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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 PRANAY VERMA
ON THE 18th OF OCTOBER, 2023
WRIT PETITION No. 15800 of 2023**

BETWEEN:-

**SMFG INDIA CREDIT COMPANY LIMITED FORMERLY
KNOWN AS FULLERTON INDIA CREDIT COMPANY
LIMITED THROUGH AUTHORIZED OFFICER PRATIK
DUBEY S/O SHRI SUDHIR DUBEY, AGED 33 YEARS,
OCCUPATION: SERVICE ADD. 1ST FLOOR BLOCK 4 9/1
M.G. ROAD, NEAR TREASURE ISLAND MALL BEHIND
YES BANK INDORE ADD. 2 ADD. 1ST FLOOR BLOCK 4
9/1 M.G. ROAD, NEAR TREASURE ISLAND MALL
BEHIND YES BANK INDORE (MADHYA PRADESH)**

.....PETITIONER

(SHRI NILESH AGRAWAL, LEARNED COUNSEL FOR THE PETITIONER)

AND

- 1. ADDITIONAL DISTRICT MAGISTRATE DISTRICT
INDORE ADD. COLLECTORATE OFFICE MOTI
TABELA DISTRICT 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. AMAN S/O VIJAY KUMAR DAWAR OCCUPATION:
BUSINESS PLOT NO. 413 FOURTH FLOOR
SHREENATH AVENUE 158 MURAI MOHALLA KIBE
COMPOUND INFRONT OF DAWA BAZAR INDORE
(MADHYA PRADESH)**
- 4. VIJAY KUMAR DAWAR S/O SHRI OCCUPATION:
BUSINESS PLOT NO. 413 FOURTH FLOOR
SHREENATH AVENUE 158 MURAI MOHALLA KIBE
COMPOUND INFRONT OF DAWA BAZAR INDORE
(MADHYA PRADESH)**

.....RESPONDENTS

*(SHRI ROHIT SHARMA, LEARNED COUNSEL FOR THE RESPONDENT
[CAVEAT].*

*(SHRI ANIKET NAIK, DY. ADVOCATE GENERAL FOR THE
RESPONDENT/STATE)*

.....
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.

By way of the instant writ petition, the petitioner has assailed the order dated 28.06.2023 passed in Case No.0031/B-121/2022-23 by the respondent no.1 whereby the application u/S 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002(referred to as 'SARFAESI Act' hereinafter) filed by the petitioner has been dismissed.

2. Brief facts of the case are that the petitioner is involved in the business of providing loan to its customers. The respondent no. 2 to 5 approached the petitioner company for availing loan of Rs. 97,78, 740/- . Respondents no.2 to 5 in order to secure the repayment of the said loan created equitable mortgage/security interest in respect of property admeasuring 1800 Sq. Ft. at Commercial House (Hotel Savera) Plot No. 9/4 (Old No. 44) Kibe Compound Chhoti Gwaltoli, Teh & Dist. Indore(referred to as 'property in question') in favour of petitioner . The account of the respondent no.2 to 5 was classified as Non Performing Asset(for short 'NPA'), due to irregular repayment of loan as per the terms and conditions. Notices u/S 13(2) of the SARFAESI Act were served upon the respondents. Petitioner filed application u/S 14 of the SARFAESI Act before the District Magistrate, Indore for taking possession of the property in question from the respondent no.2 to 5. The case was then transferred to respondent no.1 i.e. Additional District Magistrate, Distt. Indore

for requisite action. The respondent no.1 instead of assisting the petitioner to take possession of the property in question has issued notices to the borrowers and provided them opportunity to defend the said application which was challenged by the petitioner in W.P. No. 10672/2023. The said petition stood allowed wherein directions were issued to the respondent no.1 to decide the application without affording any opportunity of hearing to the respondent no.2 to 5. The petitioner again made a representation on 24.05.2023 to the respondent no.1 for compliance of the order passed by this Court but to no avail. Thereafter, petitioner has moved a contempt petition against the respondent no.1 on 24.06.2023 as respondent no.1 has posted the matter for 28.06.2023 and on the said date respondent no.1 has rejected the application filed by the petitioner u/14(1) of SARFAESI Act by observing that respondents have filed SARFAESI application before the DRT, Jabalpur which is pending adjudication, therefore, respondent no.1 has become *functus officio*.

3. Learned counsel for the petitioner submitted that respondent no.1 failed to consider that the petitioner company is a secured creditor and the property in question is secured by way of mortgage. The respondent no.1 exceeded its jurisdiction in deciding the rights of the parties while rejecting application u/S 14 of the SARFAESI Act. In fact, the respondent no.1 ought to have considered only two aspects:

(i) Determine whether the secured assets fall within its territorial jurisdiction?

