

M/s R. D. JAIN AND CO.

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v.

CAPITAL FIRST LTD. & ORS.

(Civil Appeal No. 175 of 2022)

JULY 27, 2022

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**[M. R. SHAH AND B. V. NAGARATHNA, JJ.]**

*Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 – ss. 13(4), 14 – Chief Metropolitan Magistrate (CMM) shall deem to mean and include Additional Chief Metropolitan Magistrate (ACMM) – The respondent (secured creditor) instituted proceedings under the SARFAESI Act for recovery of the amount due and payable by the appellant (borrower) – The borrowers refused to handover the physical possession of security asset – Secured creditor filed an application u/s 14 of the SARFAESI Act praying for assistance from the CMM in taking physical possession of the secured asset – The matter was adjourned from time to time – Secured Creditor approached the High Court for an order directing the CMM to dispose of application u/s 14 in a time bound manner as mandated by second proviso to s.14(1) of Act – The Division Bench considering the large volume of pendency and workload of the CMM, has observed that the ACMM, being invested with all the judicial powers of the CMM, can be considered at par with the CMM – The High Court further observed that the CMM and ACMM stand on the same footing and one cannot be said to be either inferior or subordinate to the other – On appeal, held: As mandated by s.14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order – Thus, the powers exercised by the CMM/DM is a ministerial act – While disposing of the application u/s. 14 of the SARFAESI Act, no element of quasi-judicial function or application of mind would require – S.14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto – The High Court has rightly observed that the power vested in the CMM/District Magistrate is not by way of persona designata – The judicial powers and the powers, under the Cr.PC which may be exercised by the CMM, can be exercised by the ACMM also – Thus, the ACMM can be said to be at par with the CMM in*

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- A *so far as the powers to be exercised under the Cr:PC are concerned – The expression “CMM” as appearing in s.14 of the SARFAESI Act shall deem to mean and include ACMM for the purposes of s.14 of the SARFAESI Act.*

**Dismissing the appeal, the Court**

- B **HELD:** 1.1 Considering the scheme of the SARFAESI Act, it is explicit and crystal clear that possession of the secured assets can be taken by the secured creditor before confirmation of sale of the secured assets as well as post- confirmation of sale. For taking possession of the secured assets, it could be done by the “authorised officer” of the Bank as noted in Rule 8 of the Security Interest (Enforcement) Rules, 2002. [Para 8][73-C-D]
- 1.2 However, for taking physical possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under Section 14(1) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. As mandated by Section 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment. As observed and held by this Court in the case of *NKGSB Cooperative Bank Ltd.*, the step taken by
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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, this Court reiterates 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. [Para 8.1][73-D-H; 74-A-D]

1.3 From the relevant provisions of Cr.PC, namely, sections 11, 12, 15, 16, 17, 19 and 35, it can be seen that any Metropolitan Magistrate can be appointed by the High Court to be the Chief Metropolitan Magistrate. The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under Cr.PC or under any other law for the time being in force as the High Court may direct. The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate. Thus the judicial powers and the powers, under the Cr.PC which may be exercised by the Chief Metropolitan Magistrate, can be exercised by the Additional Chief Metropolitan Magistrate also. Thus, the Additional Chief Metropolitan Magistrate can be said to be at par with the Chief Metropolitan Magistrate in so far as the powers to be exercised under the Cr.PC are concerned. The Chief Metropolitan Magistrate in addition, may have administrative powers. However, for all other purposes and more particularly the powers to be exercised under the Cr.PC both

