The Authorized Officer,Indian Bank vs D. Visalakshi on 23 September, 2019

Equivalent citations: AIR 2019 SUPREME COURT 4619, AIRONLINE 2019 SC 1113, 2020 (1) AKR 50, (2019) 12 SCALE 766, (2019) 2 CLR 1140 (SC), (2019) 4 BANKCAS 41, (2019) 4 ICC 675, (2019) 4 RECCIVR 952, (2019) 6 ANDHLD 118, (2020) 129 CUT LT 127, 2020 (1) ABR(CRI) 51, AIR 2020 SC(CRI) 125

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Bench: Dinesh Maheshwari, A.M. Khanwilkar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S).6295 OF 2015

The Authorised Officer, Indian Bank ..…Appellant(s)

Versus

D. Visalakshi and Anr. ….Respondent(s)

With

Civil Appeal No(s) 7554-7555 of 2019
(Arising out of SLP (C) No(s).12430-12431 of 2015)

Criminal Appeal No(s) 1463-1464 of 2019
(Arising out of SLP (Crl.) No(s).393-394 of 2019)

Civil Appeal No(s) 7557 of 2019
(Arising out of SLP (C) No(s) 23193 of 2019)
(Arising out of Diary No(s).47134 of 2018

Civil Appeal No(s) 7558 of 2019
(Arising out of SLP (C) No(s).7121 of 2019)

Criminal Appeal No(s) 1465 of 2019
(Arising out of SLP (Crl.) No(s).3507 of 2019)

Criminal Appeal No(s) 1478 of 2019
(Arising out of SLP (Crl.) No(s).3689 of 2019)

Criminal Appeal No(s) 1466 of 2019
(Arising out of SLP (Crl.) No(s).4351 of 2019)

Criminal Appeal No(s) 1467 of 2019

(Arising out of SLP (Crl.) No(s).4293 of 2019)

Criminal Appeal No(s) 1468 of 2019
(Arising out of SLP (Crl.) No(s).4387 of 2019)

Criminal Appeal No(s) 1469 of 2019
(Arising out of SLP (Crl.) No(s) 8870 of 2019)
(Arising out of Diary No(s).15461 of 2019)

Criminal Appeal No(s) 1470 of 2019
(Arising out of SLP (Crl.) No(s) 8871 of 2019)
(Arising out of Diary No(s).15465 of 2019)

Criminal Appeal No(s) 1471 of 2019
(Arising out of SLP (Crl.) No(s) 8872 of 2019)
(Arising out of Diary No(s).15467 of 2019)

Criminal Appeal No(s).900 of 2019

Criminal Appeal No(s) 1472 of 2019
(Arising out of SLP (Crl.) No(s).5058 of 2019)

Criminal Appeal No(s) 1473 of 2019
(Arising out of SLP (Crl.) No(s).5368 of 2019)

Criminal Appeal No(s) 1475 of 2019
(Arising out of SLP (Crl.) No(s).5268 of 2019)

Criminal Appeal No(s).945 of 2019

Civil Appeal No(s) 7560-7561 of 2019
(Arising out of SLP (C) No(s).13722-13723 of 2019)

Criminal Appeal No(s) 1476 of 2019
(Arising out of SLP (Crl.) No(s).5346 of 2019)

Criminal Appeal No(s) 1477 of 2019

(Arising out of SLP (Crl.) No(s).5351 of 2019)

JUDGMENT

A.M. Khanwilkar, J.

Delay condoned. Leave granted in Special Leave Petitions.

2. The seminal question involved in these appeals is: whether the Chief Judicial Magistrate (for short, "CJM") is competent to process the request of the secured creditor to take possession of the secured asset under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "2002 Act")? There are conflicting views of different High Courts on this question. The High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand have interpreted the said provision to mean that only the Chief Metropolitan Magistrate (for short, "CMM") in metropolitan areas and the District Magistrate (for short, "DM") in non-metropolitan areas are competent to deal with such request. On the other hand, the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh have taken a contrary view of the same provision, to mean that it does not debar or preclude the CJM in the non-metropolitan areas to exercise power under Section 14 of the 2002 Act.

3. The earliest decision is of the Division Bench of the High Court of Kerala at Ernakulam in Muhammed Ashraf and Anr. Vs. Union of India (UOI) and Others1. The Court noted that Section 14 of the 2002 Act expressly refers to CMM in relation to metropolitan areas and DM for non-metropolitan areas. It then went on to observe that as the powers and functions of CJM in non-metropolitan areas and CMM in metropolitan areas are one and the same (with only difference that CMM exercises powers in metropolitan areas and CJM in non-metropolitan areas); and the expression CJM and CMM are interchangeably used namely, one is synonymous for the other depending on the area under its jurisdiction, by interpretative process, it concluded that in non-metropolitan areas, apart from DM, the CJM is also competent to exercise powers under Section 14 of the 2002 Act. This decision was carried in appeal before this Court being SLP (C) No.1671 of 2009 which, however, came to be dismissed on 2 nd February, 2009 as no ground to interfere with the impugned judgment was made out.

1. AIR (2009) Ker. 14

4. Soon thereafter, another Division Bench of the High of Kerala in Radhakrishnan, V.N. Vs. State of Kerala and Anr. 2, reiterated the view taken in Muhammed Ashraf (supra) and declined to refer the matter to a full bench for reconsideration.

5. However, around the same time, the High Court of Bombay (Aurangabad Bench) in IndusInd Bank Ltd., (formerly known as Ashok Leyland Finance Ltd.) through its Legal Executive, Ravindrakumar Prakash Bhargodev Vs. The State of Maharashtra through Police Station3, had taken a diametrically opposite view. It had held that it is not open to substitute the word, "CMM" for

"CJM". For, there is no indication in the 2002 Act that the legislature had intended to empower the CJM outside the metropolitan areas, although the judicial officer (CMM) was entrusted with the power to deal with such request in the metropolitan areas. Again in Arjun Urban Co□operative Bank Ltd., Solapur Vs. Chief Judicial Magistrate, Solapur and Ors.4, another Division Bench of the High Court of Bombay opined that Section 14 of the 2002 Act, in no univocal terms, 2 MANU/KE/0677/2008 (Cr. M.C. No.4369 of 2008 dated 20.11.2008) 3 2008 (110) BOM LR 2880 (decided on 22.04.2008) 4 2009 (5) Mh. L.J. 380 constricts the exercise of powers only by the CMM or DM, as the case may be.

