

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Case No. Parties Name	W.P. No.5877/2021 <i>Rachna Mahawar</i> vs. <i>The District Magistrate and others</i>
Date of Order	01/04/2021
Bench Constituted	<u>Division Bench</u> : Justice Prakash Shrivastava Justice (Smt) Anjali Palo
Order passed by	Justice Prakash Shrivastava
Whether approved for reporting	Yes
Name of counsels for parties	For petitioner : Shri Aseem Trivedi, Advocate For respondents/State : Shri Piyush Dharmadhikari, Government Advocate
Law laid down	The power under Section 14 of the Securitisation Act can be exercised by the Additional District Magistrate also. The nature of power exercisable under Section 14 of the Act is to facilitate taking over of possession of secured assets and not to decide any contentious issue. Section 37 of the Act specifically provides that application of any other law for the time being in force is not barred. Section 20 of the Cr.P.C. reflects that the Additional District Magistrate also exercises the same power as the District Magistrate as per direction of the State Government. Supreme Court in the matter of Authorised Officer, Indian Bank Vs. D. Visalakshi and another, (2019) 20 SCC 47 has already settled that an expansive meaning is to be given to the authority mentioned in Section 14 of the Act. Hence, the Additional District Magistrate is competent to exercise the power under Section 14 of the Act.
Significant paragraph numbers	5, 6, 7, 8, 9, 10, 11 & 12

ORDER
(01.04.2021)

Per : Prakash Shrivastava, J.

This petition has been filed by the petitioner aggrieved with the order dated 16.02.2021 passed by the Additional District Magistrate under Section 14 of the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short '**the Act**').

2. A preliminary objection has been raised in respect of availability of alternate remedy of appeal.

3. Submission of learned counsel for the petitioner is that against such an order the remedy of appeal under Section 17 of the Act is not available and that the power under Section 14 can be exercised only by the District Magistrate and not the Additional District Magistrate.

4. I have heard the learned counsel for the parties and perused the record.

5. The issue relating to the jurisdiction of the Additional District Magistrate to pass an order under Section 14 of the Act needs consideration by this Court because if the Additional District Magistrate had no jurisdiction to pass the impugned order then the availability of alternative remedy of appeal will not come in the way of the petitioner from approaching this Court.

6. Section 14 of the Act gives the power to Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset. The term "District Magistrate" has not been defined under the Act. Section 37 of the Act makes it clear that the application of other laws is not barred and provides as under :-

"37. Application of other laws not barred.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial

Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.”

7. The term “District Magistrate” has been defined under Section 20 of the Cr.P.C., which 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 sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division 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.”

8. A District Magistrate while passing an order under Section 14 of the Act, exercises only administrative or executive function. Section 20 of the Cr.P.C. makes it clear that the Additional District Magistrate also exercises

the same power as are exercisable by the District Magistrate as per the direction of the State Government. Hence, the power under Section 14 of the Act can be exercised by the Additional District Magistrate also.

9. The Supreme Court in the matter of **Authorised Officer, Indian Bank Vs. D. Visalakshi and another, (2019) 20 SCC 47** has considered somewhat similar issue while holding that the expression “Chief Metropolitan Magistrate” used under Section 14 of the Act is inclusive of Chief Judicial Magistrate. While holding so, the Court has given expansive meaning to the term “CMM” in order to make the provision more meaningful as the same does not militate against the legislative intent. The Supreme Court in the case of **Authorised Officer, Indian Bank** (supra) has considered the conflicting views of various High Courts on this issue and has laid down as under :

“35. Indisputably, the expressions “CMM” and “DM” have not been defined in the 2002 Act. That definition can thus, be traced to the provisions of CrPC. It is also well established by now that the 2002 Act, is a self-contained code. Concededly, the nature of inquiry to be conducted by the designated authorities under the 2002 Act, is spelt out in Section 14 of the 2002 Act. The same is circumscribed and is limited to matters specified in clauses (i) to (ix) of the first proviso in sub-section (1) of Section 14 of the 2002 Act, inserted in 2013. Prior to the insertion of that proviso, it was always understood that in such inquiry, it is not open to adjudicate upon contentious pleas regarding the rights of the parties in any manner. The stated authorities could only do verification of the genuineness of the plea and upon being satisfied that it is genuine, the adjudication thereof could then be left to the court of competent jurisdiction.

37. Notably, the powers and functions of CMM and CJM are equivalent and similar, in relation to matters specified in CrPC. These expressions (CMM and CJM) are interchangeable and synonymous to each other. Moreover, Section 14 of the 2002 Act does not explicitly exclude CJM from dealing with the request of the secured creditor made thereunder. The power to be exercised under Section 14 of the 2002 Act by the authority concerned is, by its very nature, non-judicial or State's coercive power. Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected

by the proposed action being in possession of the subject property, have statutory remedy under Section 17 of the 2002 Act and/or judicial review under Article 226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lessee; nor is it possible to suggest that they are rendered remediless in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any advantage much less added advantage. Taking totality of all these aspects, there is nothing wrong in giving expansive meaning to the expression “CMM”, as inclusive of CJM concerning non-metropolitan area, who is otherwise competent to discharge administrative as well as judicial functions as delineated in CrPC on the same terms as CMM. That interpretation would make the provision more meaningful. Such interpretation does not militate against the legislative intent nor it would be a case of allowing an unworthy person or authority to undertake inquiry which is limited to matters specified in Section 14 of the 2002 Act.”