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- A are at par. Therefore, the Additional Chief Metropolitan Magistrate cannot be said to be subordinate to the Chief Metropolitan Magistrate in so far as exercise of judicial powers are concerned. [Para 10.1][77-B-E]
2. In view of the above discussion and as observed
- B hereinabove when the powers to be exercised by the Additional Chief Metropolitan Magistrate are at par with the powers to be exercised by the Chief Metropolitan Magistrate [Section 17(2) of Cr.PC] and the Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge (Section 19 of the Cr.PC) and the steps to be taken by the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act as observed hereinabove are ministerial in nature and does not involve any adjudicatory process and there is no element of any quasi-judicial function, we see no reason to take a different view than the view taken by the Bombay High Court in the impugned judgment. This Court holds that the expression “Chief Metropolitan Magistrate” as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act. [Para 10.2][77-F-H; 78-A]
- E 3. Similarly, when the Additional District Magistrates are conferred with the powers to be exercised by the District Magistrates either by delegation and/or by special orders and the Additional District Magistrates are exercising the same powers which are being exercised by the District Magistrates, the same analogy can be applied, more particularly, when the powers exercisable under Section 14 of the SARFAESI Act, are ministerial steps. [Para 10.3][78-B]
4. The issue/question may also be considered from another angle. It cannot be disputed and even judicial notice can be taken of the fact that the CMMs and/or even the DMs are required to perform so many other duties under different statutes. They have to perform many administrative duties also. District Magistrates are in overall administrative control of their jurisdiction/district. Similarly, CMMs are also required to perform administrative
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duties and they have also to deal with the other cases/criminal trials and many trials under special statutes also. It cannot be disputed that the litigations under the SARFAESI Act and proceedings and/or applications under Section 14 of the SARFAESI Act are increasing. Even as noticed by the High Court in the impugned judgment and order, as on 09.08.2017, 926 cases were pending under Section 14 of the SARFAESI Act before only one CMM. Therefore, a number of applications under Section 14 are pending. It also cannot be disputed that the SARFAESI Act provides for expeditious disposal of the applications filed under Section 14 of the SARFAESI Act. As per, second proviso to Section 14, suitable orders for the purpose of taking possession of the secured assets are required to be passed within a maximum period of sixty days from the date of the application. Therefore, if the submission on behalf of the appellants that only the concerned CMM/DM alone would have jurisdiction to decide the applications under Section 14 of the SARFAESI Act is accepted, in that case, it will be practically impossible for the concerned CMM/DM to decide the application under Section 14 of the SARFAESI Act expeditiously and within the time stipulated under second proviso to Section 14 of the SARFAESI Act. If the interpretation which this Court proposes that, the District Magistrate/Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act includes the Additional District Magistrate/Additional Chief Metropolitan Magistrate, the same can be said to be a purposive interpretation to achieve the object and purpose of proceedings under the SARFAESI Act, more particularly when as observed hereinabove, the orders to be passed under Section 14 of the SARFAESI Act are ministerial steps and to assist the secured creditor in getting/obtaining the possession of the secured property. Thus, there is no element of exercise of adjudicatory powers under Section 14 of the SARFAESI Act. All these aspects have been considered in detail by the High Court in the impugned judgment and order. [Para 11][78-C-H; 79-A-B]

**5. This Court is in complete agreement with the view taken by the High Court that (i) the District Magistrate, Chief Metropolitan Magistrate is not a *persona designata* for the**

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- A **purposes of Section 14 of the SARFAESI Act; (ii) the expression “District Magistrate” and the “Chief Metropolitan Magistrate” as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act. [Para 12][79-C]**
- B *NKGSB Cooperative Bank Limited v. Subir Chakravarty & Ors. Civil Appeal No. 1637/2022 decided by the Supreme Court; Hari Chand Aggarwal v. Batala Engineering Co. Ltd. and Ors. [1969] 2 SCR 201– referred to.*
- C *State of Maharashtra v. Shanti Prasad Jain in Criminal Reference No. 9 of 1977 decided by the Division Bench of the High Court; Shivam Water Treaters P. Ltd. v. Authorised Officer, State Bank of India in Special Civil Application No. 12632 of 2013 decided by the Division Bench of the Gujarat High Court – referred to.*
- D **[1969] 2 SCR 201 referred to Para 4.2**

**Case Law Reference**

- E **[1969] 2 SCR 201 referred to Para 4.2**
- F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 175 of 2022.
- F From the Judgment and Order dated 22.12.2017 of the High Court of Judicature at Bombay in Writ Petition No. 1961 of 2017.
- F Purvish Jitendra Malkan, Ms. Dharita P. Malkan, Ms. Deepa Gorasia, Alok Kumar, Ms. Nandini Chhabra, Ms. Khushboo Vinodrai Malkan, Ms. Bhavna Sarkar, Advs. for the Appellant.
- G Sachin Patil, Rahul Chitnis, Aaditya A. Pande, Geo Joseph, Ms. Shwetal Shepal, Advs. for the Respondents.

