

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**SINGLE BENCH : JUSTICE MS.VANDANA KASREKAR**

**WRIT PETITION NO.10649/2017**

Prafulla Kumar Maheshwari

**Vs.**

Authorized Officer & Chief Manager and others

Shri Rajesh Maindiretta, learned counsel for the petitioner.

Shri A.C. Thakur, learned counsel for respondents No.1 and 2.

Shri Ankit Agrawal, learned Govt. Advocate for respondents No.3 and 4.

Shri Wajid Hyder, learned counsel for the interveners.

**ORDER**  
**(22/11/2017)**

The petitioner has filed the present writ petition challenging the orders dated 30/11/2016 and 23/03/2017 passed by respondent No.3.

2. Nav Bharat Press Private Limited had availed certain financial assistance from respondent-bank. For securing the said credit facilities, the immovable property belonging to the petitioner i.e. Plot Nos. 118 to 124, Swami Dayanand Saraswati Marg, Jabalpur having area admeasuring 14035 sq. ft. bearing Survey No.65, Block No.99 of Nagar Nigam, Jabalpur together with building and structure was mortgaged. Respondent -bank

for realization of its outstanding dues initiated action under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act of 2002') and the Security Interest (Enforcement) Rules, 2002 (in short 'the Rules of 2002') against the borrower and the petitioner. Notice under Section 13(2) of the Act of 2002 was issued by respondent-bank on 14/02/2007 and thereafter measures under Section 13(4) of the Act of 2002 were taken on 26/04/2007. Thereafter the respondent-bank moved an application under Section 14 of the Act of 2002 for taking physical possession of the aforesaid mortgaged property before respondent No.3. Respondent No.3 vide order dated 04/09/2013 dismissed the said application for want of prosecution as none appeared on behalf of the respondent-bank. Respondent-bank challenged the aforesaid proceeding by filing Writ Petition No.7127/2014. Thereafter an application for withdrawal of the said writ petition was filed by the respondent-bank thereby also seeking liberty to move an application under Section 14 of the Act of 2002 and the rules framed thereunder afresh before respondent No.3. This

Court vide order dated 19/02/2016 dismissed the said writ petition as withdrawn. However, instead of granting liberty, this Court categorically ordered that this Court has not expressed any view on tenability of fresh application under Section 14 of the Act of 2002.

3. The respondent-bank thereafter filed Review Petition No.232/2016 before this Court which was too dismissed vide order dated 11/04/2016 by this Court. While dismissing the said review petition, this Court observed that if an application under Section 14 of the Act of 2002 is maintainable, then the respondent-bank can apprise the competent authority about the maintainability and it is for the authority to decide whether the application under Section 14 of the Act of 2002 is maintainable or not. In the said writ petition, the borrower and the petitioner were noticed and reply was filed categorically stating that there are certain tenants in the premises to the knowledge of the respondent-bank prior to creation of mortgage. The petitioner further submits that in fact no liberty was granted by this Court and, therefore, second application seeking same relief was not maintainable before the District Magistrate, however, the respondent-bank

yet again filed application under Section 14 of the Act of 2002 before respondent No.3 thereby seeking assistance for taking physical possession of the aforesaid property belonging to the petitioner. In the said application the respondent-bank did not mention the name of the tenants those who are occupying the premises. Respondent No.3 thereafter passed an order dated 30/11/2016 thereby accepting the application filed by the respondent-bank under Section 14 of the Act of 2002 on the ground that the borrower and the petitioner have not repaid the outstanding dues, therefore, the bank is entitled to take physical of the secured assets. Respondent No.3 has not considered the specific objection taken in the proceeding as regards its tenability. It has further been submitted that respondent No.3 while deciding the application has also not expressed any satisfaction as regards to declaration as is required to be given on affidavit under Section 14 of the Act of 2002. In pursuance of the order passed by respondent No.2, respondent No.4 issued a notice dated 23/12/2016 for handing over the physical possession of the secured assets on or before 03/01/2017 and else the same shall be taken

forcibly.

4. Being aggrieved by this order, the petitioner has filed an application before the Debt Recovery Tribunal, Jabalpur (DRT). DRT, Jabalpur initially granted interim relief to the petitioner but subsequently the said application was disposed of by the DRT, Jabalpur holding that the relief with regard to the order under Section 14 of the Act of 2002 is not maintainable before the Tribunal.

5. The petitioner has further submitted that the property in relation to which respondent No.3 has passed the order for taking physical possession is a lease hold property of the Municipal Corporation, Jabalpur. Municipal Corporation, Jabalpur, for realization of its dues, had taken possession of the said property on 01/03/2013, however, the same was given on Supurdnama to the General Manager, Nav Bharat Press on 01/03/2013. Thus, the possession of the said property is with the Municipal Corporation, Jabalpur, therefore, respondent No.3 could not have passed the order directing the Tahsildar to take physical possession of the same. It has also been submitted that the lease deed of the said property was also expired on 22/01/2013 and the same is

not renewed thereafter. All these facts were concealed by the respondent-bank in the application filed under Section 14 of the Act of 2002. The petitioner has further submitted that in the part of the said property, Nav Bharat Printing Press is operational wherein 40 employees are working and, therefore, even otherwise the respondent-bank cannot take possession of the running unit under Section 14 of the Act of 2002 and the proper course available to the bank is to take over the management under Section 15 of the Act of 2002. In such circumstances, the petitioner submits that the impugned order deserves to be set aside.

