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MP-3698-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 16th OF JULY, 2025MISC. PETITION No. 3698 of 2025*ANIL AGRAWAL**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

*Shri Manu Maheshwari appearing on behalf of Shri Tejas Vyas - Advocate
for the petitioner.*

*Shri Bhuwan Gautam - Government Advocate for the respondents No.1 &
3.*

Shri Gaurav Chhabra - Advocate for the respondent No.2.
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ORDER

Per. Justice Vivek Rusia

1. The present miscellaneous petition has been filed by the petitioner seeking the following relief(s):-

"a. Quash and set aside the order dated 10.07.2025 (Annexure P/01) or alternatively

b. Hold and declare that the Debts Recovery Tribunal is competent to entertain and decide applications for condonation of delay under Section 17(1) of the SARFAESI Act, 2002, by applying Section 5 of the Limitation Act, 1963 and / or

c. Direct the Hon'ble DRT to hear and decide the Petitioner's IA. No. 2404/2025 (condonation of delay application) afresh on merits, and thereafter, the corresponding I.A. No. 2405/2025 (amendment application), in accordance with law.

d. Stay all further proceedings and actions under Section 14 of the SARFAESI Act, including dispossession or enforcement, in respect of the subject property, till the final adjudication of the Petitioner's pending applications before the DRT.



e. Pass any other order(s), direction(s), or relief(s) as this Hon'ble Court may deem fit, proper and just in the interest of justice, equity, and fair adjudication."

Facts of the case, in short, are as under:-

2. The respondent-Bank issued a notice dated 19.4.2017 under Section 13(2) of the SARFAESI Act, which was challenged by the petitioner by filing Securitisation Application No.238/2017. The learned DRT, Jabalpur quashed the notice and vide order dated 13.9.2017 dismissed the aforesaid application. Thereafter, a fresh demand notice under Section 13(2) of the SARFAESI Act dated 22.9.2017 was issued by the respondent Bank. The respondent-Bank filed an application before the District Magistrate, Dhar, under Section 14 of the SARFAESI Act in Case No.0089/B-121/2017-18 by mentioning wrong Khasra Numbers 384(K) and 455/2. Thereafter, the District Magistrate passed an order dated 24.4.2019 admitting the application. In the meantime, the subject property was auctioned at an amount of Rs 1,05,00,000/- in the year 2021. After a lapse of two and a half years, the respondent Bank filed an application on 13.4.2021 for modification of the order before the District Magistrate, Dhar, disclosing the error of the survey number of the land in the order dated 24.4.2019. The petitioner filed a reply to the said application. Thereafter, vide order dated 18.10.2021, the District Magistrate, Dhar, dismissed the application.

3. Thereafter, the petitioner filed an application under Section 17 of the SARFAESI Act against the order dated 18.10.2021, which was registered as SA 94/2021. Vide order dated 21.11.2023, the learned DRT dismissed the IA for condonation of delay as well as IA for amendment by holding that the DRT has no power to condone the delay. Thereafter, the respondent-Bank has filed a WP No.3806/2022 before this Court for setting aside the order dated 18.10.2021. Vide



order dated 22.5.2024, the petition was allowed by the writ court. Thereafter, the respondent-Bank filed a fresh application for correction of the order passed under Section 14 of the SARFAESI Act and obtained a modified order from the District Magistrate, Dhar, dated 3.2.2025. In view of this order, the applicant filed the IA for amendment along with an application for condonation of delay and an application for stay.

4. Vide impugned order dated 10.7.2025, the learned DRT has rejected the application on the ground of delay as well as on the ground that the order dated 6.3.2025 is only an amendment order, which does not give a fresh cause of action, hence this petition before this Court.

