proceedings, he could have approached the learned Debt Recovery Tribunal (referred to as 'DRT' hereinafter) u/S 17(4A) of the SARFAESI Act, if at all there is any threat of dispossession. The DRT has powers to examine the matter and after recording of evidence, pass appropriate orders. The petitioner without availing the aforesaid remedy has approached this Court, therefore, the petition deserves to be dismissed.

6. Heard, learned counsel for the parties and perused the record.

7. The two core legal questions involved in this petition are :

(i) Whether the CJM can exercise powers u/S 14 of the SARFAESI Act?

(ii) Whether the borrower can and /or "any other person" is required to be given an opportunity of hearing before passing the order u/S 14 of the SARFAESI Act?

8. So far as the answer to the first question is concerned, this question came up for consideration before The Hon'ble Apex Court in the case of

Authorized Officer, Indian Bank Vs. D. Visalakshi and Another reported in **(2019) 20 SCC 47**. The Apex Court was tasked to deal with the contrary views being taken from various High Courts in the country. The High Court of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand interpreted the said provision to mean that only the CMM in metropolitan areas and the DM in non-metropolitan areas were competent to deal with the applications u/S 14 of the SARFAESI Act whereas on the other hand High Courts of Kerela, Allahabad, Andhra Pradesh and Karnataka took a contrary view and concluded that the provision does not debar or preclude the CJM to exercise the powers u/S 14 of the Act. The Apex Court in the case of **Authorized Officer, Indian Bank**(supra) has held thus:

"34. Notably, the powers and functions of the CMM and the CJM are equivalent and similar, in relation to matters specified in the Cr.P.C.. These expressions (CMM and CJM) are interchangeable and synonymous to each other. Moreover, Section 14 of the 2002 Act does not explicitly exclude the CJM from dealing with the request of the secured creditor made thereunder. The power to be exercised under Section 14 of the 2002 Act by the concerned authority is, by its very nature, nonjudicial or State's coercive power. Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy under Section 17 of the 2002 Act and/or judicial review under Article 226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lessee; nor is it possible to suggest that they are rendered remediless in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any advantage muchless

added advantage. Taking totality of all these aspects, there is nothing wrong in giving expansive meaning to the expression "CMM", as inclusive of CJM concerning nonmetropolitan area, who is otherwise competent to discharge administrative as well as judicial functions as delineated in the Cr.P.C. on the same terms as CMM. That interpretation would make the provision more meaningful. Such interpretation does not militate against the legislative intent nor it would be a case of allowing an unworthy person or authority to undertake inquiry which is limited to matters specified in Section 14 of the 2002 Act.

44. Suffice it to observe that keeping in mind the subject and object of the 2002 Act and the legislative intent and purpose underlying Section 14 of the 2002 Act, contextual and purposive construction of the said provision would further the legislative intent. In that, the power conferred on the authorised officer in Section 14 of the 2002 Act is circumscribed and is only in the nature of exercise of State's coercive power to facilitate taking over possession of the secured assets.

54. To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (Banks)."

9. So far as the answer to Question No.2 is concerned, the maiden attempt to decide the said question was made by the Apex Court in the case of **Standard Chartered Vs. Noble Kumar & Others** reported in **(2013) 9 SCC 620** wherein the Apex Court has observed thus:

"25. 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 the possession of the secured asset."

10. This Court was also loathed with the similar question in the case of **Aditya Birla Finance Ltd. Vs. Shri Carnet Elias Fernandes** reported in **AIR 2018 MP 209** wherein it has been held that:

"29. Thus, the proceedings under **Section 14** of the Act are not proceedings to adjudicate the rights of the parties. Therefore, no notice is contemplated to be served upon the debtor; as such proceedings are taken only after serving notice under **Section 13** of the Act.

30. In view of the aforesaid, we find that the order of the learned Single Bench allowing the writ petition cannot be sustained in law. The same is set aside and the order of the District Magistrate is restored. The present appeal stands allowed."

11. The Apex Court in the case of **Authorized Officer, (supra)** went to throw light on the operation and application of Section 14 of the SARFAESI Act. Relevant extracts of the judgment are as follows:

".....Concededly, the nature of inquiry to be conducted by the designated authorities under the 2002 Act, is spelt out in **Section 14** of the 2002 Act. The same is circumscribed and is limited to matters specified in Clauses (i) to (ix) of the first proviso in subsection (1) of **Section 14** of the 2002 Act, inserted in 2013. Prior to the insertion of that proviso, it was always understood that in such inquiry, it is not open to adjudicate upon contentious pleas regarding the rights of the parties in any manner. The stated authorities could only do verification of the genuineness of the plea and upon being satisfied that it is genuine, the adjudication thereof could then be left to the Court of competent jurisdiction.

33. Suffice to observe that an inquiry conducted by the stated authority under **Section 14** of the 2002 Act, is a sui generis inquiry. In that, majorly it is an administrative or executive function regarding verification of the affidavit and the relied upon documents filed by the parties. That inquiry is required to be concluded within the stipulated

time frame. While undertaking such an inquiry, as is observed by this Court, the authority must display judicious approach, in considering the relevant factual position asserted by the parties. That presupposes that it is a quasijudicial inquiry though, a nonjudicial process. The inquiry does not result in adjudication of inter se rights of the parties in respect of the subject property or of the fact that the transaction is a fraudulent one or otherwise. "

12. This Court in the case of **Fullerton India Co. Ltd Vs. Additional District Magistrate in W.P. No. 10672 of 2023 vide order dated 8th May, 2023** relying upon the case of **Aditya Birla Finance Ltd.(supra)** held that no opportunity of hearing is required to be given to the borrower at any stage. Also, even if the borrower appears *suo motu*, it must not be heard as proceedings u/S 14 of the SARFAESI Act as the same is not adjudicatory in nature.

13. In view of the aforesaid discussion and the various pronouncements of the Apex Court, the answer to first question would be that the CJM, is very much competent to deal with the application u/S 14 of the SARFAESI Act. In other words, the order passed by the CJM, Indore is not hit by any illegality or incompetency. So far as opportunity of hearing to the borrower while deciding the application u/S 14 of the SARFAESI Act is concerned, in the light of the judgment passed in the case of **Standard Chartered (supra), Aditya Birla Finance Ltd.(supra) & Authorized Officer Indian Bank (supra)**, the CMM/DM/CJM is not required to issue notice either to the borrowers or the third party, they are only required to verify from the bank/institution whether notice u/S 13(2) of the SARFAESI Act has been issued/served or not.

14. In view of the aforesaid, the present petition is bereft of merit and substance and, therefore, the same deserves to be and is hereby dismissed. No order as to cost.

15. The interim order granted by this Court on 15.06.2023 stands vacated.

(S. A. DHARMADHIKARI)
JUDGE

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(HIRDESH)
JUDGE