6. The respondents No.1 and have filed their reply and in the said reply they have stated that respondent-bank had moved an application under Section 14 of the Act of 2002 for taking assistance of the Collector/District Magistrate for taking physical possession of the mortgaged property in order to recover the huge amount outstanding dues recoverable from the petitioner. In the said application, the respondent-bank was only required to disclose the information about borrower and the owner/mortgagor of the mortgaged property. The respondent-bank under no compulsion to

knowledge the presence of any illegal occupant in the premises of the mortgaged property at the time of moving the application under Section 14 of the Act of 2002 when there is no whisper of any pre-existing tenancy at the time of creation of mortgage in the year 2004. At the time of creation of the charge of mortgage, the petitioner never informed about any existing tenancy on the property in question.

7. The tenants have moved an application under Section 17(1) of the Act of 2002 before the DRT, Jabalpur. The documents which have been furnished by the tenants along with his application can merely be considered enough to prove their tenancy rights. The shops were appeared to have been let out to the alleged tenants some 30 years before. The tenants did not furnish any registered instruments to prove valid tenancy rights. Before inducting any tenant, the petitioner was required to obtain permission from the respondent-bank since the property was mortgaged by the petitioner in favour of the respondent-bank. It has further been submitted that in the present writ petition the petitioner has not challenged the order dated 09/05/2017 passed in S.A. No.01/2017 by learned Presiding Officer, DRT, Jabalpur but

has challenged the order dated 30/11/2016 and modified order dated 23/03/2017 passed by District Magistrate, Jabalpur under Section 14 of the Act of 2002, therefore, this writ petition is barred by limitation due to an unexplained and unnecessary delay. The property in question is mortgaged with the respondent-bank in the year 2004 and for that purpose the petitioner had given notarized declaration dated 18/03/2004 and had signed on the memorandum requiring deposit of the title deeds to create additional mortgage dated 12/04/2004. The petitioner never informed the respondent-bank about any tenancy on the mortgaged property and nor in the subsequent years. So far as maintainability of the securitization application under Section 14 of the Act of 2002 is concerned, respondent-bank, in reply, has stated that the petitioner has not demonstrated any prejudice that has been caused to him by the action of the respondent-bank. The respondent-bank has not restrained from moving an application under Section 14 of the Act of 2002 afresh vide order dated 19/02/2016. Under the Act of 2002 there is no bar of filing fresh application under Section 14 of the Act of 2002 if earlier application is dismissed for want of



prosecution.

**8.** The respondent-bank has further stated that the petitioner had availed credit facilities from the respondent-bank against the charge of mortgage created in favour of the respondent-bank on 12/04/2004. The petitioner neglected the repayment of the dues to the respondent-bank and ignored the several verbal and written reminders sent to the petitioner by the respondent-bank. Thus, the respondent-bank has rightly proceeded with recovery of the dues under the Act of 2002 and served the borrowers coming under the definition of Section 2(f) of the Act of 2002 with demand notice issued under Section 13(2) and possession notice issued under Section 13(4) of the Act of 2002. The respondent-bank was intent to realizing the outstanding amount from the mortgaged property, but, it was faced with resistance when the respondent-bank attempted to take physical possession of the mortgaged property, therefore, the respondent-bank has no other option to proceed under Section 14 of the Act of 2002. In view of aforesaid, respondents pray that the writ petition be dismissed.

**9.** The petitioner has challenged the impugned order dated

30/11/2016 and modified order dated 23/03/2017 mainly on the following grounds :-

- a) The orders impugned are passed by the Additional District Magistrate and are wholly without jurisdiction in view of Section 14 of the Act of 2002.
- b) There is no mention about the tenancy by the respondent-bank in the application under Section 14 of the Act of 2002 before the District Magistrate.
- c) No liberty was given by this Court to the respondent-bank to again file an application under Section 14 of the Act of 2002 before the District Magistrate.
- d) The bank cannot take possession of the running unit.

**10.** So far as first ground is concerned, learned counsel for the petitioner submits that the orders impugned are passed by the Additional District Magistrate who has no jurisdiction to pass order under the Act of 2002. He further submits that

Section 14(1) of the Act of 2002 provides that the Chief Metropolitan Magistrate or District Magistrate are required to assist the secured creditor in taking possession of secured assets. By way of amendment, Section 14 of the Act is amended and the first proviso to sub-section provides for filing of an affidavit containing nine declarations by the secured creditor. Second proviso to the said section further provides that suitable orders shall be passed by the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, after satisfying the contents of the affidavit. Section 1 (A) has been inserted by which the District Magistrate or the Chief Metropolitan Magistrate has been conferred power to authorize any officer subordinate to him to take possession of the assets after passing of the order under Section 14(1) of the Act of 2002. He also submits that Section 20 (1) of the Code of Criminal Procedure, 1973 provides that the State Government may appoint as many persons as it thinks fit to be the Executive Magistrate and shall appoint one of them to be the District Magistrate. Further Sub-section (2) of Section 20 of Cr.P.C. Provides that State Government may appoint any Executive Magistrate to

be an Additional District Magistrate and such Magistrate shall have such of the powers of a District Magistrate under the Code of Criminal Procedure or under any other law for the time being in force as may be directed by the State Government.

