

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE SUJOY PAUL
&
SHRI SHRI JUSTICE PRAKASH CHANDRA GUPTA
ON THE 15th OF DECEMBER, 2022

WRIT PETITION No. 21960 OF 2022

Between:-

**INDIA SHELTER FINANCE
CORPORATION BRANCH
OFFICE AT IN FRONT OF
BHAWARTAL GARDEN,
WRIGHT TOWN, JABALPUR,
THROUGH ITS
AUTHORIZED PERSON MRS.
GEET JAIN, D/O SHRI
SANJAY JAIN, W/A LEGAL
MANAGER, AGE MAJOR.**

.....PETITIONER

**(BY SHRI AMIT KHATRI WITH SHRI SAMAGRA
SHRIVASTAVA, ADVOCATES)**

AND

**1. STATE OF MADHYA
PRADESH THROUGH
ADDITIONAL DISTRICT
MAGISTRATE, DISTRICT
JABALPUR, MADHYA
PRADESH.**

**2. MRS. JAKHU, D/O NOT
MENTION R/O H.NO. 3184,
TULSI NAGAR, CHERITAL
WARD, BEHIND PARIJAT
BUILDING DISTRICT**

JABALPUR M.P. (MADHYA PRADESH).

3. MR. SABSI S/O NOT MENTION R/O H.NO. 3184, TULSI NAGAR, CHERITAL WARD, BEHIND PARIJAT BUILDING DISTRICT JABALPUR M.P. (MADHYA PRADESH).

4. MR. PRAVEEN WAGARI S/O NOT MENTION R/O H.NO. 3184, TULSI NAGAR, CHERITAL WARD, BEHIND PARIJAT BUILDING DISTRICT JABALPUR M.P. (MADHYA PRADESH).

5. VIKARAM S/O NOT MENTION R/O H.NO. 3184, TULSI NAGAR, CHERITAL WARD, BEHIND PARIJAT BUILDING DISTRICT JABALPUR M.P. (MADHYA PRADESH)

6. MRS. KAJAL GUJARATI D/O NOT MENTION R/O H.NO. 3184, TULSI NAGAR, CHERITAL WARD, BEHIND PARIJAT BUILDING DISTRICT JABALPUR M.P. (MADHYA PRADESH).

7. MRS. CHANDA GUJARATI D/O NOT MENTION R/O H.NO. 3184, TULSI NAGAR, CHERITAL WARD, BEHIND PARIJAT BUILDING DISTRICT JABALPUR M.P. (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ANKIT AGRAWAL – GOVERNMENT ADVOCATE FOR THE STATE)

(BY SHRI PRABHAT RANJAN TRIVEDI - ADVOCATE FOR THE RESPONDENT NOS.2 & 3).

This writ petition coming on for hearing this day, Justice Sujoy Paul passed the following :

ORDER

This petition filed under Article 226 of the Constitution of India assails the impugned order dated 14.6.2022 (Annexure P-2) whereby learned Additional District Magistrate/Additional Collector has stayed his previous order dated 25.5.2022, which was passed in exercise of power under Section 14 of the **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002**, (for brevity '**Securitisation Act**').

1. Draped in brevity, the admitted facts between the parties are that the petitioner, a secured creditor filed an application under Section 14 of the said Act before the Additional District Magistrate, which was decided by final order dated 25.5.2022. Thereafter, the respondent no. 2 preferred an application before the same authority which was entertained by the impugned order dated 14.6.2022. Learned Additional District Magistrate re-examined/reviewed the case and stayed the effect and operation of the previous order dated 25.5.2022. These orders dated 14.6.2022 are subject matter of challenge in this petition.

3. Shri Amit Khatri with Shri Samagra Shrivastava, learned counsel for the petitioner submits that learned Additional District Magistrate had no authority, jurisdiction and competence to review or recall his order. He placed reliance on a Division Bench

Judgment of Punjab and Haryana High Court in **CWP -31871 – 2019 (Shriram Housing Finance Limited Vs. State of Haryana and others)**. In addition, it is submitted that as per **(2019) 20 SCC 47 (Authorised Officer, Indian Bank Vs. D. Visalakshi and another)**, the District Magistrate/competent authority while exercising power under Section 14 of the said Act mainly exercises administrative or executive power and by no stretch of imagination, it can be treated to be an exercise of judicial power. At best, it can be treated to be an exercise of quasi judicial nature. **2013 (9) SCC 620 (Standard Chartered Bank Vs. V. Noble Kumar and others)** was also relied upon for the same purpose. Shri Shrivastava submits that legislative intent behind Section 14 of the said Act is only to empower the District Magistrate to ensure the correctness of procedural part and formalities undertaken by the Bank before filing application under Section 14 of the Act. After having satisfied with nine point affidavit filed by the Bank, the Additional District Magistrate passed the order dated 25.5.2022. Thereafter, there exists no enabling provision which permits the Additional District Magistrate to review, recall or stay his order. Thus, the said order may be axed.

4. Shri Ankit Agrawal, learned Government Advocate for the State has supported the impugned order. In support of his argument, he placed reliance on **(1980) Suppl. SCC 420 (Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and others)**, it is argued that as per this judgment of the Supreme Court, the review power can be exercised in two kinds of situation. Firstly, a review which is solely based on procedural part of the exercise whereas

second type of review can be based on merits. As per this judgment, submits Shri Agrawal that every Tribunal, Court has inherent power to exercise power of review in cases of apparent procedural impropriety. Instant matter is covered under this provision and, therefore, no fault can be found in the order of learned District Magistrate.

5. Shri Trivedi, learned counsel for the private respondents placed reliance on Section 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and urged that learned Additional District Magistrate was not prevented/barred in exercising any other power flowing from any other enactment/law.

6. Learned counsel for the parties confined their arguments to the extent indicated above.

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

8. Punjab and Haryana High Court in the case of **Shriram Housing Finance Limited (supra)** framed a question which reads as under :-

(i) Whether a District Magistrate, after passing an order under Section 14 of the SARFAESI Act can stop the enforcement of the order by a subsequent order/direction for whatever reason ?

9. Thereafter Court gave a finding based on its previous Division Bench judgment in **CWP 16366-2016 (Asset Reconstruction Company (India) Limited Vs. State of Haryana**. Relevant portion of which reads as under :-

“(27) The powers exercisable by a District Magistrate under Section 14 are creation of a Statute. Those powers are required to be exercised within the four corners of the said provision. In the case in hand, the District Magistrate, Sonapat rightly exercised such power and passed the order dated 08.02.2016 thereby directing his subordinate officer, namely Naib Tehsildar-cum-Executive Magistrate to take possession of the secured assets and hand over the same to ARCIL. It could not be disputed by the learned State counsel or senior counsel for the borrowers that there is no provision under the SARFAESI Act under which the District Magistrate or the Chief Metropolitan Magistrate as the case may be can review, recall or modify his order. The successor District Magistrate, therefore, had no jurisdiction whatsoever either to entertain the borrower’s application dated 12.06.2016 or to pass the impugned orders dated 14.6.2016 and 24.10.2016. These orders are totally without jurisdiction and void ab initio, for it is well settled that the power to review is not an inherent power and it must always be conferred by law either expressly or by necessary implication. The so-called reasons assigned by the successor District Magistrate, even if assumed to be correct did not and cannot clothe him with a non-existent power to review the order passed by him or his predecessor. (Ref. (i) Patel Narshi Thakershi & Ors. Vs. Shri Pradyumansinghji Arjunsinghji (1971) 3 SCC 844; (ii) Kewal Chand Mimani (D) By Lrs. Vs. S.K. Sen & Ors. (2001) 6 SCC 512)”

(Emphasis Supplied)

10. Interestingly, in the said judgment, Punjab and Haryana High Court relied on judgment of Allahabad High Court in **Writ -C No.30899 of 2016 (Kotak Mahindra Bank Ltd. Vs. State of U.P. & 4 others) decided on 21.10.2016**. The relevant portion reads as under :-

“Be that it may, we are of the considered opinion that the District **Magistrate** has absolutely no jurisdiction to review his order dated 24.06.2013 passed under the Act, 2002, specifically when the order was subjected to challenge before the Debt Recovery Tribunal and such application was dismissed by a reasoned order holding therein that the borrower had not approached the Tribunal with clean hands. If they were not satisfied they had the remedy of approaching the Appellate Tribunal under Section 18 of the Act, 2002. We are; therefore, more than satisfied that such order of the District Magistrate cannot be permitted to stand on record. The order of the District Magistrate dated 27.04.2016 and dated 30.06.2016 are hereby quashed.”

We are respectfully in agreement with the view taken by the Allahabad High Court. Consequently, it is held that the District Magistrate, Sonapat had no authority or power to review the order dated 08.02.2016 and his subsequent orders being without any authority of law, cannot sustain.

(emphasis supplied)

11. In **Shriram Housing Finance Limited** (supra) the question aforesaid was answered by holding that a District Magistrate, after passing an order under Section 14 of the SARFAESI Act 2002 has no jurisdiction to review or recall such order.

12. The order dated 25.5.2022 (Annexure P-1) shows that learned Additional Collector in Para -3 recorded his satisfaction that all nine relevant points of affidavit were considered by him. The impugned

order dated 14.6.2022 nowhere shows that he found any procedural impropriety in his previous order. Thus, even assuming that as per judgment of the Supreme Court in **Grindlays Bank (supra)** there exists inherent power of review in cases of palpable procedural impropriety, the impugned orders are not based on any such finding of procedural impropriety. Thus, the said judgment can not be pressed into service in a case of this nature.

13. The Apex Court in two judgments i.e. **Authorised Officer, Indian Bank (supra)** and **Standard Chartered Bank (supra)** opined about the nature of power to be exercised by learned District Magistrate. The said power, in our opinion cannot be equated with a judicial power exercised by a judicial forum. We are in respectful agreement with the view taken by Allahabad and Punjab and Haryana High Court in above cases.

14. So far Section 37 of the *SARFAESI Act* on which Shri Trivedi placed reliance is concerned, it only provides that the provisions of the *SARFAESI Act* and rules shall be in addition to and not in derogation of other provisions of law. No enabling provision from any other law is shown to us which enabled learned Additional District Magistrate to re-examine or review his own order.

15. In view of foregoing analysis, we are of the considered opinion that after having passed the final order under Section 14 of the *SARFAESI Act*, learned Additional District Magistrate/Collector has become *functus officio* and there exists no enabling provision which empowers him to re-examine or recall his own order. Resultantly, both the impugned orders of same date, i.e. 14.6.2022 are set aside. However, this order will not come in the way of private

respondents to avail appropriate remedy against the order dated 25.5.2022.

16. The petition is **allowed** to the extent indicated above.

(SUJOY PAUL)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE

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