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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 PRAKASH CHANDRA GUPTA**

**ON THE 8<sup>th</sup> OF MAY, 2023**

**WRIT PETITION No. 10672 of 2023**

**BETWEEN:-**

**FULLERTON INDIA CREDIT COMPANY LIMTIED  
THROUGH AUTHORIZED OFFICER PRATIK DUBEY S/O  
SHRI SUDHIR DUBEY, AGED ABOUT 33 YEARS,  
OCCUPATION: SERVICE 1ST FLOOR, BLOCK 4, 9/1 MG  
ROAD, NEAR TREASURE ISLAND MALL, BEHIND YES  
BANK INDORE (MADHYA PRADESH)**

**.....PETITIONER**

***(SHRI RAVINDRA MAHESHWARI,-ADVOCATE)***

**AND**

- 1. ADDITIONAL DISTRICT MAGISTRATE  
COLLECTOR OFFICE, MOTI TABELA, INDORE  
(MADHYA PRADESH)**
- 2. M/S. HOTEL SAVERA THROUGH PROPRIETOR  
SHRI AMAN S/O VIJAY KUMAR DAWAR 44 NEW  
9/4, CHOTI GAWAL TOLI, INDORE (MADHYA  
PRADESH)**
- 3. SHRI AMAN S/O SHRI VIJAY KUMAR DAWAR  
OCCUPATION: BUSINESS PLOT NO. 413, FOURTH  
FLOOR, SHEENATH AVENUE, 158, MURAI  
MOHALLA, KIBE COMPOUND INFRONT OF DAWA  
BAZAR, INDORE (MADHYA PRADESH)**
- 4. SHRI VIJAY KUMAR DAWAR S/O SHRI  
OCCUPATION: BUSINESS PLOT NO. 413, FOURTH  
FLOOR, SHEENATH AVENUE, 158, MURAI  
MOHALLA, KIBE COMPOUND INFRONT OF DAWA  
BAZAR, INDORE (MADHYA PRADESH)**
- 5. SMT. NEETA W/O SHRI VIJAY KUMAR DAWAR  
OCCUPATION: BUSINESS PLOT NO. 413, FOURTH**

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FLOOR, SHEENATH AVENUE, 158, MURAI  
MOHALLA, KIBE COMPOUND INFRONT OF DAWA  
BAZAR, INDORE (MADHYA PRADESH)

.....RESPONDENTS

**(SHRI BHUWAN GAUTAM-GOVERNMENT ADVOCATE)**

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

**ORDER**

1. By this petition, petitioner has prayed for the following reliefs:

*" i. Kindly, issue an appropriate writ and/or direction and/or order to allow this petition and set aside/quash the impugned order dated 16-01-2023 and 05-04-2023 in SARFAESI Case No. 0031/B-121/2022-23 (Fullerton India V/s Hotel Savera and others) passed by the Respondent No. 1, Learned Additional District Magistrate, Indore.*

*ii. Kindly, issue an appropriate writ and/or direction and/or order to direct the Additional District Magistrate, Indore to decide the application filed by the petitioner bank under, section 14 of the SARFAESI Act without awarding any opportunity of hearing to the respondent no. 2 to 5 and without considering any of the contentions / submissions / documents of the respondent no. 2 to 5 at any stage of such proceedings and consequently assist petitioner in getting the possession of the secured asset.*

*iii. Kindly, issue any such further or other appropriate writ and/or direction and/or order in favour of petitioner as may be deemed. appropriate looking to the facts and circumstances involved in the matter.*

*iv. Kindly, award the entire cost of the writ petition in favour of the Petitioner."*

2. The brief facts of the case are that the respondent nos. 2 to 5 who are borrowers, have availed a loan facility from the Petitioner amounting to Rs.97,78,740/- and for that particular loan, the respondent Nos.2 to 5 has mortgaged their property situated at Commercial House (Hotel Savera), Plot No. 9/4 (Old No.44), Kibe Compound, Chhoti Gwaltoli, Tehsil, District Indore. Thereafter, the respondent Nos. 2 to 5 were defaulting in the payment of loan to the petitioner because of which the petitioner has classified their loan account as Non-Performing Asset (NPA) on 31-07-2022. In consequence of the same, the petitioner issued a notice on 30-08-2022 to the respondent nos.2 to 5 for discharging their full liabilities towards the petitioner within 60 days of receipt of the notice as per Section 13(2) of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI ACT). Thereafter, the petitioner further filed an application on 16-01-2023 under Section 14 of the SARFAESI Act before the District Magistrate, Indore, seeking assistance in taking possession of the mortgaged property from the respondent Nos. 2 to 5. The petitioner's application was transferred to the Additional District Collector, Indore. The said application was registered bearing No. 0031/B-121/2022-23. The Additional District Collector took cognizance upon the application filed by the petitioner and issued notice to the respondent Nos. 2 and 3 vide order dated 16.01.2023. Upon said notice, the respondents have appeared before the Additional District Magistrate, Indore on 01.03.2023. Being aggrieved by the said proceedings of the case pending before the Additional District Magistrate, the petitioner has filed the present petition.

3. Heard arguments and perused the record.

4. Section 14 of the SARFAESI ACT is reproduced below:-

*" 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 in documents relating thereto; and (b) forward such asset 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 done in pursuance of this section shall be called in question in any court or before any authority."*

5. Counsel for the petitioner has heavily placed reliance upon the judgment passed by Division Bench at Principal Seat Jabalpur in WA No. 784/2018 (*Aditya Birla Finance Limited Vs. Shri Carnet Elias Fernandes Vemalayam*). Relevant para of which is reproduced below:-

"28. Coming to the argument that opportunity of hearing was not granted to the writ-petitioners and that the order passed by the District Magistrate violates the principles of natural justice is again not tenable. The Bombay High Court in a judgment reported as **2007 Cri LJ 2544 (Bom.) (Trade Well vs. Indian Bank)** has held that the District Magistrate is not required to give notice either to the borrower or to the third party. He is only to verify from the Bank whether notice under Section 13(2) of the Act has been issued or not. The said judgment has been quoted with approval by the Supreme Court in a judgment reported as **(2013) 9 SCC 620 (Standard Chartered Bank, etc. vs. V. Noble Kumar and others, etc)**, wherein it was held as under:-

" 22. However, the Bombay High Court in *Trade Well v. Indian Bank* [2007 Cri.L.J. 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."*

*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) and also subsection (1-A) by Act 1 of 2013.*

*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 of possession of the secured asset."*

*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 SARFAESI Act.*

6. In view of the aforesaid, as per Section 14 of the SARFAESI Act, the District/Chief Metropolitan Magistrate is required to assist the secured creditors in taking possession of secured assets. The District Magistrate is not required to give any notice to either the borrowers or to the third party. He is only required to verify from the Bank whether notice under Section 13(2) of the SARFAESI Act has been issued/served or not. [See: (2013) 9 SCC 620

(Standard Chartered Bank, etc. vs. V. Noble Kumar and others, etc).

7. Accordingly, the present petition is allowed. The orders dated 16-01-2023 and 05-04-2023, passed in Case No. 0031/B-121/2022-23, is hereby quashed. Additional District Magistrate, Indore is directed to decide the application filed by the petitioner under Section 14 of SARFAESI Act without affording any opportunity of hearing to the respondent No. 2 and 5 and without considering any of the contentions or submissions or documents at any stage of the proceedings.

8. Writ petition stands allowed and disposed of.

**(S. A. DHARMADHIKARI)**  
**JUDGE**

**(PRAKASH CHANDRA GUPTA)**  
**JUDGE**

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