**11.** Learned counsel argues that the conjoint reading of Section 20(1) and 20(2) of Cr.P.C. clearly provides that the District Magistrate and the Additional District Magistrate are separate and distinct authorities and the Additional District Magistrate is empowered to exercise all powers which are conferred on the District Magistrate under the Code of Criminal Procedure or as directed by the State Government. He further argues that in the present case, there is no authorization by the State Government to the Additional District Magistrate for exercising the powers under Section 14 of the Act of 2002. Section 23 of the Cr.P.C. further provides that all the Executive Magistrate other than Additional District Magistrate shall be subordinate to the District Magistrate but merely the fact that the Additional District Magistrate is not subordinate to the District Magistrate would not mean that he can exercise the powers

specifically conferred on the District Magistrate under Section 14 of the Act of 2002. However, sub-section (2) of the said section provides that the District Magistrate to distribute the business among the Executive Magistrates subordinate to him and also allocate the business to an Additional District Magistrate. This again clearly shows that both the authorities are different, therefore, the Additional District Magistrate cannot exercise powers conferred on the District Magistrate under Section 14 of the Act of 2002. Thus, the orders impugned are absolutely illegal and liable to be set aside. For the said purpose, learned counsel for the petitioner relied upon the following judgments :

- a) **Harish Chand Agrawal Vs. The Batala Engineering Co. Ltd and others**, reported in AIR 1969 SC 483;
- b) **Ajaib Singh Vs. Gurbachan Singh and others**, reported in AIR 965 SC 1619;
- c) **State of Karnataka and another Vs. Dr. Praveen Bhai Thogadia**, reported in (2004) 4 SCC 684;

- d) **A.A.R. Malik Vs. A.N. Roy**, reported in **(2005) 2 Bom. CR (Cri) 206**;
- e) **Suresh Sham Singh and others Vs. Shri A.N. Roy Commissioner of Polie and others**, reported in **(2005) 2 Bom CR (Cri) 513**;
- f) **Imran Shah Khan Vs. State of UP & others**, reported in **(2009) 5 All LJ 748**;
- g) **Vashistha Narain Karvaria Vs. State of Uttar Pradesh and others**, reported in **(1981) Cri LJ 1526**;
- h) **Swadesh Chandra Saha Vs. State of West Bengal**, reported in **(2017) SCC Online Cal 7283**;
- i) **Sri Priolal Sarkar and another Vs. The State of West Bengal and others**, reported in **(2017) SCC Online Cal 8053**;
- j) **Sri Kartick Chandra Dhar Vs. The State of West Bengal and others**, reported in **(2017) SCC Online Cal 7155**;

- k) **State of Maharashtra and others Vs. Mohammed Salim Khan and others**, reported in (1991) 1 SCC 550;
- l) **T.C. Ramadoss & another Vs. State Bank of India and others**, reported in IV (2015) BC 217 (DB) Mad.);
- m) **Manjudevi R. Somani Vs. Union of India and others** reported in IV (2013) BC 694 (DB) (Guj);
- n) **K. Arockiyaraj & others Vs. Chief Judicial Magistrate and another**, reported in 1 (2014) BC 6 (FB) (Mad.);
- o) **Arupeswar Chatterjee and others Vs. Bank of Baroda and others**, reported in 1 (2016) BC 279 (Cal.);
- q) **Jawahar Singh Vs. United Bank of India**, reported in 1 (2016) BC 3 (Cal.);
- r) **Shyam Sunder Vs. Indusind Bank**, reported in 2017 (4) MPLJ 214; and
- s) **Standard Chartered Bank Vs. V. Noble**

**Kumar**, reported in **(2013) 9 SCC 620**.

**12.** Relating to second ground, learned counsel for the petitioner argues that in the application submitted by the respondent-bank under Section 14 of the Act of 2002, there is no mention about the tenancy. He submits that the Apex Court in the case of **Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited & others**, reported in **(2014) 6 SCC 1**, has held that the secured creditor is required to disclose tenancy in the affidavit before the District Magistrate. Thus, the respondent-bank, itself, has not approached the District Magistrate with clean hands despite the fact that in the auction notices published earlier, it is categorically mentioned by the respondent-bank that the premises are occupied by the tenants.

**13.** Regarding third ground, learned counsel for the petitioner submits that earlier the respondent-bank had filed an application before the District Magistrate under Section 14 of the Act of 2002. The said application was dismissed by respondent No.3 for want of prosecution. Against the said order, the petitioner has filed Writ Petition No.7127/2014



before this Court. In the said writ petition and application was filed for withdrawal of the writ petition by the bank with liberty to file another application before the District Magistrate. The said application was allowed by this Court vide order dated 19/02/2016 and the writ petition was dismissed as withdrawn, but, without any liberty. The bank has filed a review application for reviewing the order dated 19/02/2016, however, the said review application was also dismissed by this Court vide order dated 11/04/2016 and, thus, as no liberty was granted by this Court to the bank to file fresh application under Section 14 of the Act of 2002, therefore, fresh application preferred by the respondent-bank before respondent No.3 was not maintainable.

