

W.P. No.6401/2011**09.01.2017**

Shri Wajid Hyder, learned counsel for petitioner.

Shri Atul Choudhary, learned counsel for respondent.

Petitioner takes exception to order dated 23.04.2010; whereby, the Chief Judicial Magistrate has taken cognizance of an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act of 2002').

It is urged that Section 14 of the Act of 2002 empowers only the Chief Metropolitan Magistrate and the District magistrate to take cognizance of an application, it is beyond the jurisdiction of the Chief Judicial Magistrate to entertain the application. It is further contended that the judgment by the Division Bench of Kerala High Court in **Muhammed Ashraf vs. Union of India : AIR 2009 Kerala 14** on the basis whereof the Chief Judicial Magistrate has entertained the application has been distinguished by the Full Bench of Madras High Court in **K.Arockiyaraj vs. Chief Judicial Magistrate, Srivilliputhur AIR 2013 Madras 206.**

Section 14 of the Act of 2002 provides for :

“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:

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.

(1-A) 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 (sic or) 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."

The provision enables secured creditors in taking possession of secured assets.

The Full Bench in **K.Arockiyaraj** (supra) while relying on the decision in **Arjun Urban Co-Operative Bank Ltd., Solapur vs. C.J.M., Solapur (2009) 2 DRTC 431** by the Bombay High Court and of the Calcutta High Court in MAT No.389 of 2013 with CAN 3023 of 2013 decided on 23.04.2013, distinguished the judgment in (supra) and held :

"27. It is a well settled principle of law that while interpreting the words used in a legislation or parliamentary enactment, the intention of the legislature is to be borne-in-mind. The Act was enacted in the year 2002. The legislature was aware of the fact that in non-metropolitan areas, the Chief Judicial Magistrates function like Chief Metropolitan

Magistrates in Metropolitan areas. If the intention of the Parliament is to confer power to the Chief Judicial Magistrate in non-metropolitan areas also, the same should have been specifically stated in section 14 itself. The legislature purposely not included the Chief Judicial Magistrate in section 14 to give assistance to the secured creditors in non-metropolitan areas. The said view was taken by the Aurangabad Bench of the Bombay High Court in the decision reported in CDJ 2008 BHC 520. Section 14(1) clearly states that Chief Metropolitan Magistrate or District Magistrate may on such request being made to assist taking of possession of such assets and documents to the secured creditors, which the secured creditor is entitled to take possession, referable to section 13(4). In the said judgment it is held that the legislature does not seem to have entrusted the functions to the Chief Judicial Magistrate in non-Metropolitan Areas, although such function has been entrusted to the Chief Metropolitan Magistrate, a Judicial Officer in metropolitan areas.

28. The Bombay High Court in the decision reported in 2009 (2) D.R.T.C. 431 (supra) also interpreted section 14 to the effect that in non-metropolitan areas the District Magistrate alone can be approached for getting assistance by the secured creditor as section 14 do not contemplate adjudication of any issue and is intended only to render assistance to recover possession including the support of force. The judgment of the Kerala High Court in AIR 2009 Kerala 14 (supra) was also rendered on the basis of the wordings

used in CrI.P.C. As we have already held that the SARFAESI Act being a complete Act by itself, the provisions of the CrI.P.C. cannot be imported viz., section 3. There is no Casus omissus in the enactment. Therefore, giving interpretation in the context of the definition given in CrI.P.C. does not arise.

33. The Calcutta High Court in its judgment dated 23.4.2013 in M.A.T.No.389 of 2013 with CAN 3023 of 2013, considered the decisions of this Court, Kerala High Court as well as the decisions of Aurangabad Bench and the Bombay Principal Bench. In the said judgment it is clearly stated as follows,

"..... the legislature did not intend to bring the Court of law at the stage of Section 13 or 14. Hence it entrusted the Chief Executive of the District to exercise the power under Section 14. Only exception was made in case of Metropolis that was entrusted to the Chief Metropolitan Magistrate. We do not support the logic of the Madras High Court or the Kerala High Court to the extent, District Magistrate should be seen as Chief Judicial Magistrate. The learned single Judge of the Madras High Court considered the relevant provisions of the Criminal Procedure Code where the Chief Metropolitan Magistrate was authorized to use the power that was vested on the Chief Judicial Magistrate. It was not otherway round. Had it been only Chief Metropolitan Magistrate, we would have supported the logic. Once the District Magistrate was clearly mentioned in Section 14, the intent was clear and unambiguous. We cannot interpret otherwise. We fully agree, in a case of Metropolis, the Chief Metropolitan

Magistrate having the expertise to examine the provisions of law, would judiciously exercise such power whereas in case of other cities or towns the District Magistrate being an Executive without having the legal expertise would not be so competent like Chief Metropolitan Magistrate. It is for the legislature to amend the law if they intend to do so. So long it is not done, we are unable to support the learned single Judge on the proposition of law."

35. From the perusal of the above judgments as well as the statutory provisions contained in Section 14 of the SARFAESI Act, 2002, in its independent existence, we are of the firm view that Section 14 does not contemplate the secured creditors to approach the Chief Judicial Magistrates for assistance to secure their assets and the secured creditors can approach the Chief Metropolitan Magistrate in Metropolitan areas and in non-metropolitan areas, the secured creditors has to approach the District Magistrate, and not the Chief Judicial Magistrate."

This Court is in respectful agreement with the view by Their Lordships in K.Arockiyaraj (supra) that Section 14 of the Act of 2002 does not contemplate secured creditors to approach the Chief Judicial Magistrate for assistance to secure their assets. They can approach the Chief Metropolitan Magistrate in Metropolitan and the District Magistrate in non-Metropolitan areas and not the Chief Judicial Magistrate.

In view whereof, the impugned order cannot be approved of. The contentions on behalf respondent that the impugned order is just and proper are negated.

Consequently, the impugned order is set aside, the institution of case under Section 14 of the Act of 2002 before the Chief Judicial Magistrate, Jabalpur is quashed. The respondent Bank, however, is at liberty to take recourse to remedy before the District Magistrate under Section 14 of the Act of 2002.

The petition is disposed of finally in above terms. No costs.

**(SANJAY YADAV)
JUDGE**

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