It has further been held that :

“**44.** Be it noted that Section 14 of the 2002 Act is not a provision dealing with the jurisdiction of the Court as such. It is a remedial measure available to the secured creditor, who intends to take assistance of the authorised officer for taking possession of the secured asset in furtherance of enforcement of security furnished by the borrower. The authorised officer essentially exercises administrative or executive functions, to provide assistance to the secured creditor in terms of the State's coercive power to effectuate the underlying legislative intent of speeding the recovery of the outstanding dues receivable by the secured creditor. At best, the exercise of power by the authorised officer may partake the colour of quasi-judicial function, which can be discharged even by the Executive Magistrate. The authorised officer is not expected to adjudicate the contentious issues raised by the parties concerned but only verify the compliances referred to in the first proviso of Section 14; and being satisfied in that behalf, proceed to pass an order to facilitate taking over possession of the secured assets.

45. It is well established that no civil court can interdict the action initiated in respect of any matter, which a Debts Recovery Tribunal or Debts Recovery Appellate Tribunal is empowered by or under the 2002 Act, to determine and in particular, in respect of any action taken or to be taken in pursuance of any power conferred by or under the 2002

Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. That has been ordained by Section 34 of the 2002 Act.

46. The borrowers or the persons claiming through borrowers had placed emphasis on Section 35 of the 2002 Act. The same reads thus:

“35. *The provisions of this Act to override other laws.*—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

47. The construction of this provision plainly indicates that the provisions of the Act will override any other law for the time being in force. The question is : do the provisions of the 2002 Act override the provisions of CrPC, whereunder the functions to be discharged by CMM are similar to that of CJM. Further, the expressions “CMM and CJM” are used interchangeably in CrPC and are considered as synonymous to each other. Section 14, even if read literally, in no manner denotes that allocation of jurisdictions and powers to CMM and CJM under the Code of Criminal Procedure are modified by the 2002 Act. Thus understood, Section 14 of the 2002 Act, *stricto sensu*, cannot be construed as being inconsistent with the provisions of the Code of Criminal Procedure or vice versa in that regard. If so, the stipulation in Section 35 of the 2002 Act will have no impact on the expansive construction of Section 14 of the 2002 Act. Whereas, there is force in the submission canvassed by the secured creditors (banks), that Section 37 of the 2002 Act answers the issue under consideration. The same reads thus:

“37. *Application of other laws not barred.*—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.”

The bare text of this provision predicates that the provisions of the 2002 Act or the Rules made thereunder shall be in addition to the stated enactments or “any other law for the time being in force”. Having said that the provisions of Section 14 of the 2002 Act are in no way inconsistent with the provisions of the Code of Criminal Procedure, it must then follow that the provisions of the 2002 Act are in addition to, and not in derogation of the Code.

48. Suffice it to observe that keeping in mind the subject and object of the 2002 Act and the legislative intent and purpose underlying Section 14 of the 2002 Act, contextual and purposive construction of the said provision would further the legislative intent. In that, the power conferred on the authorised officer in Section 14 of the 2002 Act is circumscribed and is only in the nature of exercise of State's coercive power to facilitate taking over possession of the secured assets.”

Finally, it has been concluded that :

“52. Applying the principle underlying this decision, it must follow that substitution of functionaries (CMM as CJM) qua the administrative and executive or so to say non-judicial functions discharged by them in light of the provisions of the Code of Criminal Procedure, would not be inconsistent with Section 14 of the 2002 Act; nay, it would be a permissible approach in the matter of interpretation thereof and would further the legislative intent having regard to the subject and object of the enactment. That would be a meaningful, purposive and contextual construction of Section 14 of the 2002 Act, to include CJM as being competent to assist the secured creditor to take possession of the secured asset.”

On the same analogy, it can be safely concluded that the power under Section 14 of the Act can very well be exercised by the Additional Magistrate also.

10. Learned counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in the matter of **Hari Chand Aggarwal v. The Batala Engineering Co. Ltd. And others, AIR 1969 SC 483** but in that case the nature of power of requisition exercisable under Section 29 of the Defence of India, Act (1962) was found to be very drastic in nature involving fundamental right of property hence it was held that the word

“District Magistrate” could not be read as “Additional District Magistrate” but that is not so in the present case as the nature of power exercisable under Section 14 of the Act is quite different. Hence, the petitioner is not entitled to the benefit of the judgment of the Supreme Court in the matter of **Hari Chand Aggarwal** (supra).

11. Counsel for the petitioner referring to the Principles of Statutory Interpretation by Shri G.P. Singh (Twelfth Edition, 2010) has raised the issue that when the Act confer power on the authority then it should be exercised by the same authority. That principle is not in dispute but in terms of the judgment of the Supreme Court in the matter of **Authorised Officer, Indian Bank** (supra), the term “District Magistrate” as contained in Section 14 of the Act is inclusive of Additional District Magistrate also. Hence, the contention of the counsel for the petitioner in this regard is not accepted.

12. Thus, in the present case, the order passed by the Additional District Magistrate under Section 14 of the Act cannot be held to be beyond jurisdiction.

13. So far as the other issues, which are raised by the counsel for the petitioner, the appropriate remedy is to file an appeal under Section 17 of the Act. This Court in another judgment delivered today in the matter of **Madan Mohan Shrivastava Vs. Additional District Magistrate (South) Bhopal and others** passed in W.P. No.5629/2021 has already held that against the order passed under Section 14, remedy of appeal under Section 17 is available.

14. Hence, the writ petition is **disposed of** after granting liberty to the petitioner to avail the remedy of appeal.

(PRAKASH SHRIVASTAVA)
JUDGE

(SMT ANJULI PALO)
JUDGE