HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No.	**W.P. No. 14166/2017**
Parties Name	*Manish Makhija.* *Vs.* *Central Bank of India and others*
Date of Judgment	**15/02/18**
Bench Constituted	Single Bench
Judgment delivered by	**Justice Sujoy Paul**
Whether approved for reporting	**YES**
Name of counsels for parties	**For petitioner:** Mr. Wajid Hyder, Advocate. **Respondent/State:** Mr. Sanjay Dwivedi, Deputy Advocate General. **Respondent No.1/Bank**: Mr. A.C. Thakur, Advocate.
Law laid down	**Section 14(1) of the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002- satisfaction of Magistrate- not specifically required to be recorded. The satisfaction is regarding adjudicating that nine points of declaration are covered in the affidavit. It does not call for any modicum of enquiry into the veracity or justification or the decision of declaration or any aspect thereof. Even if the word "satisfaction" is not recorded by the Magistrate but his satisfaction can be gathered from his order, order will not become vulnerable.** **Section 14(1)- second proviso-directory in nature- provisions being procedural and is introduced in order to ensure that Magistrate must pass orders within stipulated time-the provision is held to be directory in nature.** **Section 14 (1)- second proviso- in the statute the word "may" is employed. No consequence is prescribed if time limit is not followed by the Magistrate. The provision is held to be directory in nature.** **Interpretation of statute- the**

	interpretation must depends on the text and context. That interpretation is based, which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.
Significant paragraph numbers	**11,12, 14**

(O R D E R)
15.02.2018

In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the legality, validity & propriety of order dated 10.08.2017 (Annexure-P/3) passed by Additional District Magistrate, Hoshangabad.

2. At the outset, Mr. Hyder fairly submits that the point regarding competence of Additional District Magistrate/Collector in passing the order under Section 14 of the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 *[hereinafter referred to as "the Act of 2002"]* is no more *res integra* and this Court in ***W.P. No.10649/2017, [Prafulla Kumar Maheshwari vs. Authorised Officer & Chief Manager Bank of Maharashtra & others]*** decided on 22.11.2017, opined that the Additional District Magistrate is also competent to pass orders under Section 14 of the Act of 2002.

3. Naturally, the other side has no objection. Accordingly, this point regarding competence of said authority is not pressed by the petitioner.

4. Mr. Hyder, learned counsel for the petitioner contended that as per Section 14(1) of the Act of 2002, the Bank/secured creditor is required to file affidavit disclosing nine points mentioned in the said provision. The impugned order does not show that any such affidavit was filed. The next point of Mr. Hyder is based on the second proviso to Sub-section (1) of Section 14 of the Act of 2002. By taking assistance from the language employed in this proviso, it is contended that the competent authority was required to record satisfaction regarding contents of said affidavit and it has to pass suitable orders for the

purpose of taking possession of secured asset. By taking this Court to the impugned order, it is contended that no satisfaction was specifically recorded by the said authority regarding filing of such affidavit or availability of aforesaid nine points in the said affidavit. The next contention of learned counsel for the petitioner is that that as per the third proviso to Sub-section (1) of Section 14, the competent authority was required to pass order under Section 14 within 30 days' from the date of filing of application by the Bank. The Bank filed the application on 08.09.2015 and the impugned order was passed on 10.08.2017. It is urged that the maximum period engrafted was 60 days' from the date of filing of application, within which the said authority could have passed the final order under Section 14 of the Act of 2002. Since, the order is not passed within the permissible statutory period, the order is without authority of law because it is passed beyond the said period. Furthermore, it is contended that the notice under Section 13(2) was never served on the petitioner. In addition, it is urged that the petitioner is a legal representative of Shri Achardas Makhija. The original application filed by the Bank before the Debts Recovery Tribunal i.e., O.A. No.35/2016, shows that there were other legal representatives of Late Achardas Makhija. The Bank picked up and chosen the present petitioner alone and for this reason also, the impugned order is bad in law. Lastly, Mr. Hyder submits that the non-applicant No.1 before the Additional Collector died long back and his all legal representatives were not impleaded. This objection was taken by non-applicant No.3/present petitioner before the competent authority, but his point has not been dealt with.