(ii) Whether notice u/S 13(2) of the SARFAESI Act has been furnished or not?

4. In support of his contention, learned counsel for the petitioner relied on the judgment passed by Single Bench of this Court in the case of

Cholamandalam Investments and Finance Ltd. Vs. Additional District Magistrate and Others [2018(3) MPLJ 123] wherein , in para 20 it is held that :

20. *"It has been held that the District Magistrate has to consider only two aspects. He has to first determine whether the secured asset falls within his territorial jurisdiction and secondly whether the notice under Section 13(2) has been furnished or not and no adjudication has been contemplated at that stage."*

5. He further relied upon the order passed by the Division Bench of this Court in the case of **HDFC Bank Ltd. Vs. Additional District Magistrate, Indore & Others in W.P. No. 14976/2022.**

6. On the other hand, learned counsel for the respondents submitted that the order need no interference as the same has been passed in accordance with law and prayed for dismissal of the writ petition.

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

8. Section 14 of the SARFAESI Act is reproduced below for convenience and ready reference:

"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 authorized 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.

9. Thus, from the above, it is apparent that nature of power u/S 14 of SARFAESI Act vested in the District Magistrate/Additional District Magistrate is executory and ministerial and not adjudicatory.

10. This is the second round of litigation by the petitioner. Despite the order passed by this Court earlier in W.P. No.. 10672/2023, respondent no.1 has not chosen to comply with the same and kept sitting tight over the matter. In the considered opinion of this Court, respondent no.1 has earlier travelled beyond the scope of Section 14 of the SARFAESI Act and thereafter transgressed its jurisdiction by dismissing the application and therefore, the impugned order deserves to be quashed.

11. It has been observed in number of cases that the Additional District Magistrate, Indore namely Mrs. Sapna M. Lovanshi attained the role of adjudicatory authority citing reasons that she becomes *functus officio* and the remedy available to the petitioner is before the DRT, Jabalpur. In the instant petition, this Court vide order dated 13.07.2023 had directed her to remain personally present before the Court to explain as to why the authority has interpreted the order on its own brushing aside the order of this order which amounts to contempt of Court. Though, the Additional District Magistrate had filed her reply, but on perusal of the same, there is no explanation as to how she becomes *functus officio*. This Court as well as the Apex Court time and again reiterated that the role of DM/ADM is ministerial in nature so far as Section 14 of the SARFAESI Act 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 this Court as well as the Apex Court. Since no explanation has been put forth by the Additional District Magistrate, Indore as to how she becomes *functus officio*, this Court is of the considered opinion that heavy cost be imposed on the Officer concerned for deliberately interpreting the law as per her convenience.

12. The Officer concerned has also filed I.A. No. 6354/2023 seeking permission to withdraw the impugned order dated 28.06.2023 which goes to show that she is in a habit to exercise the powers arbitrarily.

13. In view of the aforesaid, the present petition is allowed with the following directions:

(i) The order dated 28.06.2023(Annexure P-1) is quashed and respondent no.1 is directed to pass the order afresh in accordance with law keeping in view the statutory provisions as contained in Section 14 of the SARFAESI Act as well as in the light of the judgment passed in the case of **Cholamandlam Investment and Finance Ltd. (supra)** within an outer limit of 30 days extendable to 60 days, but only after recording reasons for delay.

(ii) Mrs. Sapna M. Lovanshi, Additional District Magistrate, Indore is saddled with cost of Rs. 10,000/- for wasting the precious time of this Court which could have been utilized in deciding more pressing matters. The cost of Rs. 10,000/- shall be deposited in the account of President and Secretary H.C. Employees Union H.C. (Account No.63006406008, Branch Code No. 30528, IFSC No. SBIN0030528, CIF No. 73003108919) within a period of 30 days from the date of receipt of certified copy of this order and thereafter compliance report be filed before the Registry, failing which, the Registry shall list the the matter as PUD qua cost.

(iii) The cost of Rs. 10,000/- shall be deposited by the Additional District

Magistrate herself from her own pocket and not to be borne by the State Government.

(iv) As a word of caution, this Court expects that in future at least the Additional District Magistrate shall follow the orders passed by the High Court and Apex Court in letter and spirit and shall not adventure in interpreting the orders on her own.

(v) Let a copy of this order be sent to the Principal Secretary, Revenue Department Govt. of M.P. for circulating the same amongst all concerned officers so that the officers may stop interpreting the orders passed by this Court in their own manner. If at all, any of them are aggrieved by the order, they have a right to file an appeal or appropriate proceedings, as the case may be.

14. Petition stands disposed off.

(S. A. DHARMADHIKARI)
JUDGE

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(PRANAY VERMA)
JUDGE