5. We heard Shri Manu Maheshwari learned counsel for the petitioner. Shri Gaurav Chhabra, learned counsel appearing for the respondent No.2, has argued to justify the impugned order and has placed reliance on the following judgments:- (1) *Punjab National Bank Vs. Additional District Magistrate, Raisen and others* (WP No.25147/2024, vide order dated 18.10.2024 passed by Principal Seat at Jabalpur), (2) *ITC Limited Vs. Blue Coast Hotels Limited and others reported in (2018) 15 SCC 99*, (3) *Devendra Bhawsar and others Vs. A.U. Small Finance Bank Ltd. and others* (WP No.28466/2024, order dated 21.9.2024 passed by the Indore Bench), (4) *Smt. Smriti Baheti and Another Vs. Punjab National Bank* (MP No.1858/2024, vide order dated 5.4.2024 passed by the Indore Bench), (5) *State of Madhya Pradesh Vs. Vicco Products (Bombay)* reported in (2017) SCC OnLine MP 2067.

We have heard the learned counsel for the parties and perused the record.

6. The petitioner filed S.A. No.94/2021 under section 17 of the SARFASI Act, challenging the auction notice dated 5.1.2018, and it has been admitted for adjudication. They filed an application seeking an amendment to challenge the



possession notice dated 25.1.2018 in the pending SA, but vide order dated 24.4.2019, the learned DRT has rejected the same. Thereafter, the petitioner filed an application challenging the original order dated 24.4.2019 passed by the DM under section 14 of the SERFASI Act vide IA No.454/2021, along with an application for condonation of delay in the pending SA and vide order dated 21.11.2023, the said application has also been rejected. Now the learned DM has corrected the order dated 21.11.2023 in compliance of the order dated 22.5.2024 passed in WP No.3806/2022 by the Division Bench of this Court. Hence, the petitioner has filed an application seeking an amendment in the S.A. challenging the order dated 3.2.2025. Learned Tribunal has rejected the application solely on the ground that the application challenging the original order dated 24.4.2019 had been dismissed vide order dated 21.11.2023, and by the order dated 3.2.2025, only the Khasra number has been changed from 455 to 445.

7. Under Section 13 of the SARFAESI Act, the authority has been given to the secured creditor to enforce the security interest in accordance with the provisions of this SARFAESI Act, in default of repayment of secured debt or any instalment thereof. As per sub-section (2) of Section 13, after such default, the secured creditor may classify the account of the borrower or guarantor, as the case may be, as Non Performing Asset (NPA), and then will issue a notice in writing to discharge the liability within sixty days. After receipt of the notice, if the borrower or guarantor makes a representation or raises any objection, the secured creditor shall consider the same and may either reject or grant some time. Under sub-section (4) in case a borrower fails to discharge his liability in full within the period specified in the notice, the creditor may take recourse to one or more measures like taking of possession including right to transfer by way of lease, assignment or sale or take over the management of the business of the borrower



including right to transfer. There are two other measures to be taken by the bank, such as the appointment of any person to manage the secured assets, the possession of which has been taken over or give any time by notice in writing to pay the money as is sufficient to pay the secured debt.

8. In order to take possession of the secured asset or the secured asset is required to be sold or transferred under the provisions of this Act, the secured creditor may for the aforesaid purpose, request in writing, the Chief Metropolitan Magistrate or District Magistrate and upon such request the concerned Magistrate may direct to provide such assistance as required. Section 15 of the SARFAESI Act deals with the manner and effect of taking over the management of the secured assets. Therefore, it is clear from Sections 13 & 15 that the secured creditor may take **several measures** to recover the debt. There is a remedy to challenge every measure by any person, including the borrower, by way of appeal under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal within 45 days from the date on which such measures had been taken. It is the settled law that if an appeal is not filed within 45 days, the DRT may consider the application for condonation of delay filed under Section 5 of the Limitation Act. As per sub-section (2), it is mandatory for the DRT to consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor are in accordance with the provisions of this Act and rules thereunder. If the DRT comes to the conclusion that any of the measures are not in accordance with the provisions of this Act or Rules, it may pass an order of restoration of possession of the secured asset or management, as the case may be. Section 18 of the SARFAESI Act again provides a remedy of appeal to an Appellate Tribunal. Therefore, under Section 17, the Id. DRT is competent to examine the validity of