**14.** In respect of fourth ground, learned counsel for the petitioner submits that Printing Press of the petitioner is still functional and for the said purpose, he has filed some of the photographs demonstrating the same. The respondent-bank has not filed any reply or has denied such averments, thus, when the unit of the petitioner is operational, the respondent-bank cannot take physical possession of the said property and can only take over the management as provided under Section

15 of the Act of 2002 read with Rule 8(3) of the Rules of 2002. For the said purpose, he relies upon the judgment passed by the Chhattisgarh High Court in **W.P. (C) No.1686/2017 (M/s City Mall Vikash Pvt. Ltd. & others Vs. Punjab National Bank and another)**. Learned counsel for the petitioner argues that the application filed by the respondent-bank under Section 14 of the Act is also not maintainable in view of the fact that the possession of the secured assets is already taken by the Municipal Corporation, Jabalpur and the same is handed over on Supurdnama to the petitioner vide Annexure-P/13. Even otherwise the lease of the said premises has also expired. In view of aforesaid, learned counsel for the petitioner argues that the action of the respondent-bank is absolutely illegal and liable to be set aside.

**15.** In reply to the aforesaid submissions made by learned counsel for the petitioner, learned counsel for the respondents submits that the Additional District Magistrate has jurisdiction to pass the impugned orders. He submits that prior to amendment in Section 14 of the Act of 2002 i.e. before amendment of Section 14(1A) of the Act of 2002, only

Chief Metropolitan Magistrate or District Magistrate could pass the order under Section 14 of the Act of 2002. Thereafter vide amendment dated 15/01/2013 in Section 14 of the Act of 2002, the Chief Metropolitan Magistrate or District Magistrate, as the case may be, has been authorized to delegate the powers under Section 14 of the Act of 2002 to any officer subordinate to him. Any officer would not have been mentioned in the amended provision had the intention been otherwise. On perusal of provisions of Section 14(1) and 14(1A) of the Act of 2002, it will be evident that the duty of the Chief Metropolitan Magistrate or District Magistrate, as per Section 14(1) or any subordinate officer authorized by them as per Section 14(1A) of the Act of 2002, is the same i.e. (a) take possession of such assets and documents relating thereto; and (b) forward such assets and documents to the secured creditor. Before amendment on 15/01/2013, the execution of the order passed by the District Magistrate was being done by the Tehsildar/SDM. It confirms that subsection (1A) was inserted to reduce the load of District Magistrate or Chief Metropolitan Magistrate by allowing them to authorize any officer to pass order under Section 14

of the Act of 2002. However, it is argued that on perusal of Section 23(1) and (2) of Cr.P.C., it will be evident that all the Executive Magistrates other than Additional District Magistrate shall be subordinate to District Magistrate. In terms of the same, passing of the order by Additional District Magistrate cannot be treated as delegation of authority. In terms of Section 17 of the M.P. Land Revenue Code, Additional District Magistrate shall exercise such powers and discharge such duties conferred and imposed on a District Magistrate. As per Section 35 of the Act of 2002, it is having override effect over the other Acts. The Principal Secretary and OSD-cum-Commissioner, Institutional Finance vide circular dated 03/07/2014 had brought it to the knowledge of the Collectors that in view of amendment, District Magistrate can authorize any officer subordinate to him for the purpose of exercising powers under Section 14 of the Act of 2002. In pursuance of the said circular, the District Magistrate, vide notification dated 25/07/2014 had authorized Shri Chhote Singh, Additional District Magistrate and Shri Shailendra Singh, Additional District Magistrate to pass any order under Section 14 of the Act of 2002. The

District Magistrate has distributed the work amongst himself as well as Additional District Magistrates vide work allotment orders dated 19/07/2016, 25/11/2016, 06/01/2017, 13/01/2017, 23/03/2017, 10/07/2017 and 13/07/2017 from which it is evident that Shri Chhote Singh, Additional District Magistrate was allotted the work in connection with the Act of 2002.

**16.** Regarding tenancy, learned counsel for the respondents argues that at the time of execution of mortgage deed, the petitioner does not disclose about existing tenancy. Thereafter in execution proceeding before the DRT, he tried to take advantage of the pre-existing tenancy, however, the said plea was rejected by the DRT vide order dated 06/05/2015 and the said order has not been challenged before any authority and, thus, attains finality. So far as possession of the running unit is concerned, he submits that the bank cannot take physical possession of the running unit or can take over the management. No one can compel the bank to take over the management of the alleged running unit. So far as attachment of the property by Municipal Corporation for recovery of the rent is concerned, the respondents have

admitted the fact that the petitioner has created mortgage on the property to secure the financial assistance of Rs.1417 lakh. After the alleged attachment of the property by the Jabalpur Municipal Corporation and handing over possession of the property to the petitioner, the property was attached by the DRT. In the said attachment, there is no whisper of the alleged attachment of the property by the Municipal Corporation on 01/03/2013. Learned counsel for the respondents placed reliance on the judgments in the cases of **Union of India Vs. Tulsiram Patel**, reported in **1985(3 SCC 398**, **N. Mani Vs. Sangeeta Theatre**, reported in **(2004) 12 SCC 278**, **Ram Sunder Ram Vs. Union of India**, reported in **(2007) 13 SCC 255**, **Dr. Sujit Kumar Roy Vs. Union of India & others**, reported in **AIR 2009 Cal 160**, **Ram Singh Vs. State of MP**, reported in **2013 (1) MPLJ 117**, **Sachin Patidar Vs. State of M.P. passed in W.P. No.1828/2016**, **M/s Lakshya Concots Private Limited Vs. Bank of Baroda**, reported in **AIR 2017 All 172**, **Rich Field Industries Pvt. Ltd. Vs. State Bank of India passed in Writ-C No.26826/2016** by Allahabad High Court, **T.R. Jewellery Vs. State Bank of India**, reported in **AIR 2016**