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The Judgment of the Court was delivered by A

**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 22.12.2017 passed by the High Court of Judicature at Bombay in Writ Petition No. 1961/2017, by which, the Division Bench of the High Court while interpreting Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 (hereinafter referred to as the “SARFAESI Act”) has held that (i) the District Magistrate, Chief Metropolitan Magistrate is not a persona designata for the purposes of Section 14 of the SARFAESI Act; (ii) the expression “District Magistrate” and the “Chief Metropolitan Magistrate” as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act, the borrower has preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under: - D

2.1 That respondent No. 1 herein – Financial Institution – Capital First Limited is the secured creditor (hereinafter referred to as the “secured creditor”) within the meaning of Section 2(1)(zd) of the SARFAESI Act. That the secured creditor instituted proceedings under the SARFAESI Act for recovery of the amount due and payable by the appellant herein – borrower. The said proceedings initiated under Section 13(4) of the SARFAESI Act, the secured creditor proceeded to take possession of the secured asset. However, the borrowers refused to handover the physical possession of the secured asset. The secured creditor took symbolic possession of the secured asset on 21.01.2017 and affixed the possession notice at the said secured asset. That on 17.03.2017, the secured creditor filed an application under Section 14 of the SARFAESI Act with the learned Chief Metropolitan Magistrate Court, Esplanade, Mumbai, inter-alia, praying for assistance from the learned Chief Metropolitan Magistrate in taking physical possession of the secured asset. The matter was adjourned from time to time and lastly, it was adjourned to 29.07.2017. As mandated by second proviso to sub-section (1) of Section 14 of the SARFAESI Act, the application was required to be disposed of within a period of 30 days and as the application was not decided within the period mandated by the statute, the secured creditor F

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- A moved an application for advancement. The said application came to be dismissed by the learned Chief Metropolitan Magistrate, inter-alia, on the ground that the said application is a fresh application and many old applications are pending. Therefore, the secured creditor approached the High Court by way of the present writ petition for an appropriate direction and order directing the learned Chief Metropolitan Magistrate to dispose of their cases/applications under Section 14 of the SARFAESI Act in a time bound manner.
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2.2 That the Division Bench of the High Court issued directions to the learned Chief Metropolitan Magistrate to make an endeavour to

- C dispose of the pending applications as expeditiously as possible and preferably within a period of thirty days from the date of receipt of writ along with the order. The learned Chief Metropolitan Magistrate vide communication dated 14.08.2017 brought to the notice of the High Court that, "Even though, the SARFAESI Act, 2002 provides for expeditious disposal of the applications filed under Section 14 of the said Act, there
- D are as many as 924 cases pending under the said Act as on 09.08.2017 on the file of the Court of the Chief Metropolitan Magistrate, Esplanade, Mumbai. Out of 924 cases, 509 cases are filed in the year 2017. However, there are 27 cases of the year 2014, 96 cases of the year 2015 and 291 cases of the year 2016, still pending for disposal. As per the direction of the Hon'ble High Court, preference should be given to the old pending cases for disposing of the same. Therefore, the preference is being given to the pending old cases rather than fresh new cases."
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2.3 On receiving the aforesaid report, the High Court was of the opinion that considering the volume of applications filed under Section 14 of the SARFAESI Act and pendency of such applications, the learned

- F Chief Metropolitan Magistrate, who is an authority under Section 14 of the SARFAESI Act cannot decide such applications within a time bound period in terms of the first and second proviso to Section 14(1) of the SARFAESI Act. After opining so, the High Court proceeded to consider the issue as to how to minimize the pendency. In this context, after
- G considering the relevant provisions of the SARFAESI Act as well as Section 17(2) and Section 19 of the Code of Criminal Procedure, the High Court has observed that the Additional Chief Metropolitan Magistrate (for short "ACMM"), being invested with all the judicial powers of the Chief Metropolitan Magistrate, can be considered at par with the Chief Metropolitan Magistrate. The High Court has also observed that so far
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as the exercise of judicial powers are concerned, the Chief Metropolitan Magistrate and the Additional Chief Metropolitan Magistrate stand on the same footing and one cannot be said to be either inferior or subordinate to the other. It is further observed and held that as the status of Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate is same and identical, the Additional Chief Metropolitan Magistrate can exercise the powers under Section 14 of the SARFAESI Act. While holding so, the Division Bench of the High Court has heavily relied upon the decisions of the Division Bench of the High Court in the case of **State of Maharashtra Vs. Shanti Prasad Jain** in Criminal Reference No. 9 of 1977 decided on 29.09.1977 by which, on a reference the Division Bench of the High Court held and concluded that the Chief Metropolitan Magistrate and the Additional Chief Metropolitan Magistrate are courts of the same status having the same or identical jurisdiction so far as the trial of criminal cases is concerned. Further, by taking into consideration the fact that the powers of the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act being purely executionary in nature and having no element of quasi-judicial functions ultimately it is observed and held by the High Court as under: -