6. However, in 2013, the High Court of Karnataka in Kaveri Marketing Vs. The Saraswathi Co□op. Bank Ltd.5 took the same view as taken by the High Court of Kerala that the CJM can also exercise powers under Section 14 of the 2002 Act. But the Single Judge of the High Court of Calcutta in Dinesh Kumar Agarwal Vs. State of West Bengal6 and the full bench of Madras High Court in K. Arockiyaraj Vs. The Chief Judicial Magistrate, Srivilliputhur Virudhunagar District and The Housing Development Finance Corporation Limited7 took a different view as taken by the High Court of Bombay and held that the CMM or DM, as the case may be, alone can exercise powers under Section 14 of the 2002 Act. Later, the High Court of Madras in T.C. Ramadoss and Ors. Vs. The Chief Manager & Authorised Officer State Bank of India and Ors.8, the High Court of Madhya Pradesh in Shyam Sunder Rohra Vs. 5 111 (2013) BC 582 6 2013 (1) CHN 671 7 AIR (2013) Mad. 206 8 AIR (2015) Mad. 67 IndusInd Bank9, the High Court of Uttarakhand at Nainital in Deepak Aggarwal Vs. State of Uttarakhand and Others 10 and the Division Bench of the High Court of Calcutta in Andhra Bank and Ors. Vs. Sri Dinesh Kumar Agarwal and Ors.11 also held that CMM or DM, as the case may be, alone can exercise power under Section 14 of the 2002 Act.

7. Whereas, the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in M/s T.R. Jewellery and Another Vs. State Bank of India and Another12 and the High Court of Allahabad in Abhishek Mishra Vs. State of U.P. and Others.13, by interpretative process opined that even the CJM was competent to exercise powers under Section 14 of the 2002 Act.

8. The borrowers or the persons claiming through borrowers, would contend that literal interpretation of Section 14 of the 2002 Act must be preferred. In which case, the secured creditor can seek assistance "only" of CMM in metropolitan areas and DM 9 AIR (2017) M.P. 36 10 MANU/UC/0012/2012 11 (2013) 4 CHN 95 12 AIR (2016) A.P. 125 (FB) 13 AIR (2016) All. 210 in non□metropolitan areas, for the purpose of taking over possession of the secured asset or property (instead of resorting to recovery of property by other means). As the provision is univocal, it cannot be interpreted in any other manner. To do so would entail in doing violence to the legislative intent. There is presumption that Parliament had complete knowledge of the existing laws and was conscious of the distinction or similarity between the scope of powers to be exercised by the CMM, DM and CJM, as the case may be, in terms of the provision of Cr.P.C. and other laws. Despite such awareness, the parliament consciously chose to identify clearly, the authority which can entertain the application(s) of the secured creditor under Section 14 of the 2002 Act. In that sense, the provision is in the nature of defining the authority persona designata, namely CMM and DM for the concerned area.

9. If so, contends the learned counsel, it is not open for the Court to take recourse of interpretative process to include another authority such as CJM merely because the functions discharged by the CJM and CMM under the Cr.P.C. and other laws are similar. There is no room for invoking the doctrine of Casus Omissus in light of the unambiguous provision in the form of Section 14 of the 2002 Act. Thus, the similarity of functions discharged by the CMM and CJM under the Cr.P.C. would be of no avail. Rather, the Court must follow the maxim "cum inverbis nulla ambiguitas est, non debet admitti voluntatis quaestio" and prefer the plain language of the statute. To demonstrate the distinction between the hierarchy of the judicial officers, reliance has been placed on a chart which clearly distinguishes them on the basis of their functions as non□Judicial Magistrate and Judicial Magistrate in the concerned area. The office of DM essentially discharges executive functions and comes within the non□Judicial Magistrate category. On the other hand, the office of CMM or CJM would involve both executive and judicial functions. This distinction is crucial and it must be presumed that the Parliament was conscious about this distinction. It is also urged that the Parliament in various Acts, including the Sick Industrial Companies (Special Provision) Act, 1985 – Section 29, Banking Regulation Act, 1949 – Section 45S, Industrial Reconstruction Bank of India, 1984 – Section 51, National Housing Bank Act, 1987 – Section 36□H, Companies Act, 1956 – Section 10FP, Companies Act, 2013 – Section 429 and Small Industries Development Bank of India Act, 1989 □Section 39, have enacted similar provisions empowering CMM/DM, for seeking assistance to take possession of the property sold or leased.

10. It is urged that taking any other view would require re□writing of Section 14 of the 2002 Act and in the process doing violence to the legislative intent. That must be eschewed. It is urged that in contradistinction to the expression used in Section 14 "CMM" and "DM", Section 30 of the same Act (2002 Act) refers to the authority as "Metropolitan Magistrate" or a "Judicial Magistrate", as the case may be for taking cognizance of offences punishable under the Act.

11. To buttress the above submissions, reliance is placed on Shankarlal Aggarwal and Ors. Vs. Shankarlal Poddar and Ors.14, Municipal Corporation of Delhi Vs. Shiv Shanker15, Ratan Lal Adukia Vs. Union of India16, Kishorebhai Khamanchand Goyal Vs. State of Gujarat and Another17, M/s. Unique Butyle Tube Industries Pvt. Ltd. Vs. U.P. 14 AIR (1965) SC 507 15 (1971) 1 SCC 442 16 (1989) 3 SCC 537 17 (2003) 12 SCC 274 Financial Corporation and Ors.18, Delhi Financial Corpn. and Another Vs. Rajiv Anand and Others19, A.N. Roy, Commissioner of Police and Another Vs. Suresh Sham Singh20, Standard Chartered Bank Vs. V. Noble Kumar and Others21, Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and Others 22, Shree Bhagwati Steel Rolling Mills Vs. Commissioner of Central Excise and Another.23, Authorized Officer, State Bank of Travancore and Others. Vs. Mathew K.C.24, Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company and Others25.

12. Per contra, the secured creditors (Banks) and auction purchasers would commend us with the view taken by the High Courts of Kerala, Andhra Pradesh, Allahabad and Karnataka. According to them, the process under Section 14 of the 2002 Act 18 AIR (2003) SC 2103 19 (2004) 11 SCC 625 20 (2006) 5 SCC 745 21 (2013) 9 SCC 620 22 (2014) 6 SCC 1 23 (2016) 3 SCC 643 24 (2018) 3 SCC 85 25 (2018) 9 SCC 1 can be invoked by the secured creditor only for taking possession of the secured assets. The application is required to be filed by the secured creditor supported by an affidavit

stating due compliances of the stipulations provided therefor. The inquiry envisaged under Section 14 of the 2002 Act, to be undertaken by the CMM or DM, is minimal and basic in nature. It is only to satisfy itself about the factual position stated by the secured creditor in the concerned application including the appended affidavit filed therewith. It is not an adjudicatory process muchless to decide about the rights and liabilities of the contesting parties. The nature of inquiry is essentially one of exercise of administrative or executive powers. Sub-Section (1A) enables the DM or CMM to authorise any officer subordinate to him to take possession.

13. The CMM and CJM are clothed with powers as per the scheme of Cr.P.C.. The office of CMM and CJM are interchangeable and they discharge similar functions in their respective jurisdictions namely, metropolitan and non-metropolitan areas, as the case may be. The recent enunciation of this Court expounds that the inquiry requires judicious approach. Therefore, it could be effectively exercised by CJM in a non-metropolitan area. There is no express provision in the 2002 Act, so as to disregard the dispensation under the Cr.P.C., concerning the exercise of powers by the CMM and CJM respectively. On the other hand, Section 37 of the 2002 Act makes it amply clear that the application of provisions of Cr.P.C. is not completely ruled out. Section 37 of the 2002 Act postulates that the application of other laws in force would continue to apply and the provisions of 2002 Act or the Rules made thereunder shall be in addition thereto and not in derogation thereof.

14. It is urged that the 2002 Act does not define the term “CMM” or “DM”. Reliance is then placed on Section 2(k) of Cr.P.C. which defines the expression “metropolitan area” and Section 3 of Cr.P.C. which defines the expression “CMM” or “DM”. The adjudicatory process like sifting of evidence, trial etc. is required to be undertaken only by a Judicial Magistrate. The Executive Magistrate can exercise only executive powers. Indisputably, the powers of CJM in non-metropolitan area and CMM in metropolitan area are equal and those terms are used as synonymous. Additionally, reliance is placed on Section 12 of Cr.P.C. concerning the Judicial Magistrate and Additional Judicial Magistrate, Section 14 concerning local jurisdiction, Section 16 and 17 concerning courts of Metropolitan Magistrate, CMM and Additional Chief Metropolitan Magistrate respectively. Section 20 of Cr.P.C. deals with the office of Executive Magistrates. Relying on the exposition of this Court in All India Judges’ Association and Others Vs. Union of India and Others26, it is urged that incontrovertibly the post of CJM and CMM must be equated and they have to be placed in the same cadre of Civil Judge (Senior Division). Reliance is also placed on Standard Chartered Bank (supra), to contend that there is no difference in the jurisdiction or powers exercisable by the CJM and CMM, except operating in different territorial area. It is thus urged that expressions “CMM/DM” in Section 14 be construed as also including “CJM” in a non-metropolitan area.

15. Reliance is then placed on Sindhi Education Society and Another Vs. Chief Secretary, Government of NCT of Delhi 26 (2002) 4 SCC 247 and Others27, Rani Kusum (Smt.) Vs. Kanchan Devi (Smt.) and Others28 and Vinay Tyagi Vs. Irshad Ali Alias Deepak and Others29, to buttress the submission that Section 14 of the 2002 Act must receive a construction which would advance the cause of justice and legislative object sought to be achieved. A purposive interpretation of Section 14 as including the office of CJM in a non-metropolitan area would further the legislative intent as it would enable the secured creditor to approach the CJM to take possession of the secured assets thereat.

16. It is urged that the borrowers or the persons claiming through borrowers, cannot be heard to make any grievance, if the application filed under Section 14 is dealt with by a judicial mind; and moreso because the nature of inquiry to be undertaken is circumscribed. In that, it is merely verification of compliances by the secured creditor. In any case, the aggrieved borrower has a statutory remedy of appeal against the order passed by the CJM as would be available against the order passed by CMM/DM. Similarly, all contentious issues available to the borrowers or the persons claiming through them could be 27 (2010) 8 SCC 49 28 (2005) 6 SCC 705 29 (2013) 5 SCC 762 raised by them even before the CJM, who would be equally competent to deal with the same as would be done by the CMM/DM, as per law. Considering the fact that the CMM and CJM both discharge similar functions and are treated equivalent for all purposes in the respective territorial jurisdictions, it is not a case of application being processed by someone who is inferior and not competent or qualified to do so.

17. To buttress the above submissions reliance is placed on Vishal N. Kalsaria Vs. Bank of India and Others 30, State of A.P. Vs. Polamala Raju Alias Rajarao31, Sri Nasiruddin Vs. State Transport Appellate Tribunal32, Bhudan Singh and Another Vs. Nabi Bux and Another33, K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another 34, Atma Ram Mittal Vs. Ishwar Singh Punia35 and M/s. Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others36.

30 (2016) 3 SCC 762 31 (2000) 7 SCC 75 32 (1975) 2 SCC 671 33 (1969) 2 SCC 481 34 (1981) 4 SCC 173 35 (1988) 4 SCC 284 36 (1986 2 SCC 237

18. It is also urged that in certain States, the functions of the DM are discharged by the Deputy Commissioner of the State such as in the State of Jharkhand. Therefore, the interpretation put forth by the High Courts that application under Section 14 of the 2002 Act can also be moved before the CJM in a non□metropolitan area, would sub□serve the interests of all concerned and also effectuate the legislative intent of expeditious resolution of matters under the 2002 Act without intervention of the Court. Lastly, it is urged that if this Court upholds the view taken by the concerned High Courts that CJM is not competent to deal with the action under Section 14 of the 2002 Act, this Court may invoke the doctrine of prospective overruling and save all the orders passed by the CJM's to this end.

19. We have heard Mr. Dhruv Mehta, Mr. Sudhivasudevan, Mr. Jaideep Gupta and Mr. Jayanth Muthraj, Senior Advocates, Mr. Kuriakose Varghese, Mr. A. Karthik, Mr. E. Easwaran, Mr. Sajith P. Warrier Mr. Govind Manoharan, Ms. Nina Gupta, Mr. Roy Abraham, Mr. Philip K. Varghse, Mr. Rakesh K. Sharma, Mr. Radha Shyam Jena, Mr. Himanshu Munshi, Mr. Ram Swarup Sharma, and Mr. Mudit Sharma, Advocates.

20. We deem it apposite to reproduce Section 14 of the 2002 Act. The same reads thus:

> "14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.□(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset 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 asset, 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 assets 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;

(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 assets 2[within a period of thirty days from the date of application]:

[Provided 4[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 of 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 6[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.

1. Ins. By Act 1 of 2013, sec. 6(a) (w.e.f. 15□1□2013, vide S.O. 171 (E), dated 15□1□2013).

2. Subs. By Act 44 of 2016, sec. 12(i) (w.e.f. 1□9□2016, vide S.O. 2831(E), dated 1st September, 2016).

3. Ins. By Act 44 of 2016, sec. 12(ii) (w.e.f. 1□9□2016, vide S.O. 2831(E), dated 1st September, 2016).

4. Corrected by Corrigendum Notification, published in the Gazette of India, Extra., Pt.II, Sec. 1, No.56, dated 8th September, 2016.

5. Ins. By Act 1 of 2013, sec. 6(b) (w.e.f. 15□1□2013, vide S.O. 171(E), dated 15□1□2013).

6. Ins. By Act 1 of 2013, sec. 6(c) (w.e.f. 15-1-2013, vide S.O. 171(E), dated 15-1-2013).” The unamended provision as applicable at the relevant time when the decision was rendered by the High Court of Kerala in Muhammed Ashraf (supra), was somewhat different. Sub-section (1A) was not in vogue. That has come by way of an amendment in 2013. The provision was amended in 2013 and further amended in 2016, as is reproduced in the extracted portion hitherto.

21. The Division Bench of the High Court of Kerala in Muhammed Ashraf (supra), after adverting to the unamended Section 14 of the 2002 Act had opined that the said provision is a procedural measure whereby the CMM or DM, as the case may be, is obligated to render assistance to the secured creditor to take possession of the secured assets or documents. The said authority is empowered to take such steps and use such force, as may be necessary for taking possession of the secured assets and documents relating thereto. Strikingly, the act of the authority is protected and its action cannot be questioned in any Court or before any authority in terms of Section 34 of the 2002 Act. It also noted that a trial or adjudication of dispute by the authority is not contemplated under this Section. However, the limited inquiry to be undertaken is whether secured property is identifiable and whether 60 days' notice was issued under Section 13(2) enabling the secured creditor to resort to Section 13(4) and take possession of the secured assets. The Court unerringly opined that Section 14 of the 2002 Act is only for the purpose of executing the power and assisting the secured creditor to take possession of the secured assets. The borrower or person affected by such action has a right of judicial review before the Writ Court as ordained by this Court in Mardia Chemicals Ltd. and Others v. Union of India and Others37. The Division Bench then noted that the 2002 Act is a self-contained code, including the powers of the Tribunal to declare any of the measures taken by the secured creditor invalid and consequential restoration of possession to persons from whom the possession was taken. The Court reiterated that in absence of any adjudicatory power vested in the authority referred to in Section 14 of the 2002 Act, it had 37 (2004) 4 SCC 311 (paragraph Nos.80 and 81) no powers to exercise the powers vested in the Tribunal. Whereas, it can only facilitate the secured creditor in taking possession of the secured assets after verification of the basic facts regarding the entitlement of the secured creditor to get such possession. The Court then adverted to the exposition of this Court in Transcore Vs. Union of India and Another38, which had analysed the provisions of the 2002 Act. It then adverted to the Gujarat High Court decision in Bank of India Vs. Pankaj Dilipbhai Hemnani and Others39 and agreed with the dictum therein that the authority referred to under Section 14 of the 2002 Act can only verify whether 60 days' notice as prescribed under Section 13(2) was issued or not and whether secured asset is identifiable. It then noted that after such inquiry the authority before taking action is obliged to satisfy itself in that regard. At the same time, it cannot enter upon adjudication or trial of a dispute while exercising power under Section 14 of the 2002 Act. The Parliament has invested power under Section 14 of the 2002 Act, in a senior functionary so as to avoid an arbitrary and high-handed action at the instance of secured creditor. The Court then 38 (2008) 1 SCC 125(paragraph No.74) 39 AIR 2007 Guj. 201 adverted to the decision in Solaris Systems Pvt. Ltd. and Another Vs. Oriental Bank of Commerce and Another40, of a Single Judge of the same High Court, which for the first time had held that CJM for non-metropolitan areas was competent to deal with the application under Section 14 of the 2002 Act. The Court then noticed the definition of metropolitan area in Section 2(k) of Cr.P.C., Section 3 regarding construction of references which equates the CJM to that of the CMM whilst exercising jurisdiction in the concerned areas. Considering the legislative scheme

in that regard, the Court concluded that the powers of the CJM in non□metropolitan areas and CMM in metropolitan areas, are one and the same with only difference being that the CMM exercises powers in metropolitan areas. The Court then analysed the decision of this Court in Unique Butyle Tube Industries Pvt. Ltd. (supra) and distinguished the same by holding that in the present case, the question was whether the term CMM in metropolitan areas will include CJM in non□metropolitan areas. The Court went on to observe that the legislation must be understood in a reasonable manner. For that, it took support 40 I.L.R. 2006 Ker 645 from the dictum in Holmes Vs. Bradfield Rural District Council41 and also in Sri Nasiruddin (supra) wherein this Court adopted "just reasonable and sensible" interpretation of the provision. The Court then noted the dictum of Denning, L.J. in Seaford Court Estates Ltd. Vs. Asher42 which was quoted with approval by this Court in M. Pentiah Vs. Muddala Veeramallapa43, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others 44 and NEPC Micon Ltd. Vs. Magna Leasing Ltd.45 etc.. The Court also adverted to the enunciation of House of Lords in Inco Europe Ltd. and Ors. Vs. First Choice Distribution (a firm) and Ors.46 wherein it is observed that Court can add words in its interpretative process in suitable cases to give effect to the purpose of legislature. The Court then noted that in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others47, a Constitution Bench of this Court had held that "a casus omissus cannot be supplied by the 41 1949 (1) All ER 381 (Page 384) 42 (1949) 2 All ER 155, P. 164(CA) 43 (1961) 2 SCR 295 44 (1978) ILLJ 349 SC 45 1999 CriLJ 2883 46 2000 (2) All ER 109 47 (2002) 255ITR 147 (SC) Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself...". Lastly, the Court adverted to the decision in National Insurance Co. Ltd. Vs. Laxmi Narain Dhut48 which had considered the dictum in Reserve Bank of India and Others Vs. Peerless General Finance and Investment Company Ltd. and Another49; and Kehar Singh and Others Vs. State (Delhi Admn.)50 to hold that if the statutory provision is open to more than one interpretation, then the Court must adopt the one which represents the true intent of the legislature. However, the function of the Court is only to expound and not to legislate. At the same time, the process of construction combines both literal and purposive approaches. Finally, the Court went on to observe that in the present case there was no casus omissus. In that, CJM in metropolitan areas are designated as CMM and vice versa mutatis□ mutandis by implication and reference by the areas of jurisdiction both stand on the same footing to denote the authority depending upon where he is situated. On that basis, it 48 2007 (2) KLT 470 (SC) (paragraph Nos.34 and 35) 49 (1996) 1 SCC 642 50 (1988) 3 SCC 609 concluded that in non□ metropolitan areas, apart from the DM, the powers can be exercised by the CJM also to render assistance to the secured creditor in taking possession of the secured assets; and in doing so, the Magistrate can appoint a Commissioner for identification of the secured assets and taking possession thereof and if there is any resistance, ask for police assistance and take any effective steps to have possession of the secured assets taken over.

22. The full Bench of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in M/s T.R. Jewellery (supra) also analysed the provisions of the 2002 Act and noted that the object of the Act is to achieve speedier recovery of the dues declared as Non□ Performing Assets (NPAs), without the intervention of the Tribunals or the Courts and for quick resolution of disputes arising out of the action taken for recovery of such dues apart from making better availability of capital liquidity and resources to help in the growth of economy and welfare of the people. As regards to Section 14 of the Act, it noted that the purpose underlying is to assist the

secured creditor for taking possession or control of the secured assets by requesting the authority referred to therein. The Court then went on to analyse the scheme of the Cr.P.C. and noted that the executive powers are to be exercised by the Executive Magistrate, whereas sifting of evidence shall be exercisable only by a Judicial Magistrate. Further, from the scheme of the Cr.P.C., it is clear that the CJM, CMM and the DM are separately referred to in the Code and High Court has been empowered to appoint CJM and CMM while the State Government appoints one of the Executive Magistrate as DM in every District. The Court then adverted to the decisions of different High Courts which have had the occasion to deal with the question under consideration in reference to Section 14 of the 2002 Act, as to whether the CJM in non-metropolitan areas, is equally competent to entertain or deal with the application moved by the secured creditor. It then adverted to Sections 35 and 37 of the 2002 Act and noted the decision of this Court in Mathew Varghese Vs. M. Amritha Kumar and Others51 to conclude that the application of the provisions of the Cr.P.C., would be in 51 (2014) 5 SCC 610 addition to and not in derogation of the provisions of 2002 Act and the provisions of the Code cannot be excluded from consideration while dealing with the 2002 Act. It disagreed with the Full Bench of the Madras High Court that Section 35 of the 2002 Act would override the provisions of Cr.P.C.. After analysing the other decisions, it went on to hold that in terms of Section 14 of the 2002 Act, the CJM can authorise any officer subordinate to him to take possession of such assets after examining the correctness of the assertion made in the affidavit. Thus, it is only a procedural step without any adjudication of any dispute whatsoever. The action is therefore, only an administrative order made for taking possession of the secured assets, if all other conditions are fulfilled. Having already noted that the powers exercised by the CMM and DM in terms of Section 14 of the 2002 Act are synonymous to each other and that they are not adjudicatory in nature, it answered the question under consideration in the affirmative. The Court then noted that there was no casus omissus nor it was reading something into the provision which the legislature never intended nor trying to interpret the provision so as to defeat the intention of the legislature. Whereas, the Court was only resorting to a purposive interpretation to effectuate the intention of the legislature for which the enactment was made. Thus, it concluded that exercise of power by the CJM in non-metropolitan areas, who exercises the same powers as that of CMM in metropolitan areas, would not in any way abrogate or contradict the dispensation predicated in Section 14 of the 2002 Act. Moreso, it would not cause even a tittle of prejudice to any of the parties. Whereas, it would ensure a just process under the aegis of a judicial mind (CJM) in rendering assistance to the secured creditors to recover possession of their assets thereby achieving the object for which the 2002 Act has been enacted.

23. Similarly, the Karnataka High Court at Bangalore in Kaveri Marketing (supra), opined that the expression CMM be construed as inclusive of CJM for non-metropolitan areas, as the powers of CJM and CMM are identical. Thus, the High Court of Karnataka also opined that the CJM in non-metropolitan areas would be competent to entertain and deal with application under Section 14 of the 2002 Act.

24. Similar view has been taken by the Division Bench of the High Court of Allahabad in Abhishek Mishra (supra). It is held that Section 14 of the 2002 Act is a procedural measure enabling the secured creditor to take possession of the secured assets by making application to the authority specified therein. Even the Allahabad High Court adverted to the scheme of the provisions in the

Cr.P.C. bestowing executive and judicial power in the concerned authority. Besides, it made reference to the same decisions as noticed by the High Court of Kerala in Muhammed Ashraf (supra) and concluded as under:

> "34. Applying the above well settled principles of interpretation of Statute, the answer to the issue is nomenclature 'Chief Metropolitan Magistrate' used by legislature is Section 14 of the Act includes Chief Judicial Magistrate functioning in non□ metropolitan area and shall have jurisdiction to entertain an application made under Section 14 of the SARFAESI Act, 2002. In our considered opinion, there is no casus omissus. The interpretation given by us does not amount to reading anything in the provision, which the legislature never intended to, nor the interpretation given by us, in any way, defeats the intention of the Legislature. It is a purposive interpretation to advance the true intention of the legislature for enacting the Act, viz. speedy recovery of bad debts of the banks and financial institutions declared as NPAs. On the contrary, adopting the principles of literal construction in interpretation of the word 'Chief Metropolitan Magistrate' would not only defeat the object and purpose of legislation but would lead to manifestly anomalous result which could not have been intended by the legislature. As per Lord Reid in the case of Luke Vs. IRC, 1966 AC 557, where to apply words would literally defeat the obvious intention of the legislation and produce a wholly unreasonable result, we must do some violence to the words and so achieve that obvious intention and produce a rational construction.
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> 35. The view taken by us finds support from the Full Bench decision of Andhra Pradesh High Court in the case of T.R. Jewellery & Ors. Vs. State Bank of India & Ors. (supra) and a Division Bench of High Court of Kerala in the case of Muhammed Ashraf, C. Arifa Vs. Union of India, we are unable to agree with contrary view taken by Bombay High Court in the case of Indusind Bank Ltd. Vs. State of Maharashtra and High Court of Madras in K. Arockiyaraj Vs. The Chief Judicial Magistrate, Srivilliputhur & Anr., MANU/TN/1796/2013 : 2013 (4) L.W. 485. The Full Bench of Madras High Court in the case of K. Arockiyaraj (supra) was of the view that phraseology used in Section 14 of the Act, 2002 should be given its true meaning without taking any assistance from Code of Criminal Procedure in view of Section 35 of Act, 2002, which provides that provisions of the Act will override all other laws which includes Code of Criminal Procedure. It was also held that when SARFAESI Act is a complete code, there is no need to take resort to Section 3 of Cr.P.C.
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> 36. With respect to the learned Judges, we have been unable to persuade ourselves to agree to the view taken. The Full Bench failed to take notice of Section 37 of the Act, 2002 which provides that application of other laws is not barred. The said section reads as under.
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> "37. Application of other laws not barred.□The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the

Securities and Exchange Board of India Act 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

37. There can be no manner of doubt that words "any other law for time being in force" used in Section 37 would also include Code of Criminal Procedure within its ambit and the application of provisions of Cr.P.C. cannot be excluded from consideration while dealing with the provisions of Act, 2002. Hence, the view taken by Full Bench of Madras High Court that in view of Section 35 of Act, 2002, the provisions of said Act would override the provisions of Cr.P.C. and the words 'Chief Metropolitan Magistrate' used in Section 14 should be given literal interpretation without taking any aid or assistance of Cr.P.C. does not, to us, appear to be correct.

38. Fort the aforesaid facts and discussions, we are of the considered view that nomenclature 'Chief Metropolitan Magistrate' used in Section 14 of Act, 2002 is inclusive of 'Chief Judicial Magistrate' functioning in a non-metropolitan area and shall have jurisdiction to entertain an application made by a secured creditor under Section 14 of Act, 2002."

25. We shall now turn to the other decisions taking the view that only DM in a non-metropolitan area is competent to deal with the application filed by the secured creditor under Section 14 of the 2002 Act. The Division Bench of the High Court of Bombay in IndusInd Bank Ltd. (supra) after adverting to the statement of objects and reasons of the 2002 Act, opined that the secured creditor is not required to obtain a decree from a competent Court/DRT before being entitled to take steps for the purpose of enforcement of recovery in relation to the secured assets. While dealing with the specific issue as to whether, the CJM is competent to deal with the application filed by the secured creditor under Section 14 of the 2002 Act, the Court went by the plain text of Section 14 of the 2002 Act to hold that the CJM was not competent to do so; and that only the CMM in metropolitan areas and DM in non-metropolitan areas is competent to assist the secured creditor in taking possession of the secured assets, in terms of the 2002 Act. It noted that the reference to expression CJM is conspicuously absent in Section 14 of the 2002 Act and, therefore, the legislature did not intend to entrust the stated function to CJM in a non-metropolitan area, although the same is entrusted to CMM, a judicial officer, in metropolitan area. Yet again, in Arjun Urban Co-operative Bank Ltd. (supra), another Division Bench of the High Court of Bombay reiterated the exposition in IndusInd Bank Ltd. (supra) after adverting to the dictum in Trade Well and Another Vs. Indian Bank and Another52, Transcore (supra) and Unique 52 (2007) Cri. LJ 2544 Butyle Tube Industries Pvt. Ltd. (supra). It noticed the Kerala High Court decision in Muhammed Ashraf (supra) and agreed therewith only to the extent that there was no casus omissus in Section 14 of the 2002 Act -as it refers to two distinct authorities. However, it went on to disagree with the view taken therein that CJM is also competent to deal with such applications; because, in its view, when literal construction of Section 14 of the 2002 Act was explicit then there was no need to supplement any word(s) thereto. For, the interpretation of Section 14 of the 2002, as it stands, does not lead to any absurd results. It did notice that the authority referred to in Section 14 of the 2002 Act has no power to adjudicate upon any rights of the parties but can only render assistance to the secured creditor to recover possession. It opined that nothing prevented the legislature from adding the words CJM in Section 14 of the 2002 Act. It then went on to advert to the dictum of Lord Denning in Seaford Court

Estates Ltd. (supra) and House of Lords in Inco Europe Ltd. (supra) wherein, it was held that a Court can add words in its interpretative process in suitable cases, if omission or inadvertence of drafting is noticed to give effect to the purpose of the legislation, but not otherwise. It held that there was no inadvertence in drafting of Section 14 of the 2002 Act, when it referred to two distinct authorities, namely, CMM and DM. The High Court of Bombay thus, adopted the route of literal interpretation of the provision as it stands.

26. The next decision is of the High Court of Uttarakhand at Nainital in Deepak Aggarwal (supra), which adopted the view taken by the High Court of Bombay in IndusInd Bank Ltd. (supra) and concluded that only CMM in metropolitan areas and DM in non-metropolitan areas would be competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act for taking possession of the secured assets.

27. The Single Judge of High Court of Calcutta in Dinesh Kumar Agarwal (supra), while dealing with the question under consideration relied on his previous decision in Ronit Nirman Pvt. Ltd. Vs. State Bank of India and Others 53, wherein he had agreed with the principle expounded by the High Court of 53 A.S.T. 1337 of 2011 (dated 18th October, 2011) Bombay in IndusInd Bank Ltd. (supra). The Court opined that once an authority has been named for the purpose of rendering assistance, the Court cannot confer jurisdiction on any other authority, who has not been named in the statutory provision for exercising such powers. That would amount to usurping legislative function. It, thus, disagreed with the view taken by the High Court of Kerala, which had held to the contrary that the CJM is equally competent to entertain application filed by the secured creditor under Section 14 of the 2002 Act. This decision of the Single Judge was carried in appeal before the Division Bench in Andhra Bank (supra), which in turn upheld the view taken by the Single Judge that only CMM in metropolitan areas and DM in non-metropolitan areas were competent to deal with the application filed by the secured creditor under Section 14 of the 2002 Act. The Division Bench disagreed with the view taken by the High Court of Kerala on the ground that the language of Section 14 of the 2002 Act was unambiguous and did not warrant construction to empower the CJM in non-metropolitan areas.

28. The Full Bench of the High Court of Madras in K. Arockiyaraj (supra) adverted to the exposition in Mardia Chemicals Ltd. (supra), K. R. Chandrasekaran Vs. Union of India54, which had considered the objects of enactment in question. It noted that the 2002 Act is a self-contained code and after adverting to the relevant provisions observed in paragraph Nos.15 and 16 of its judgment as under:

> "15. On perusal of Sections 13(2), 13(4), 14(1) & 14(2), it is evident that the Secured Creditor can proceed against the Secured Assets, if the borrower makes any default in repayment of secured debts or any installment thereof. Any person aggrieved against the order passed under Section 13(4) of the Act is given a right of Appeal under Section 17 of the Act. The adjudication of the rights of parties will come only if the action of the Secured Creditor is challenged in an Appeal filed under Section 17. A further appeal to the Appellate Tribunal (DRAT) is also provided under Section 18 of the Act.

> 16. Section 14, inserted through the Amendment Act No. 1 of 2013, contemplates delegation of power to assist, by the District Magistrate/Chief Metropolitan Magistrate, to any officer subordinate to him, amplifies the intention of the Parliament to treat the power of assistance as an executive function and not as a judicial function. If the power is a judicial function, adjudicatory in nature, there may not be such delegation to any subordinate officer. It is well settled in law that the adjudicating authority cannot delegate his power as it will run 54 2012 (2) CWC 115 contrary to the Principle 'Delegata potestas non potest deligari'." It then adverted to the dictionary clause of the 2002 Act and noted that sub□section 2(2) saved in the Indian Contract Act 1872; Transfer of Property Act, 1882; the Companies Act, 1956;

the Securities and Exchange Board of India Act, 1992; and which are not inconsistent with the definition given in the 2002 Act. It also noted that the authority referred to in Section 14 is not expected to undertake adjudication of rights of the concerned parties. It then noted Section 34 and 35 of the 2002 Act and went on to observe as follows:

> "20. From the perusal of the above Section 35, it is evident that the provisions of SARFAESI Act, 2002, shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus, the SARFAESI Act will override other laws including the provisions of Crl. P.C. Section 36 of the Act deals with limitation. The limitation question can be raised after passing an order under Section 13(4), if the claim in respect of the financial asset is not made within the period of limitation prescribed under the Limitation Act. Thus, the applicability of Limitation Act, 1963, is permitted under Section 36, however, as per Section 35, the application of Crl. P.C. is not permitted." In this backdrop the Full Bench examined the decision of the Division Bench of the same High Court in Indian Overseas Bank Vs. Sree Aravindh Steels Ltd.55, which had relied on Sections 3, 5 and 8 of the Cr.P.C. concerning the jurisdictions of CJM, CMM and Additional Chief Metropolitan Magistrate. It then noticed Section 20 of the Cr.P.C. relating to the Executive Magistrates and their local jurisdictions as specified therein.
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> After analysing these provisions, it went on to observe thus:
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> "25. On a perusal of the above referred provisions of the Code of Criminal Procedure, Chief Metropolitan Magistrate, Chief Judicial Magistrate and District Magistrate are separately dealt with and only for the purpose of convenience, the High Court is empowered to appoint the Chief Judicial Magistrate to perform the functions akin to Chief Metropolitan Magistrate in Metropolitan areas, which includes judicial functions and administrative functions. When Crl. P.C. itself is dealing with District Magistrates and their jurisdiction, the phraseology used in Section 14(1) should be given its true meaning without any assistance from the Criminal Procedure Code, particularly in the light of Section 35 read with Section 2(2) of the SARFAESI Act, 2002.

> 26. Section 14 of the Act is very clear and unambiguous. It states that the Chief Metropolitan Magistrate or the District Magistrate can assist the Secured Creditors in taking possession of the Secured Assets. It means, in Metropolitan areas, the Secured Creditors can approach either the Chief Metropolitan Magistrate or the District Magistrate and in Non□Metropolitan areas, where there is no Chief Metropolitan Magistrate, the Secured Creditors can seek the assistance of the District Magistrate alone, as 55 2009 (1) CTC 341 no power is vested on the Chief Judicial Magistrate to give assistance to the Secured Creditors in Non□Metropolitan areas. There is no omission in the said section as contended by the learned Senior Counsel for the respondents. If there is no authority mentioned to assist the Secured Creditor in Non□Metropolitan areas, the Secured Creditors may be justified in contending that in case of omission, the meaning given in Crl. P.C. can be imported for the effective implementation of the SARFAESI Act. The said situation being not there, the learned Senior Counsel for the Respondent is not justified in contending that wherever there is no Chief Metropolitan Magistrate, the Chief Judicial Magistrate will automatically get the powers to assist the Secured Creditors. If such an interpretation is accepted, the phraseology used in Section 14 that Chief Metropolitan Magistrate or District Magistrate will have no meaning."

29. To buttress the above view, the Full Bench agreed with the decisions of the High Court of Bombay in IndusInd Bank Ltd. (supra), Arjun Urban Co□operative Bank Ltd. (supra). It also relied on the decision of the High Court of Calcutta, which took similar view as commended to the Full Bench. The Full Bench then noted the decisions of this Court in Official Liquidator Uttar Pradesh and Uttarakhand Vs. Allahabad Bank and Others56, Sri Nasiruddin (supra), Bhudan Singh and Another (supra), K.P. Varghese (supra), Atma Ram Mittal (supra), Indian Administrative Service (S.C.S.) Association, U.P. and 56 (2013) 4 SCC 381 Others Vs. Union of India57, Nasiruddin and Others Vs. Sita Ram Agarwal58, High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others59, Prakash Kumar Alias Prakash Bhutto Vs. State of Gujarat60 and New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another61 and also the dictum in Seaford Court Estates Ltd. (supra), to conclude as follows:

> "35. From the perusal of the above judgments as well as the statutory provisions contained in Section 14 of the SARFAESI Act, 2002, in its independent existence, we are of the firm view that Section 14 does not contemplate the Secured Creditors to approach the Chief Judicial Magistrates for assistance to secure their assets and the Secured Creditors can approach the Chief Metropolitan Magistrate in Metropolitan areas and in Non□Metropolitan areas, the Secured Creditors has to approach the District Magistrate, and not the Chief Judicial Magistrate." The Full Bench decision has been followed by the Division Bench of the same High Court in T.C. Ramadoss (supra). In this decision, the Court, additionally, considered the submission

57 (1993) Supp. 1 SCC 730 58 (2003) 2 SCC 577 59 (2003) 4 SCC 712 60 (2005) 2 SCC 409 61 (2008) 3 SCC 279 regarding prospective overruling and went on to observe as follows:

"15. The doctrine of prospective overruling was recognised for the first time in the American jurisprudence in Great Northern Railway Co. Vs Sunburst Oil & Refining Co. 287 U.S. 358 (1932) The said doctrine was for the first time applied in Golak Nath Vs State of Punjab MANU/SC/0029/1967 : AIR 1967 SC 1643 in India and thereafter referred and relied on in various decisions, and as such, the doctrine of prospective overruling is now an integral part of the Indian Legal System. It is well settled that the overruling decision is a new decision, because it has overruled the settled precedent and it has decided an issue of first impression, where at least one earlier case has not foreshadowed the overruling decision. In the case on hand, the Full Bench in K. Arokiyaraj MANU/TN/1796/2013 : 2013 (6) MLJ 641: 2013 (4) LW 485 (supra) has not unsettled the settled position of law. The settled position of law has been interpreted on plain reading of the provisions. Thus, the contention of the learned counsel for the respondent that the decision of the Full Bench would be applicable prospectively does not merit acceptance and it is accordingly rejected. The language of the relevant provision is plain and clear admitting no confusion, which has been interpreted by the Full Bench in its decision.