**Hyderabad 125, Puran Maharashtra Automobiles Vs. Sub-Divisional Magistrate, reported in 2009 (4) Bom LR 1412.**

17. The interveners who are tenant in the said premises has also filed an application for intervention (I.A. No.10609/2017) on the ground that they are the tenants in the said premises for last more than 30 years. They have further stated that the interveners have filed objection to the application filed by respondent-bank before the District Magistrate, however, as the said application was dismissed for want of prosecution, therefore, the said objection raised by the interveners could not be decided. The interveners could not get knowledge about the present application which is filed by the respondent-bank before District Magistrate and the order was passed without their knowledge and the respondent/bank has also not disclosed in the application that the interveners are tenants in the said premises, thus, the order has been obtained by respondent-bank by suppressing the fact about tenancy. The interveners have already filed securitization application before the DRT and the said application is pending before DRT in which an interim

protection has already been granted in favour of the interveners. Thus, if any adverse order is passed against the petitioner, then, their interest will also be affected. In such circumstances, they have submitted that the interveners are necessary parties in the writ petition.

**18.** When the instant case came up for hearing before this Court on 24/08/2017, on the said day this Court has directed learned Govt. Advocate to file an appropriate application to demonstrate if there exists an authorization in the name of Additional District Magistrate for exercising the powers under Section 14 of the Act of 2002. In pursuance of the said order passed by this Court, respondent No.3 has filed I.A. No.12989/2017 for taking additional documents on record. In the said application, the respondents have submitted that the Additional District Magistrate is fully authorize to act as the District Magistrate for the provision of Section 14 of the Act of 2002. The above submission is supported by the order dated 25/11/2016 passed by District Magistrate, Jabalpur. By the said order dated 25/11/2016 Shri Chhote Singh, Additional District Magistrate has been authorized to take action and exercise powers under the Act of 2002 within the



Municipal limit of Jabalpur. It has further been submitted that Section 23 of Cr.P.C. would clarify that the Additional District Magistrate is not subordinate of District Magistrate for exercising the powers as District Magistrate under the various Acts. Sub-section (2) of Section 23 of Cr.P.C. clarifies that the District Magistrate from time to time may allocate business to Additional District Magistrate which has power to verify without any specific delegation of power. Thus, in light of the provision of Section 23 of Cr.P.C., and the order dated 25/11/2016, Additional District Magistrate is empower to take action under Section 14 of the Act of 2002.

**19.** The first ground is raised by learned counsel for the petitioner is regarding to the jurisdiction of the Additional District Magistrate in passing the order under Section 14 of the Act of 2002. As per Section 13 of the Act of 2002, if any borrower fails to repay the loan, then the bank can proceed to recover that amount under Section 13 of the Act of 2002. Sub-section (2) of the said section provides that initially a notice is required to be issued under Section 13(2) of the Act of 2002 directing the borrower to deposit the amount within 60 days from the date of notice failing which the secured

creditor shall be entitled to exercise all or any of the rights under sub-section (4). Sub-section (4) of Section 13 of the Act of 2002 provides that in case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the methods which includes taking possession of the secured assets of the borrower. For taking possession of the secured assets, provisions have been made under Section 14 of the Act of 2002.

**20.** Section 14 of the Act of 2002 provides that whenever the possession of any secured asset is to be taken by the secured creditor, then an application is required to be made in writing to the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secure asset or other documents relating thereto may be situated or found. Upon such request being made, the District Magistrate shall take possession of such asset and documents relating thereto and forward such asset and documents to the secured creditor. Thus, as per this section, for taking possession of the secured asset, application is required to be made to the District Magistrate in the District. Sub-section (1A) has been

incorporated by the Act 1 of 2013 which provides that the District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him to take possession of such assets and documents relating thereto and to forward such assets and documents to the secured creditor. Thus, in light of the aforesaid position of law, the question arises whether any Executive Magistrate other than the Chief Metropolitan Magistrate or the District Magistrate would be empowered to pass an order under Section 14 of the Act of 2002. Section 20 of the Code of Criminal Procedure provides for appointment of Executive Magistrate. Section 20 of Cr.P.C., reads as under :

**“20. Executive Magistrates.**

(1) In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have such of the powers of a District Magistrate under this Code or under any other law for the time being

in force [as may be directed by the State Government].

(3) Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

(4) The State Government may place an Executive Magistrate in charge of a subdivision and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a subdivision shall be called the Sub-divisional Magistrate.