one or more measures taken by the secured creditor under sub-section (4) of Section 13, and if any of the measures is not found in accordance with the Act and Rules, then the Tribunal may direct the restoration of possession. Therefore, the borrower or guarantor, as the case may be, has a right to challenge **one or more measures** taken by the secured creditor, like notice for payment, rejection of objection, action of symbolic possession, action of auction sale and order passed by the District Magistrate before the Tribunal under Section 17. The borrower may file one Securitisation Application i.e. SA under Section 17 before the DRT, and thereafter all subsequent adversary actions are liable to be brought on record either by way of amendment or by way of separate application in the main case in order to be adjudicated by the learned DRT under Section 17(2) & 17(3) of the SARFAESI Act. In such a case, all subsequent actions are not liable to be rejected on the ground of delay once the main case has been admitted for adjudication, because if one of the measures is found in violation of any provision of the Act and Rules, the borrower is entitled to repossession.

9. In the present case, though the earlier orders passed by the DRT rejecting the application for amendments have not been challenged by the petitioner, the application for amendment has wrongly been rejected by the Tribunal. All applications challenging the subsequent action of the res no. 2 filed in the pending S.A ought to have been allowed, looking to the scheme of the SERFACI Act. The learned Tribunal should not have adopted a technical approach against the borrower because there is a very limited scope of interference by the DRT in matters related to the SARFAESI Act.

10. So far as the present case is concerned, admittedly, the wrong Khasra number was mentioned in the order dated 24.4.2019, and the auction proceeding has been conducted of the land. After two and a half years, the Bank realised the



mistake and filed an application for correction in the order. According to the petitioner, the possession of the land is with him. The Division Bench of this Court has passed a detailed order holding that the mistake of Khasra number is liable to be corrected because this is related to the identification of the mortgaged property. Para-26 is reproduced below:-

"26. 'Review' means a process under which the Court, in certain circumstances, can reconsider its own judgment. It is a judicial re-examination of the case by the same Court by the same Judge. The application preferred before the respondent No.1 was not for re-examination or reconsideration of its own judgment, but it was only for correction in one survey number of the secured asset, the boundaries of which and other details were also available and the property is identifiable. Accordingly, it is an error or mistake arising from accidental slip or omission and may be rectified at any time. If the mistake is not corrected, then it may affect the property that was not mortgaged but mentioned in the impugned order. In case of *J. Samuel (supra)* the omission was with reference to specific plea which is mandatory in terms of Section 16 (C) of Specific Relief Act, 1963 and was running into 3-4 sentence so that was not considered as typographical error whereas in this case only correction of Khasra number of which boundaries are correctly mentioned is sought to be corrected. Accordingly, the case of *J. Samuel (supra)* does not apply in this case."

11. The learned DM has corrected the mistake in the original order after the aforesaid High Court's order, the rest of the order dated 24.4.2019 has been maintained except the Khasra Number from 455 to 445, and after amendment, both the orders are liable to be read together in order to give complete execution. After the order dated 3.2.2025, the Bank got the right to take possession of the mortgaged asset, i.e. Khasra No.445, if it has not already been taken. Therefore, the petitioner has a right to challenge the amended order. In view of the above discussion, the impugned order passed by the learned DRT is set aside.

12. In view of the above, we direct the learned DRT not to reject the



applications for amendment based on the subsequent development in the pending S.A. because under Section 17(2) & (3) of the SARFAESI Act, all the measures taken by the secured creditor under Section 13(4) are liable to be examined by the Tribunal. Rejection of any interlocutory application challenging one of the actions may seriously prejudice the interest of the borrower. Even in some cases, the DRT will not be in a position to effectively pass an order of restoration of possession. If one of the actions/measures remained unchallenged by way of rejection of the application for amendment, then an effective final order can not be passed. Therefore, all the causes of actions are liable to be clubbed and decided together in one S.A., and if the independent S.A.s are filed against each cause of action, then all are liable to be clubbed and decided by a common order. This will not only save the valuable time and labour of the DRT as well as Appellate Tribunal, and High Court, but also, this will not cause an extra financial burden on the borrower as well as the Bank to contest each and every application.

13. The miscellaneous petition is accordingly **disposed of**.

14. A copy of this order shall be sent to the DRT, Jabalpur, for necessary compliance.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE