

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 18th OF OCTOBER, 2024

WRIT PETITION No.25147 of 2024

PUNJAB NATION BANK

Versus

ADDITIONAL DISTRICT MAGISTRATE, RAISEN AND OTHERS

Appearance:

Shri Kapil Duggal - Advocate for petitioner.

Shri Abhijeet Awasthi- Deputy Advocate General for respondents/State.

Shri – Vishal Bhatnagar - Advocate through VC with Shri Shrey Diwan – Advocate for respondents No.2 to 4.

Shri Atul Nema – Advocate for intervenor.

ORDER

Per: Justice Sanjeev Sachdeva

1. Petitioner-Punjab National Bank impugns an order dated 27.05.2024 passed by the Collector, Raisen wherein the application filed by the Bank under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'Act') has been dismissed by the Collector.

2. The Collector by the impugned order dated 27.05.2024 has held

that during examination of the application, it is found that the Bank has already issued a sale certificate and since the Bank has already issued the sale certificate, it is not entitled to seek physical possession of the secured asset.

3. Learned counsel for the petitioner submits that physical possession of the secured asset had continued with the borrower and; as such, the sale certificate did not transfer full rights to the buyer and the secured creditor i.e. the Bank, continued to retain the right to take measures for taking over possession of the secured assets. He further submits that the Collector under Section 14 of the Act does not have any adjudicatory power and has to exercise only ministerial power of taking over possession of secured asset and handing over the same to the secured creditor.

4. *Per contra*, learned counsel appearing for respondent No.2 to 4, the debtors, submits that the remedy of the petitioner against the order of the Collector was to approach the Debt Recovery Tribunal under Section 17 of the Act and not approached this Court under Article 226 of the Constitution. He further submits that since the petitioner has already sold the asset and issued a sale certificate, petitioner has ceased to be a secured creditor and has no right to take steps for recovery of possession by applying Section 14 of the Act.

5. The questions that arise for consideration in this petition are:-

- (i) as to whether a secured creditor, on issuance of a sale certificate and transfer of title without possession, ceases to have a right to approach the concerned authority to assist the secured

creditor in taking possession of the secured asset in terms of Section 14 of the Act ?

(ii) Whether the authority i.e. Chief Metropolitan Magistrate or District Magistrate, as the case may be, has any adjudicatory power under Section 14 of the Act or said authority exercises merely ministerial powers of taking over possession of the secured asset and forwarding the asset to the secured creditor ?

(iii) as to whether a secured creditor can approach the Debt Recovery Tribunal under Section 17 of the Act against an action or inaction of the Chief Metropolitan Magistrate or the District Magistrate ?

6. Reference may be had to the judgment of the Supreme Court in ***ITC Ltd. vs. Blue Coast Hotels Limited and others, (2018) 15 SCC 99*** wherein the Supreme Court has considered the effect of sale of the secured asset by the secured creditor, where the possession of the secured asset continued to remain with the borrower. The Supreme Court has held as under:

“46. The question, however, whether the creditor could maintain an application of possession under Section 14 of the Act even though it had taken over only symbolic possession before the sale of the property to the auction-purchaser, depends on whether it remained a secured creditor after having done so. Section 2(1)(d) of the Act defines “secured creditor” to mean a “banking company” having the meaning assigned to it in clause (c) of Section 5 of the Banking Regulation Act, 1949; Section 2(1)(l) includes debts or receivables and any right or interest in the security whether full or part underlying such debt or receivables or any beneficial interest in property vide Sections 2(1)(i), (iv) and (v). Sub-section (6) of Section 13 posits that the transfer of the secured asset by the secured creditor shall vest in the transferee all the rights as if the transfer had been made by the owner of the secured

asset.

47. *In Mulla's The Transfer of Property Act:*

“The section (Section 8) does not apply to court sales, for such sales effect a transfer by the operation of law. The principle of the section was, however, applied in a case decided by the Madras High Court where a debt for unpaid purchase money on a sale of land was attached and sold, and the auction-purchaser was held entitled to the charge which the vendor had under Section 55(4)(b) on the property in the hands of the buyer. The Court, after observing that the present section did not apply to court sales, said:

‘7. ... The effect of applying Section 8 is to strengthen the sale certificate by transferring the lien along with it.

This Court observed in Abdul Aziz Khan Sahib v. Appayasami Naicker, 1903 SCC OnLine PC 32 that a sale through court is different from a sale inter partes:

We note that even though the entire right, title and interest were purported to have been transferred, all the rights, transfer and interest could not be said to have been transferred since the possession of the property was not transferred to creditor. The possession was retained by the debtor who continued to do business and receive rent from the rooms on the property and has in fact continued to do so till date. There is no doubt that after taking over the property from debtor, the creditor also acquired the right to receive the usufruct of the property i.e. the rent in this case. However, this was an interest in the property which was not at any point of time transferred to the auction-purchaser.

48. In this case, the creditor did not have actual possession of the secured asset but only a constructive or symbolic possession. The transfer of the secured asset by the creditor therefore cannot be construed to be a complete transfer as contemplated by Section 8 of the Transfer of Property Act. The creditor nevertheless had a right to take actual possession of the secured assets and must therefore be held to be a secured creditor even after the limited transfer to the auction-purchaser under the agreement. Thus, the entire interest in the property not having been passed on to the creditor in the first place, the creditor in turn could not pass on the entire interest to the auction-purchaser and thus remained a secured creditor in the Act.

7. The Supreme Court in ***Blue Coast Hotels Limited*** (supra) has held

that a secured creditor, could maintain an application for possession, under Section 14 of the Act even though it had taken over only symbolic possession before the sale of the property to the auction purchaser. The Supreme Court has held that the creditor continued to remain a secured creditor as defined under Section 2(1)(d) of the Act even after it had sold the rights in the property provided the physical possession was not obtained from the borrower and transferred alongwith the sale of the property. The Supreme Court held that all rights, transfer and interest on sale of such a property could not be said to have been transferred since the possession of the property was not transferred to the creditor and possession continued to remain with the debtor.

8. The Supreme Court in *Blue Coast Hotels Limited* (supra) further held that a creditor, who did not have actual possession of the secured asset but only had a constructive or symbolic possession, could not be construed to have completely transferred the asset as contemplated by Section 8 of the Transfer of Property Act. Such a creditor continued to have the right to take actual possession of the secured asset and thus could have approached the concerned authority under Section 14 of the Act.

9. In the instant case, clearly the possession of the secured asset continues to remain with the borrower and was never obtained by the creditor. Accordingly, the sale certificate issued by the petitioner-bank could not have transferred the entire asset and in terms of the judgment of the Supreme Court in *Blue Coast Hotels Limited* (supra), petitioner bank continued to retain the right to approach the concerned authority under Section 14 of the Act for seeking assistance in obtaining physical

possession of the said asset.

10. Accordingly, question No.1 is answered holding that a secured creditor after the sale of the asset without transferring physical possession does not cease to be entitled to approach the appropriate authority under Section 14 of the Act.

11. With regard to the power exercised by the Chief Metropolitan Magistrate or District Magistrate, reference may be had to Section 14 of the Act which reads as under:

“14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.—

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—

- (a) take possession of such asset and documents relating thereto; and*
- (b) forward such asset and documents to the secured creditor:*

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

- (i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;*
- (ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such*

properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above; (iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount.

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets¹ within a period of thirty days from the date of application:

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.

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority.”

12. Section 14 of the Act contemplates that where possession of any secured asset is required to be taken by the secured creditor or if any secured asset is required to be sold or transferred by the secured creditor under the provisions of the Act, the secured creditor may for the purposes of taking over possession of control of the asset request the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction such asset is situated, then Chief Metropolitan Magistrate or the District Magistrate, as the case may be, ‘**shall**’ on such a request being made take possession of such asset and forward such asset to the secured creditor.

13. The wording of Section 14 of the Act is very clear. The Chief Metropolitan Magistrate or the District Magistrate, as the case may be, on

receipt of such a request is obliged to take over possession of the secured asset and forward the asset to the secured creditor. There is no discretion given to the same authority. Said authority is obliged to take possession and handover to the secured creditor. We may note that first proviso to Section 14 of the Act provides that the application of the secured creditor shall be accompanied by an affidavit duly affirmed by an authorised officer declaring to certain conditions as contained in first proviso to Section 14 of the Act. Once such a declaration is filed, the District Magistrate or Chief Metropolitan Magistrate has to merely satisfy himself with the contents of the Affidavits and then pass suitable orders for the purposes of taking possession of the secured asset within a period of 30 days. The District Magistrate or Chief Metropolitan Magistrate has been given powers only to ascertain as to whether the Affidavit filed by the authorised officer satisfies the requirement of the first proviso to Section 14 of the Act. Once the Affidavit satisfies the requirement of Section 14 of the Act, the District Magistrate has no discretion thereafter.

14. Reference may be had to the judgment of the Supreme Court in *R.D. Jain & Company vs. Capital First Limited and others, (2023) 1 SCC 675, Kotak Mahindra Bank Ltd. vs. Girnar Corrugators Pvt. and others, (2023) 3 SCC 210* and *Balkrishna Rama Tarle vs. Phoenix Arc Pvt. Ltd. and others, (2023) 1 SCC 662* wherein the Supreme Court has held that the steps taken by the Chief Metropolitan Magistrate or the District Magistrate are ministerial in nature and does not involve any adjudicatory process.