**(I) The District Magistrate, Chief Metropolitan Magistrate is not a persona designata for the purposes of Section 14 of the SARFAESI Act.**

**(II) The expression “District Magistrate” and the “Chief Metropolitan Magistrate” as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act.”**

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court holding that the District Magistrate, Chief Metropolitan Magistrate is not by persona designata for the purposes of Section 14 of the SARFAESI Act and that the expression “District Magistrate” and the “Chief Metropolitan Magistrate” as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act, the borrower has preferred the present appeal.

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- A        3. Shri Purvish Jitendra Malkan, learned Advocate has appeared on behalf of the appellant – borrower and Shri Sachin Patil, learned Advocate has appeared on behalf of the State. None has appeared on behalf of the respondent No. 1 – secured creditor.
- B        4. Shri Malkan, learned counsel appearing on behalf of the borrower has vehemently submitted that the High Court has committed a grave error in holding that powers under Section 14 of the SARFAESI Act can be exercised by the Additional Chief Metropolitan Magistrate and Additional District Magistrate also. It is vehemently submitted that the High Court has also committed a very serious/grave error in holding that the District Magistrate and the Chief Metropolitan Magistrate is not a persona designata for the purposes of Section 14 of the SARFAESI Act.
- C        4.1 Shri Malkan, learned counsel appearing on behalf of the borrower has submitted that the impugned judgment and order passed by the High Court is just contrary to the decisions of the Gujarat High Court, Kerala High Court and the Calcutta High Court. It is submitted that the High Court of Gujarat, has been pleased to hold that: -
- D        “1) District Magistrate and Additional District Magistrate are two different and distinct authorities;
- E        2) The powers conferred on the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, under Section 14 are inter-alia that the powers are conferred specifically on these authorities. One of the aspects of the power to be exercised is that the District Magistrate or the Chief Metropolitan Magistrate has to satisfy himself about compliance of the requirement of the Section. The satisfaction is personal satisfaction. The District Magistrate or the Chief Metropolitan Magistrate are conferred with the powers in their specific capacity as Chief Metropolitan Magistrate of the District Magistrate. They themselves only are the competent authorities to exercise the powers. The nature of powers under Section 14 would not permit transfer/delegate of exercise of powers under the said provision to different person or authorities.”
- F        4.2 It is submitted that while holding as above the Gujarat High Court heavily relied upon the decision of this Court in the case of **Hari Chand Aggarwal Vs. Batala Engineering Co. Ltd. and Ors.; (1969)**
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**2 SCR 201.** It is submitted that as held by this Court in the case of **Hari Chand Aggarwal** (supra) the District Magistrate and Additional District Magistrate are the distinct authorities and the Additional District Magistrate is subordinate to the District Magistrate and therefore, the Additional District Magistrate being subordinate cannot exercise the powers of the District Magistrate.

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4.3 It is submitted that the Gujarat High Court has also considered and relied upon its earlier Division Bench judgment in the case of **Shivam Water Treaters P. Ltd. Vs. Authorised Officer, State Bank of India** in Special Civil Application No. 12632 of 2013 decided on 17.09.2013 by which the Division Bench of the High Court observed and held as under:-

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“7. In the past, this very Bench had an occasion to consider the question as to whether the power conferred under Section 14 of the Securitisation Act can be delegated by a Chief Metropolitan Magistrate in favour of the Additional Chief Metropolitan Magistrate. In that context, this bench held that the action of the Chief Metropolitan Magistrate, Ahmedabad in exercise of his powers under Section 19 Clause (3) of the Code of Criminal Procedure, 1973 read with Rule 10 Clause (1) of Chapter XXXII of the Criminal Manual, 1977 regarding the distribution of business amongst the Metropolitan Magistrates, Ahmedabad, thereby empowering the Additional Chief Metropolitan Magistrate, Ahmedabad to accept and decide the cases under the provisions of the Securitisation Act, arising within the limits of Ahmedabad Municipal Corporation, was without jurisdiction.

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8. In the case before us, the question is a bit different one as to whether a District Magistrate can delegate such power to the Sub Divisional Magistrate.”

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It is submitted that thereafter it is specifically observed and held that it is only the District Magistrate who can exercise the powers under Section 14 of the SARFAESI Act.

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4.4 Making the above submissions and relying upon the decisions of this Court in the case of **Hari Chand Aggarwal** (supra) and the decisions of High Court of Gujarat, Kerala and Calcutta, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court and to hold that it is only the District Magistrate or the Chief Metropolitan Magistrate who are conferred with

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- A the powers in their specific capacity as Chief Metropolitan Magistrate or District Magistrate to exercise the powers under Section 14 of the SARFAESI Act.

5. Shri Sachin Patil, learned counsel appearing on behalf of the State has supported the impugned judgment and order passed by the B High Court. It is submitted that looking to the mandate under Section 14 of the SARFAESI Act to decide and dispose of the applications under Section 14 within a maximum period of 60 days and looking to the volume of the work and applications pending with the District Magistrates or the Chief Metropolitan Magistrates and that they have also to look after and consider other duties including the administrative work and with a view C to see that the ultimate object and purpose of providing the time lines in deciding the applications under Section 14 of the SARFAESI Act, it is prayed to dismiss the present appeal.

6. Heard. While considering the issue whether the Additional D District Magistrate or Additional Chief Metropolitan Magistrate may exercise the powers under Section 14 of the SARFAESI Act and/or the issue whether the expression "District Magistrate" and the "Chief Metropolitan Magistrate" as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purposes of Section 14 E of the SARFAESI Act, the powers exercisable by the District Magistrate (for short "DM") and the Chief Metropolitan Magistrate (for short "CMM") under Section 14 of the SARFAESI Act are first required to be considered. Section 14 of the SARFAESI Act reads as under:-

- F "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, G 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 H to him—

(a) take possession of such asset and documents relating thereto; A  
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—

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(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

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(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;

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(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

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

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

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(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;

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(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;

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(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;

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A (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

B 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]

[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.]

D 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.]

E (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.

F (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.”

G 6.1 That in the year 2013 by Act 1 of 2013, Section 14 (1A) has been inserted by which now, while exercising the powers under Section 14 of the SARFAESI Act, 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. Section 14 (1A) as inserted in the year 2013 reads as under:-

H “[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 A

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

6.2 Even as observed and held by this Court in the recent decision of **NKGSB Cooperative Bank Limited Vs. Subir Chakravarty & Ors.** (Civil Appeal No. 1637/2022) decided on 25.02.2022, it is open to the CMM/DM to appoint an advocate and authorise him/her to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor under Section 14(1A) of the SARFAESI Act.

7. Now so far as the powers exercisable by DM and CMM under Section 14 of the SARFAESI Act are concerned, statement of objects and reasons for which SARFAESI Act has been enacted reads as under:-

**“STATEMENT OF OBJECTS AND REASONS**

The financial sector has been one of the key drivers in India’s efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them

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- A without the intervention of the court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the 21st June, 2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.
- B The provisions of the Ordinance would enable banks and financial institutions to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce nonperforming assets by adopting measures for recovery or reconstruction.”
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- D Thus, the underlying purpose of the SARFAESI Act is to empower the financial institutions in India to have similar powers as enjoyed by their counterparts, namely, international banks in other countries. One such feature is to empower the financial institutions to take possession of securities and sell them. The same has been translated into provisions falling under Chapter III of the SARFAESI Act. Section 13 deals with enforcement of security interest. Sub-Section (4) thereof envisages that in the event a default is committed by the borrower in discharging his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the measures provided in sub-section (4). One of the measures is to 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. That, they could do through their “authorised officer” as defined in Rule 2(a) of the Security Interest (Enforcement) Rules, 2002.
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- F 7.1 After taking over possession of the secured assets, further steps to lease, assign or sale the same could also be taken by the secured creditor. However, Section 14 of the SARFAESI Act predicates that if the secured creditor intends to take possession of the secured assets, must approach the CMM/DM by way of an application in writing, and
- G on receipt of such request, the CMM/DM must move into action in right earnest. After passing an order thereon, he/she (CMM/DM) must proceed to take possession of the secured assets and documents relating thereto for being forwarded to the secured creditor in terms of Section 14(1) read with Section 14(2) of the SARFAESI Act. As noted earlier, Section 14(2) is an enabling provision and permits the CMM/DM to take
- H such steps and use force, as may, in his opinion, be necessary.