5. *Per-contra*, Mr. Sanjay Dwivedi, learned Deputy A.G. for the State supported the impugned order. He submits that the question of recording "satisfaction" pursuant to Section 14 of the Act of 2002 came up for consideration before the Supreme Court in the case reported in **2013 (9) SCC 620** ***[Standard Chartered Bank vs. V. Nobal Kumar]***.

6. Mr. A.C. Thakur, learned counsel for the Bank submits that there is no requirement under the provision of Section 14 of the Act of 2002 for the

District Magistrate/competent authority to mention in his final order that all nine points were mentioned in the affidavit. He submits that a plain reading of impugned order shows that the competent authority has perused the entire record, affidavit etc. and then issued notice to the borrower/petitioner. Thus, "satisfaction" of said authority can be inferred from the findings given in the impugned order.

7. Mr. Thakur further submits that second proviso to Sub-section (1) of Section 14 nowhere provides that such "satisfaction" must be recorded in specific in the impugned order. The subjective satisfaction of competent authority can be gathered by reading the entire order. By placing reliance on the language of second proviso, it is submitted that the legislature in its wisdom has decided to use expression "he may after recording reasons". To elaborate, it is urged that the word "may" used in this proviso shows that it is a directory provision. It is further urged that no consequences of not passing order within 60 days' is provided in this proviso which makes it further clear that it is a directory provision. To bolster this submission, reliance is placed on Sub-section (5) & Sub-section (6) of Section 17 of the Act of 2002 by Mr. Thakur. It is also urged that Sub-section (5) aforesaid also employs the word "may" and Sub-section (6) provides the consequences/methods if said directory provision is not complied with. In this view of the matter, it is submitted that the power of competent authority to decide the application under Section 14 is not extinguished after the period prescribed in the said proviso is over. It is submitted that in the impugned order, the learned Additional Collector mentioned about a notice issued under Section 13(4), whereas it should have been a notice under Section 13(2). Section 13(2) provides 60 days' notice and a finding is specifically given that such notice has been issued. Thus, requirement of Sub-section (2) of Section 13 is satisfied and a wrong quoting of provision will not denude the power of the authority if he is otherwise equipped with the power to do the same. Reference is made to the Constitution Bench judgment of Supreme Court in the case of ***Union of India vs. Tulsiram Patel*** reported in **AIR 1985 SC 1416** and ***N. Mani v. Sangeetha Theatre & others*** reported in **2014 (12) SCC 278**. Lastly, Mr.

Thakur submits that petitioner is admittedly a legal representative of Shri Achardas Makhija. If there were no impleadment, petitioner cannot raise any objection regarding the same.

8. No other point has been pressed by the learned counsel for the parties.

9. I have heard the parties at length and perused the record.

10. The first proviso of Section 14 (1) of the Act provides that secured creditor alongwith an application file an affidavit, which will contain certain declarations and details of these declarations are given in nine points. The second proviso of Section 14(1) of the Act reads as under:-

> *"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[within a period of thirty days from the date of application]."*

11. The question cropped up during the course of hearing was whether the Competent Authority is required to record his satisfaction in specific while passing an order under Section 14 of the Act ? In the considered opinion of this Court, the satisfaction is confined to merely checking that the nine features of declaration as recognized in the said provision have been covered in the affidavit and it does not call for any modicum of enquiry into the veracity or the justification or the basis of the declaration or any aspect thereof. The Calcutta High Court has taken this view in ***AIR 2016 Cal 100 (Dimension Realtors Pvt. Ltd. & Anr. vs. The District Magistrate, North 24 Parganas & Ors.)***. In the instant case, the District Magistrate has given a finding that the present application, attached documents and provisions of the Act were perused and then notices were issued to other side. Thus, the Competent Authority without using the word "satisfaction" shown his satisfaction about the requirement of the Act on perusal of application and attached documents.

12. In ***Nobal Kumar*** (supra), the Apex Court held that the satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset. This judgment is recently considered by Supreme Court in ***(2017) 14 SCC 329 (Indian Bank vs. S.K. Jeevandan)***. After considering the judgment of ***Nobal Kumar*** (supra), it was held that the Magistrate at the stage of exercising jurisdiction under Section 14 of the Act was not specifically required to record any satisfaction on record regarding existence of any particular fact. Thus, in view of this judgment, it is clear that satisfaction of District Magistrate can be gathered by reading his order. Thus, this point raised by the petitioner must fail.

13. The next contention of Shri Hyder is based on second proviso to Section 14(1) of the Act, which reads as under:-

> *"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.".*

14. The argument advanced by the petitioner appeared attractive in the first blush. However, when it was tested on settled principles of interpretation of statute, it lost its strength. This is settled law that the interpretation must depend on the text and the context. Neither can be ignored. Both are important. That interpretation is best, which makes the textual interpretation match the contextual. A statute is bast interpreted when we know why it was enacted. [See ***RBI vs. Peereless General Finance & Investment Company (1987) 1 SCC 424)***]. V.R. Krishna Iyer J. in his unique words held that adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and scheme of the statute, may not subserve the purpose of the statute. Such approach would be “to see the

skin and miss the soul". Whereas, *"the judicial key to construction is the composite perception of* ***Deha*** *and* ***Dehi*** *of the provision*." (Board of Mining Examination vs. Ramjee (1977) 2 SCC 256). This principle was followed by Supreme Court in ***(2013) 3 SCC 489 (Ajay Maken vs. Adesh Kumar Gupta vs. Another)***.

15. In the considered opinion of this Court, the second proviso to Sub-section (1) of Section 14 was inserted in order to ensure that Chief Metropolitan Magistrate or District Magistrate pass the order within a stipulated time. The Bank/secured creditor has no control over the District Magistrate. After filing application under Sub-section (1) of Section 14, the Bank has no authority to compel the Chief Metropolitan Magistrate or District Magistrate to pass orders within reasonable time. The legislature, in order to bind the said authorities, have inserted the said proviso. I find support in my view from the Statement of Objects and Reasons of the Enforcement of Security Interest and Recovery of Debts Laws and and Miscellaneous Provisions (Amendment) Act, 2016 (44 of 2016). It was recorded that in order to facilitate expeditious disposal of recovery applications, it has been decided to amend the said acts and also to make consequential amendments in other relevant acts. Thus, the basic object and purpose was to fix a time limit for the concerned Magistrate to pass an order and not to give a clean chit to an unscrupulous borrower/guarantor, who has not repaid the debts.

16. A simple reading of second proviso aforesaid shows that legislature has used the word "may" while fixing a time limit, which is not extendable beyond aggregate 60 days. The another issue raised is whether beyond this period, the Competent Authority can pass an order under Section 14 of the Act. Various High Courts have taken the view that if District Magistrate has failed to pass orders within time limit mentioned in the said proviso, a mandamus can be issued to the said authority to pass orders under Section 14 of the Act. [See ***2016 SCC Online Mad 33146 (M/s. Bank of India vs. District Collector, Tiruvallur)]***

17. In ***P.T. Rajan vs. T..P.M. Sahir & Ors. (2003) 8 SCC 498***, the Supreme Court observed that where authority has to perform a statutory function like admitting or rejecting an application without a time period prescribed, the time period would have to be held as directory and not mandatory. Further more, it was held that such a provision in a statute is essentially procedural in nature. Even if it employs the word "shall" it may not be held as mandatory.

18. Interestingly, Order 8 Rule 1 of CPC also prescribes a time limit, which is not extendable beyond a stipulated time frame. In ***(2005) 4 SCC 480 (Kailash vs. Nanku)***. It was held as under:-

> *"27. Three things are clear. Firstly, a careful reading of the language in which Order 8 Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Secondly, the nature of the provision contained in Order 8 Rule 1 is procedural. It is not a part of the substantive law.. Thirdly, the object behind substituting Order 8 Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried." [Emphasis supplied]*

19. Thus, in the considered opinion of this Court, the aforesaid proviso was not inserted to give the benefit to a borrower or guarantor, who has not paid the debts. In other words, if the Chief Metropolitan Magistrate or District Magistrate failed to pass the order within stipulated time, the legislature never intended to give free hand to the borrower/guarantor. Putting it differently, the intention of law makers while inserting the said proviso was to compel the said Magistrates to pass orders within a statutory time frame.

20. The said proviso can be examined from yet another angle. The Privy Council wayback in ***AIR 1917 PC 142 (Montreal Street Railway vs.***

Normandin) opined that when the provision of a statute relate to the performance of a public duty and the case is such that to hold null and void acts in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those who are entrusted with the duty, and at the same time would not promote the main object of the legislature it has been the practice to hold such provisions to be directory only.

21. This principle is consistently followed by Supreme Court in ***AIR 1957 SC 912 (State of UP vs. Manbodhan Lal Shrivastava), 1963 SC 1417 (Banarasi Das vs. Cane Commissioner), (1997) 9 SCC 132 (Mohan Singh vs. International Air Port Authority), (1998) 1 SCC 371 (Oriental Insurance Co. Ltd. vs. Inderjit Kaur) and (2003) 2 SCC 111 (Bhavnagar University vs. Palitana Sugar Mill (P) Ltd.***.

22. Justice G.P. Singh in his celebrated book 'Principles of Statutory Interpretation' dealt with "mandatory and directory provisions". The author opined that when consequence of nullification on failure to comply with a prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory. The judgment of Supreme Court reported in ***(2001) 6 SCC 46 (Rajsekar Gorgoi vs. State of Assam)*** was relied upon in this regard. The corollary of this principle is that when no consequence is provided in the statute, the provision is directory in nature. In ***AIR 1968 SC 224 (Remington Rand of India vs. Workmen)***, it has been held while construing Section 17(1) of the Industrial Disputes Act, 1947 that it is obligatory on the government to publish an award, but the provision, that it should be published within 30 days is not mandatory. An award published beyond 30 days is not invalid. Considering the aforesaid, I am unable to hold that impugned order dated 10-08-2017 can be interfered with on the ground that it was passed beyond the time prescribed by the aforesaid proviso.

23. The present petitioner has not filed any document to show that he apprised the Competent Authority regarding any infirmity in the application filed by the Bank under Sub-section (1) of Section 14 of the Act. Admittedly,

the petitioner/non-applicant No.3 entered appearance before the Competent Authority. If the petitioner had any objection about an affidavit filed by the petitioner, he could have raised such objection by filing a detailed reply. The Chhattisgarh High Court in **WP. No.1801/15 (M/s. G.P. Ispat Pvt. Ltd. & Anr. vs. Authorized Officer & Chief Manager, SBI & Ors.)** held that the objection is that the affidavit is blissfully silent with regard to clause (vii) of the first proviso to sub-section (1) of Section 14 of the SARFAESI Act that 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. The learned District Magistrate after perusal of the application and documents filed and also the affidavit filed had come to specific conclusion and satisfied himself and has decided to direct to take possession of the secured assets. The petitioners though have filed their reply before the District Magistrate twice, but no such objection appears to have been raised before the learned District Magistrate on the ground of non-compliance of clause (vii) of the first proviso to Section 14 (1) of the SARFAESI Act. The seriousness of the petitioners' objection can be appreciated from the fact that neither such application under Section 14 of the SARFAESI Act nor such affidavit filed by the Bank under the first proviso to Section 14 (1) of the SARFAESI Act as per the provision was brought on record and for the first time, the objection has been raised before this Court. But in view of the clear cut subjective satisfaction and appreciation recorded by the learned District Magistrate, I do not find any good ground to hold that the order of the learned District Magistrate granting Section 14 of the SARFAESI Act directing to take possession is unsustainable on this score. It was also opined that when despite getting the opportunity such objections are not raised, such objections are then not entertainable. The petitioner had an opportunity to raise all possible objections before the authority below and has miserably failed to avail the said remedy. Thus, at this stage, I am not inclined to entertain the objections regarding affidavit filed by the Bank. The petitioner has also failed to show any prejudice, if other L.Rs. Of Shri Achardas Makhija were not impleaded by the Bank. The petitioner is

admittedly a legal representative of Shri Achardas Makhija. I find no justification in interfering with the impugned order.

25. In view of aforesaid discussion, no case is made out for interference by this Court. Resultantly, the petition is dismissed. No cost.

(Sujoy Paul)
Judge

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