14.1 In *R.D. Jain & Company* (supra), the Supreme Court has held as under:

“25. As observed and held by this Court in NKGSB Coop. Bank [NKGSB Coop. Bank Ltd. v. Subir Chakravarty, (2022) 10 SCC 286 : (2023) 1 SCC (Cri) 157] , the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the Advocate Commissioner who is considered as an officer of his/her court. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. Thus, we reiterate that the step to be taken by the CMM/DM under Section 14 of the Sarfaesi Act, is a ministerial step. While disposing of the application under Section 14 of the Sarfaesi Act, no element of quasi-judicial function or application of mind would require. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets.”

14.2 The Supreme Court in ***Girnar Corrugators Pvt.*** (supra) has held as under:

“34. Under Section 14 of the Sarfaesi Act, the District Magistrate or the Chief Metropolitan Magistrate as the case may be is required to assist the secured creditor in getting the possession of the secured assets. Under Section 14 of the Sarfaesi Act, neither the District Magistrate nor the Metropolitan Magistrate would have any jurisdiction to adjudicate and/or decide the dispute even between the secured creditor and the debtor. If any person is aggrieved by the steps under Section 13(4)/order passed under Section 14, then the aggrieved person has to approach the Debts Recovery Tribunal by way of appeal/application under Section 17 of the Sarfaesi Act.”

14.3 Similarly, the Supreme Court in ***Balkrishna Rama Tarle*** (supra) has held as under:

“18. Thus, the powers exercisable by CMM/DM under Section 14 of the Sarfaesi Act are ministerial steps and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section 14 of the Sarfaesi Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the

documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the Sarfaesi Act, before the Debts Recovery Tribunal.”

15. Accordingly, Question No.2 is also answered by holding that subject to the secured creditor satisfying the requirement of first proviso to Section 14(1) of the Act, the District Magistrate or Chief Metropolitan Magistrate, as the case may be, have no further discretion and have to merely perform the ministerial power of taking over possession of the secured asset and handing over the same to the secured creditor.

16. Coming to the third question raised by learned counsel for the respondents that the petitioner has not exhausted the alternative remedy of approaching Debt Recovery Tribunal. Reference may be had to Section 17 of the Act which reads as under:

“17. Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,1 [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the

person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder; and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder; then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for

expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.”

Section 17(1), (2) and (3) of the Act use the expression “measures taken by the Secured Creditor” and Section 17(4) of the Act uses the expression “recourse taken by a secured creditor”. Section 17 of the Act stipulates that any person including a borrower aggrieved by any measure referred to in sub-section (4) of Section 13 of the Act taken by the secured creditor, may make an application to Debt Recovery Tribunal having jurisdiction against such measure.

17. Section 13(4) of the Act reads as under :

13. Enforcement of security interest.

(4) 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 following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such

business of the borrower which is relatable to the security for the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower; to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.”

18. Section 17 of the Act provides for remedy of approaching the Debt Recovery Tribunal to any person including a borrower who is aggrieved by measure taken by the secured creditor. By no stretch of imagination, can this provision be read to include to make it obligatory on part of the secured creditor to approach the Debt Recovery Tribunal under Section 17 of the Act against measures taken by it. For the reason that aggrieved party has to approach the Debt Recovery Tribunal who is aggrieved by a measure taken by the secured creditor or its authorised officer. A secured creditor cannot be said to be aggrieved by its own action. Bare reading of Section 17 of the Act contemplates persons including borrowers but excluding the secured creditor who are obliged to approach the Debt Recovery Tribunal against the measure taken under Section 17 of the Act.

19. Section 17 of the Act provides for a remedy against an action taken by the Secured Creditor but does not provide for a remedy against an action or an inaction of the part of the District Magistrate or the Chief Metropolitan Magistrate.

20. Accordingly, Question No.3 is answered holding that a Secured Creditor cannot approach a Debt Recovery Tribunal against an action or inaction of the Chief Metropolitan Magistrate or the District Magistrate.

21. In view of the above, we are of the view that the impugned order dated 27.05.2024 passed by the Collector is contrary to the very ratio of the Supreme Court judgment in *Blue Coast Hotels Limited* (supra) and consequently cannot be sustained. The same is accordingly quashed. The application of the petitioner under Section 14 of the Act requiring the Collector to take such measures as are contemplated under Section 14 of the Act is restored on the records of the Collector. The Collector shall proceed with the application in accordance with law and after being satisfied with regard to compliance of the petitioner with provisions contained in Section 14 of the Act proceed further with the application.

22. Keeping in view the second proviso to Section 14 of the Act which stipulates a maximum period of 30 days for action to be taken by the District Magistrate or Chief Metropolitan Magistrate, we direct the concerned Collector to take appropriate steps after satisfying himself within a period of 30 days from today.

21. Petition is accordingly allowed in the above terms. No order as to cost.

(SANJEEV SACHDEVA)
JUDGE

(VINAY SARAF)
JUDGE