(4A) The State Government may, by general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub-section (4) to the District Magistrate.

(5) Nothing in this section shall preclude the State Government from conferring under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.

As per this section, the State Government may appoint as many persons as it think fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

Further sub-section (2) of Section 20 provides that the State Government may appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate shall have such of the powers of a District Magistrate under this Code or any other law for the time being in force as may be directed by the State Government. Thus, as per this section, Additional District Magistrate is empowered to exercise all the powers which are conferred over the District Magistrate under the Code of Criminal Procedure as directed by the State Government.

**21.** Section 23 of the Code of Criminal Procedure reads as under :

**“23. Subordination of Executive Magistrates.-** (1) All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.”

A bare reading of the above section would mean that the Additional District Magistrate is not subordinate to the District Magistrate. In other word all the Executive Magistrates except Additional District Magistrate are subordinate to the District Magistrate. Sub-section (2) of Section 23 of the Code clarifies that the District Magistrate may, from time to time, allocate the business to the Additional District Magistrate which he empowers to perform. The legislature has specifically used the word 'distribute' for other Executive Magistrate and 'allocate' for the Additional District Magistrate. Once, any specific work is allocated to the Additional District Magistrate, his competence and authority to perform the same cannot be

questioned.

**22.** As per the above legal provisions, the Additional District Magistrate is empowered to exercise the powers under the Act of 2002 if he is authorised to do so by the District Magistrate. In the present case, the District Magistrate by issuing an order dated 7<sup>th</sup> July, 2016 has authorised Additional District Magistrate to perform the power under the Act of 2002. Thus, there is an authorization in favour of the Additional District Magistrate to exercise the powers given under the Act of 2002. Most of the judgments which are relied upon by learned counsel for the petitioner are prior to Amendment Act of 2013. Prior to amendment only District Magistrate or the Chief Metropolitan Magistrate, as the case may be, is entitled to exercise the powers under Section 14 of the Act of 2002. However, after amendment, sub-section (1A) has been inserted and by the said sub-section District Magistrate or the Chief Metropolitan Magistrate is empowered to authorise any officer subordinate to them. In the present case, by exercising the said power, the District Magistrate has authorise the Additional District Magistrate to exercise the powers under Section 14 of the

Act.

23. This Court in the case of **Ram Singh Vs. State of M.P., 2013(1) MPLJ 117**, has held that the Additional District Judge has power to exercise the jurisdiction under Section 14 of the Act of 2002. The said judgment has been upheld by the Division Bench of this Court. Similar view has also been taken by the Coordinate Bench of this Court in **W.P. No.1828/2016 (Sachin Patidar Vs. State of M.P.)** decided on 15/03/2016.

24. Allahabad High Court in the case of **Lakshya Consosts Private Limited Vs. Bank of Baroda**, reported in **AIR 2017 All 172** in para-11 has held as under :

“11. Placing reliance upon the use of word 'order' in the proviso to Section 14 of the Act, it has been submitted that authorities specified in Section 14 exercise judicial function while providing assistance to the secured creditor and, thus, the same cannot be entrusted to Additional District Magistrate. In our considered opinion, Section 14 of the Act is



procedural in nature and only empowers the authorities to assess the secured creditor in taking over possession of the secured assets as per the procedure contemplated therein. The Section does not empower the authorities specified therein with any power to adjudicate in respect of any dispute pertaining to the secured assets. Power exercised by the authorities specified in Section 14, since is only an administrative power, authorising any authority to exercise the same, will not amount to delegation of power.”

As per the said judgment, under Section 14 of the Act authorities exercise their administrative power and, therefore, authorising any authority to exercise the same will not amount to delegation of power.

**25.** Similar view was taken by the Division Bench of Allahabad High Court in the case of **Rich Field Industries Pvt. Ltd. Vs. State Bank of India**, reported in **2016 (10) ADJ 192**. Relevant para of the said judgment reads as under :

“It has been a considered legal position that the power exercised under Section 14 of the SARFAESI Act by the Collector/District Magistrate is only an administrative power and thus authorising any authority to exercise these powers does not amount to the delegation of the power and, in view of the Full Bench decision of the Supreme Court and the Division Bench judgment of Allahabad High Court, referred to above, this Court finds no illegality in the order that has been passed under Section 14 of the SARFAESI Act by the Additional District Magistrate.

Thus, in light of the aforesaid discussion, the powers exercise under Section 14 of the Act of 2002 by the District Magistrate is only an administrative power and not adjudicatory in nature and, thus, authorizing Additional District Magistrate or Executive Magistrate will not amount to any delegation of power and, there exists no illegality in exercise of powers under the said section by an Additional District Magistrate. In view of aforesaid discussion, there is

no error of jurisdiction in entertaining the application under Section 14 of the Act of 2002 by Additional District Magistrate and the order passed by him cannot be said illegal or without jurisdiction.

**26.** Second contention raised by learned counsel for the petitioner is that there are four tenants in the premises and, therefore, no order could be passed under Section 14 of the Act of 2002. In the present case, respondent-bank in the application submitted before the District Magistrate under Section 14 of the Act of 2002 has not disclosed about the tenancy. The Supreme Court in the case of **Harshad Govardhan Sondagar (supra)** in para 25 has held as under:-

“25.....When, therefore, a secured creditor moves the Chief Metropolitan Magistrate or the District Magistrate for assistance to take possession of the secured asset, he must state in the affidavit accompanying the application that the secured asset is not in possession of a lessee under the valid lease made prior to creation of the mortgage by the borrower or made in accordance with Section 65-A of the Transfer of

Property Act prior to receipt of a notice under sub-section (2) of Section 13 of the SARFAESI Act by the borrower.....”

As per the judgment of the Supreme Court, the secured creditor is required to disclose the tenancy in the affidavit before the District Magistrate. Learned counsel for the petitioner argues that in auction notice which was published in the year 2013, the respondent-bank has mentioned that there are four tenants in the premises which shows that respondent-bank was within the knowledge that there are tenants in the premises. In the application filed by the respondent-bank before the District Magistrate, they have not disclosed about the existence of tenancy, therefore, the tenants have raised objections before the District Magistrate. However, as the application submitted by the bank was dismissed in default, therefore, the said objection preferred by the tenants could not be decided. Thereafter a subsequent application has been filed by the bank before the District Magistrate without disclosing the fact about tenancy, therefore, the District Magistrate without adjudicating on this

point has passed an order for possession. The tenants have, therefore, filed securitization application before the DRT in which an interim protection has been granted in favour of the tenants.

27. Learned counsel for the respondent-bank has submitted that at the time of execution of mortgage deed in the year 2004 the petitioner does not disclosed the fact about existence of tenancy. He further argues that there is no registered lease deed or any document related to tenancy in favour of the tenants, therefore, the argument raised by learned counsel for the petitioner regarding tenancy could not be accepted. For the said purpose, he relied upon the judgment passed by the Apex Court in the case of **Harshad Goverdhan Sondagar (supra)**. On the basis of the said judgment, learned counsel for the respondent-bank submits that as there is no registered lease deed or any tenancy agreement in favour of the tenants, therefore, they are not entitled to get any protection. The judgment passed by the Apex Court in the case of **Harshad Govardhan Sondagar (supra)** has been considered in the latest judgment by the Apex Court in the case of **Vishal N. Kalsaria Vs. Bank of India and others**, reported in (2016) 3

**SCC 762.** Paras-29 and 30 of the said judgment reads as under :

“29. When we understand the factual matrix in the backdrop of the objectives of the above two legislations, the controversy in the instant case assumes immense significance. There is an interest of the bank in recovering the Non Performing Asset on the one hand, and protecting the right of the blameless tenant on the other. The Rent Control Act being a social welfare legislation, must be construed as such. A landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Control Act, more so when the two legislations, that is the SARFAESI Act and the Rent Control Act operate in completely different fields. While the SARFAESI Act is concerned with Non Performing Assets of the Banks, the Rent Control Act governs the relationship between a tenant and the landlord and specifies the rights and liabilities of each as well as the rules of ejectment with respect to

such tenants. The provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Control Act. If the contentions of the learned counsel for the respondent Banks are to be accepted, it would render the entire scheme of all Rent Control Acts operating in the country as useless and nugatory. Tenants would be left wholly to the mercy of their landlords and in the fear that the landlord may use the tenanted premises as a security interest while taking a loan from a bank and subsequently default on it. Conversely, a landlord would simply have to give up the tenanted premises as a security interest to the creditor banks while he is still getting rent for the same. In case of default of the loan, the maximum brunt will be borne by the unsuspecting tenant, who would be evicted from the possession of the tenanted property by the Bank under the provisions of the SARFAESI Act. Under no circumstances can this be permitted, more so in view of the statutory protections to the tenants under the Rent Control Act and also in

respect of contractual tenants along with the possession of their properties which shall be obtained with due process of law.

30. The issue of determination of tenancy is also one which is well settled. While [Section 106](#) of the Transfer of Property Act, 1882 does provide for registration of leases which are created on a year to year basis, what needs to be remembered is the effect of non-registration, or the creation of tenancy by way of an oral agreement. According to [Section 106](#) of the Transfer of Property Act, 1882, a monthly tenancy shall be deemed to be a tenancy from month to month and must be registered if it is reduced into writing. [The Transfer of Property Act](#), however, remains silent on the position of law in cases where the agreement is not reduced into writing. If the two parties are executing their rights and liabilities in the nature of a landlord-tenant relationship and if regular rent is being paid and accepted, then the mere factum of non-registration of deed will



not make the lease itself nugatory. If no written lease deed exists, then such tenants are required to prove that they have been in occupation of the premises as tenants by producing such evidence in the proceedings under [Section 14](#) of the SARFAESI Act before the learned Magistrate. Further, in terms of [Section 55\(2\)](#) of the special law in the instant case, which is the Rent Control Act, the onus to get such a deed registered is on the landlord. In light of the same, neither the landlord nor the banks can be permitted to exploit the fact of non registration of the tenancy deed against the tenant.”

As per the said judgment, non-registration of any deed will not make lease, itself, nugatory. If no legal deed is registered, then such tenants is required to prove that they have been in occupation of the premises as tenants by producing such evidence in the proceedings under [Section 14](#) of the SARFAESI Act before the learned Magistrate. In the present case, the tenants have filed the copies of the electricity bills, rent receipts and registration under the Shops

and Establishment Act which are sufficient to prove that the tenants are in occupation of the said premises. However, the District Magistrate while deciding the said application has not taken into consideration the fact that there are tenants in the said premises and, therefore, no action under Section 14 of the Act of 2002 could be initiated.

**28.** The next argument has been raised by learned counsel for the petitioner regarding maintainability of the subsequent application before the District Magistrate. The earlier application filed by the respondent-bank before the District Magistrate was dismissed for want of prosecution. The respondent-bank has challenged the said order by filing Writ Petition No.7127/2014. In the said writ petition an application was filed by the respondent-bank to withdraw the said writ petition with liberty to file another application before the District Magistrate. The said writ petition was dismissed as withdrawn by this Court vide order dated 19/02/2016, however, no such liberty was granted to the respondent-bank to file a fresh application. Thereafter the respondent-bank has filed a review petition and the review petition was disposed of with direction to the District

Magistrate to consider the objection regarding maintainability of the subsequent application. The District Magistrate thereafter considering the arguments has entertained the application preferred by the respondent-bank under Section 14 of the Act of 2002. As earlier application was not decided on merit, therefore, subsequent application filed by the respondent-bank has rightly been entertained by the District Magistrate.

**29.** So far as the next argument raised by learned counsel for the petitioner that the respondent-bank cannot take possession of the running unit is concerned, learned counsel for the petitioner submits that the Printing Press of the petitioner is still operational and has filed some of the photographs demonstrating the same. As per Section 15 of the Act of 2002, the bank cannot take physical possession of a running unit and only management can be taken over. He further relied on the Rules of 2002. Rule 8 provides for sale of immovable secured assets. It says that where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession by delivering a possession notice prepared and in the event of possession of

immovable property is actually taken by the authorised officer, then such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, then the person in whose custody the property is kept, shall take care of the said property. To support the said arguments, he relied upon the judgment passed by the Chhattisgarh High Court in the case of **M/s City Mall Vikash Pvt. Ltd. (supra)**. Relevant para-17 of the said judgment reads as under :

“17. In view of the above-stated discussion and submissions of the parties, I.A. No.1, application for grant of interim relief, is disposed of in following terms :

1. The respondent Bank/secured creditor may proceed to take actual possession of the secured assets in accordance with law.
2. The respondent Bank is at liberty to keep the secured assets in its own custody or in the custody of a person authorised or

appointed by it/or through the present management with a condition that such person having possession shall take care of the property in custody protecting the rights of the petitioners till such right is transferred in accordance with law.

3. The respondent Bank is directed to strictly comply with the provisions contained in Section 13 (4) read with Section 15 of the SARFAESI Act and sub-rules (3) and (4) of Rule 8 of the Rules, 2002, without fail and to proceed in accordance with law.

4. The respondent Bank is further directed to strictly comply with the binding dictum of the Supreme Court laid down in paragraphs 34 and 35 of **Mathew Varghese (supra)**, quoted herein above, after taking actual possession of the secured assets and the respondent will take proper care of the property in custody and for that purpose can insure the secured assets until they

are sold or otherwise disposed of.

5. This will be subject to the final outcome of the writ petition.”

**30.** These averments have been incorporated by the petitioner by way of amendment. However, there is no denial on the part of the respondent-bank of the averments made by the petitioner. Thus, in light of the judgment passed by the Chhattisgarh High Court, the respondent-bank can keep the secured assets in its own custody or in the custody of any person authorised or appointed by it or through the present management with a condition that such person having possession shall take care of the property in custody protecting the rights of the petitioners till such right is transferred in accordance with law. Thus, the said observations made by Chhattisgarh High Court in the case of **M/s City Mall Vikash Pvt. Ltd. (supra)**, the respondent-bank can take over the management of the company.

**31.** Learned counsel for the petitioner has also argued that the application under Section 14 of the Act of 2002 is also not maintainable in view of the fact that the possession of the

secured assets is taken by the Municipal Corporation, Jabalpur and the same is handed over on Supurdginama to the petitioner and even otherwise the lease of the said premises has also expired. To this argument, learned counsel for the respondents argues that the petitioner has created mortgage on the secured financial assets of Rs.1417 lakh and they have admitted that after alleged attachment of the property by Jabalpur Municipal Corporation on 01/03/2013, the custody of the said property was handed over to the petitioner. This fact was not disclosed by the Corporation in the letter dated 01/03/2013. From perusal of Annexure-P/12, it reveals that the said notice has been issued for taking possession of the premises on the ground that the petitioner has failed to deposit the property tax. Thereafter the letter (Annexure-P/12) has been filed by the petitioner which shows that the possession of the property has been taken and has been given to the petitioner in Supurdginama. Thus, these documents clearly show that the possession of the property was taken by the Jabalpur Municipal Corporation and given on Supurdginama to the petitioner.

**32.** Resultantly, in light of the aforesaid discussion, the said writ petition is allowed. The impugned orders dated 30/11/2016 and 23/03/2017 passed by respondent No.3 are hereby set aside. However, the Bank is at liberty to file a fresh application under Section 14 of the Act of 2002 before respondent No. 3.

(Ms. Vandana Kasrekar)  
JUDGE

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