7.2 At this stage, it is required to be noted that along with insertion of sub-section (1A), a proviso has also been inserted in sub-section (1) of Section 14 of the SARFAESI Act whereby the secured creditor is now required to comply certain conditions and to disclose that by way of an application accompanied by affidavit duly affirmed by its authorised officer in that regard. Sub-Section (1A) is in the nature of an explanatory provision and it merely restates the implicit power of the CMM/DM in taking services of any officer subordinate to him. As observed and held by this Court in the case of **NKGSB Cooperative Bank Ltd.** (*supra*), the insertion of sub-section (1A) is not to invest a new power for the first time in the CMM/DM as such.

8. Thus, considering the scheme of the SARFAESI Act, it is explicit and crystal clear that possession of the secured assets can be taken by the secured creditor before confirmation of sale of the secured assets as well as post-confirmation of sale. For taking possession of the secured assets, it could be done by the “authorised officer” of the Bank as noted in Rule 8 of the Security Interest (Enforcement) Rules, 2002.

8.1 However, for taking physical possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under Section 14(1) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. As mandated by Section 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment. As observed and

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- A held by this Court in the case of **NKGSB Cooperative Bank Ltd.** (*supra*), 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.
- D 9. Thus, in view of the scheme of the SARFAESI Act, more particularly, Section 14 of the SARFAESI Act and the nature of the powers to be exercised by learned Chief Metropolitan Magistrate/learned District Magistrate, the High Court in the impugned judgment and order has rightly observed and held that the power vested in the learned Chief Metropolitan Magistrate/learned District Magistrate is not by way of persona designata.
- F 10. Now the next question which is posed for consideration of this Court is, whether, the Additional Chief Metropolitan Magistrate can be said to be subordinate to the Chief Metropolitan Magistrate. For that purpose the relevant provisions of the Cr.PC, namely, Sections 11, 12, 15, 16, 17, 19 and 35, are required to be referred to which are extracted as under:-
  - G “11. Courts of Judicial Magistrates.—(1) In every district (not being a metropolitan area) there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify: 1 [Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and
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where any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.] (2) The presiding officers of such Courts shall be appointed by the High Court. (3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court.

12. Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.—(1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate. (2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct. (3) (a) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires. (b) Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.

15. Subordination of Judicial Magistrates.—(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate. (2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him.

16. Courts of Metropolitan Magistrates.—(1) In every metropolitan area, there shall be established as many Courts of Metropolitan Magistrates, and at such places, as the State Government may,

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- A after consultation with the High Court, by notification, specify. (2) The presiding officers of such Courts shall be appointed by the High Court. (3) The jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the metropolitan area.
- B 17. Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate.—(1) The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area. (2) The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct.
- C 19. Subordination of Metropolitan Magistrates.—(1) The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate. (2) The High Court may, for the purposes of this Code, define the extent of the subordination, if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate. (3) The Chief Metropolitan Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Metropolitan Magistrates and as to the allocation of business to an Additional Chief Metropolitan Magistrate.
- D F 35. Powers of Judges and Magistrates exercisable by their successors-in-office.—(1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office. (2) When there is any doubt as to who is the successor-in-office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Additional or Assistant Sessions Judge. (3) When there is any doubt as to who is the successor-in-office of any Magistrate, the Chief Judicial Magistrate, or the District Magistrate, as the case may be, shall determine by order
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in writing the Magistrate who shall, for the purpose of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Magistrate.”

10.1 From the aforesaid provisions, it can be seen that any Metropolitan Magistrate can be appointed by the High Court to be the Chief Metropolitan Magistrate. The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under Cr.PC or under any other law for the time being in force as the High Court may direct. The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate. Thus the judicial powers and the powers, under the Cr.PC which may be exercised by the Chief Metropolitan Magistrate, can be exercised by the Additional Chief Metropolitan Magistrate also. Thus, the Additional Chief Metropolitan Magistrate can be said to be at par with the Chief Metropolitan Magistrate in so far as the powers to be exercised under the Cr.PC are concerned. The Chief Metropolitan Magistrate in addition, may have administrative powers. However, for all other purposes and more particularly the powers to be exercised under the Cr.PC both are at par. Therefore, the Additional Chief Metropolitan Magistrate cannot be said to be subordinate to the Chief Metropolitan Magistrate in so far as exercise of judicial powers are concerned.

10.2 In view of the above discussion and as observed hereinabove when the powers to be exercised by the Additional Chief Metropolitan Magistrate are at par with the powers to be exercised by the Chief Metropolitan Magistrate [Section 17(2) of Cr.PC] and the Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge (Section 19 of the Cr.PC) and the steps to be taken by the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act as observed hereinabove are ministerial in nature and does not involve any adjudicatory process and there is no element of any quasi-judicial function, we see no reason to take a different view than the view taken by the Bombay High Court in the impugned judgment. We hold that the expression “Chief Metropolitan Magistrate” as appearing in Section 14 of the SARFAESI Act shall deem to mean

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- A and include Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act.

- 10.3 Similarly, when the Additional District Magistrates are conferred with the powers to be exercised by the District Magistrates either by delegation and/or by special orders and the Additional District Magistrates are exercising the same powers which are being exercised by the District Magistrates, the same analogy can be applied, more particularly, when the powers exercisable under Section 14 of the SARFAESI Act, are ministerial steps.

11. The issue/question may also be considered from another angle.

- C It cannot be disputed and even judicial notice can be taken of the fact that the CMMs and/or even the DMs are required to perform so many other duties under different statutes. They have to perform many administrative duties also. District Magisters are in overall administrative control of their jurisdiction/district. Similarly, CMMs are also required to perform administrative duties and they have also to deal with the other cases/criminal trials and many trials under special statutes also. It cannot be disputed that the litigations under the SARFAESI Act and proceedings and/or applications under Section 14 of the SARFAESI Act are increasing. Even as noticed by the High Court in the impugned judgment and order, as on 09.08.2017, 926 cases were pending under Section 14 of the SARFAESI Act before only one CMM. Therefore, a number of applications under Section 14 are pending. It also cannot be disputed that the SARFAESI Act provides for expeditious disposal of the applications filed under Section 14 of the SARFAESI Act. As per, second proviso to Section 14, suitable orders for the purpose of taking possession of the secured assets are required to be passed within a maximum period of sixty days from the date of the application. Therefore, if the submission on behalf of the appellants that only the concerned CMM/DM alone would have jurisdiction to decide the applications under Section 14 of the SARFAESI Act is accepted, in that case, it will be practically impossible for the concerned CMM/DM to decide the application under Section 14 of the SARFAESI Act expeditiously and within the time stipulated under second proviso to Section 14 of the SARFAESI Act. If the interpretation which we propose that, the District Magistrate/Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act includes the Additional District Magistrate/Additional Chief Metropolitan Magistrate, the same can be said to be a purposive interpretation to H

achieve the object and purpose of proceedings under the SARFAESI Act, more particularly when as observed hereinabove, the orders to be passed under Section 14 of the SARFAESI Act are ministerial steps and to assist the secured creditor in getting/obtaining the possession of the secured property. Thus, there is no element of exercise of adjudicatory powers under Section 14 of the SARFAESI Act. All these aspects have been considered in detail by the High Court in the impugned judgment and order.

12. We are in complete agreement with the view taken by the High Court that (i) the District Magistrate, Chief Metropolitan Magistrate is not a persona designata for the purposes of Section 14 of the SARFAESI Act; (ii) the expression “District Magistrate” and the “Chief Metropolitan Magistrate” as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act.

13. The contrary view taken by the other High Courts, namely, Gujarat High Court in the case of Pushpa Devi B Jain W/o Bhawarlal M Jain Vs. Indian Overseas Bank in Special Civil Application No. 19102/2015; Calcutta High Court in the case of Shri Chellaperumal & Anr. Vs. The Authorised Officer & Ors. in M.A. No. 26/2014 and Kerala High Court in the case of Aseena Vs. Sub-Divisional Magistrate and Ors. in W.P. (C) No. 3331/2007, is not a good law and are specifically overruled.

14. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. We hold that the powers under Section 14 of the SARFAESI Act can be exercised by the concerned Additional Chief Metropolitan Magistrates of the area having jurisdiction and also by the Additional District Magistrates, who otherwise are exercising the powers at par with the concerned District Magistrates either by delegation and/or special order. The present appeal is accordingly dismissed. No costs.