16. It is a well settled principle of law that any order passed by an authority without jurisdiction is void and non est and as such, any consequential action taken on the basis of the said order falls to the ground. (See Chief Justice of A.P. Vs L.V.A. Dixitulu MANU/SC/0416/1978 : (1979) 2 SCC 34, A. Jithendernath Vs Jubilee Hills Cooperative House Building Society MANU/SC/8138/2006 : (2006) 10 SCC 96, Ashok Leyland Ltd. Vs State of Tamil Nadu MANU/SC/0020/2004 : (2004) 3 SCC 1, Union of India Vs Pramod Gupta MANU/SC/0549/2005 :

(2005) 12 SCC 1, National Institute of Technology Vs Niraj Kumar Singh MANU/SC/0687/2007 : (2007) 2 SCC 481, Hasham Abbas Sayyad Vs Usman Abbas Sayyad MANU/SC/5541/2006 : (2007) 2 SCC 355, Deepak Agro Foods Vs State of Rajasthan MANU/SC/7812/2008 : (2008) 7 SCC 748, Chandrabhai K. Bhoir Vs Krishna Arjun Bhoir MANU/SC/8230/2008 : (2009) 2 SCC 315 and Union of India Vs Association of Unified Telecom Service Providers of India MANU/SC/1252/2011 : (2011) 10 SCC 543

17. Resultantly, we set aside the impugned order dated 23.07.2012 passed by the CJM, reserving liberty to the respondent bank to take recourse to the appropriate jurisdictional forum under the provisions of law."

30. The Single Judge of the Madras High Court in Shyam Sunder Rohra (supra), adopted the view taken by the Full Bench of High Court of Madras in K. Arockiyaraj (supra) and concluded that Section 14 of the 2002 Act does not permit secured creditors to approach the CJM for assistance to secure their assets but they must approach only CMM in Metropolitan area and DM in non□metropolitan area.

31. Going by the literal interpretation of Section 14 of the 2002 Act, it does appear that CMM or the DM within whose jurisdiction the secured asset is situated in, is bestowed with the authority to entertain the request of the secured creditor for possession of such secured asset. It also appears that remedy is provided before the designated authority, persona designata. That is the view taken by the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand. At the same time, the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh have taken a liberal approach and were persuaded to invoke purposive interpretation and give expansive meaning to the expression "CMM", to include CJM for the non-metropolitan areas. That has been done in the context of the nature of inquiry required to be conducted by the concerned authority.

32. Indisputably, the expressions "CMM" and "DM" have not been defined in the 2002 Act. That definition can thus, be traced to the provisions of Cr.P.C.. It is also well established by now that the 2002 Act, is a self-contained code. Concededly, the nature of inquiry to be conducted by the designated authorities under the 2002 Act, is spelt out in Section 14 of the 2002 Act. The same is circumscribed and is limited to matters specified in Clauses (i) to

(ix) of the first proviso in sub-section (1) of Section 14 of the 2002 Act, inserted in 2013. Prior to the insertion of that proviso, it was always understood that in such inquiry, it is not open to adjudicate upon contentious pleas regarding the rights of the parties in any manner. The stated authorities could only do verification of the genuineness of the plea and upon being satisfied that it is genuine, the adjudication thereof could then be left to the Court of competent jurisdiction.

33. Suffice to observe that an inquiry conducted by the stated authority under Section 14 of the 2002 Act, is a sui generis inquiry. In that, majorly it is an administrative or executive function regarding verification of the affidavit and the relied upon documents filed by the parties. That inquiry is required to be concluded within the stipulated time frame. While undertaking such an inquiry, as is observed by this Court, the authority must display judicious approach, in considering the relevant factual position asserted by the parties. That pre-supposes that it is a quasi-judicial inquiry though, a non-judicial process. The inquiry does not result in adjudication of inter se rights of the parties in respect of the subject property or of the fact that the transaction is a fraudulent one or otherwise.

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

> borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy under Section 17 of the 2002 Act and/or judicial review under Article 226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lessee; nor is it possible to suggest that they are rendered remediless in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any advantage muchless added advantage.

Taking totality of all these aspects, there is nothing wrong in giving expansive meaning to the expression "CMM", as inclusive of CJM concerning non-metropolitan area, who is otherwise competent to discharge administrative as well as judicial functions as delineated in the Cr.P.C. on the same terms as CMM. That interpretation would make the provision more meaningful. Such interpretation does not militate against the legislative intent nor it would be a case of allowing an unworthy person or authority to undertake inquiry which is limited to matters specified in Section 14 of the 2002 Act.

35. Such a view has been taken by the High Court of Kerala as early as in 2006 and on the same lines, are the decisions of the other High Courts (Karnataka, Allahabad and Andhra Pradesh). Be it noted, the challenge to the decision of the High Court of Kerala was unsuccessful before this Court in SLP (C) No.1671 of 2009, which came to be dismissed on 2 nd February, 2009.

36. Now we may turn to the decision in Standard Chartered Bank (supra). The Court was called upon to consider the argument that secured creditor before invoking the remedy under Section 14 of the 2002 Act, must necessarily make an attempt to take possession of the secured assets and can take recourse thereto only if he fails in that effort and encounters resistance to such an attempt. While considering that argument, the Court analysed Sections 13, 14 and 15 of the 2002 Act and opined that Section 14 of the 2002 Act enables the secured creditor who desires to seek the assistance of "State's coercive power" for obtaining possession of the secured assets to make a request in writing to the authority designated therein, within whose jurisdiction the secured asset is located. It also noted that the authority after receiving such request under Section 14 of the 2002 Act, was not expected to do any further scrutiny of the matter except to verify from the secured creditor whether notice under Section 13(2) of the Act has already been given or not and whether the secured asset is located within his jurisdiction. There is no adjudication of any kind at this stage. The Court also noticed in paragraph 23 of the reported judgment that after amendment of Section 14 of the 2002 Act, by inserting first proviso therein, the designated authority has to satisfy itself only with regard to the matters mentioned in clauses (i) to (ix). In paragraph 25 of this decision, the Court noted as follows:

> "25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset." The Court then went on to observe in paragraph Nos.33 and 36 of the reported judgment as follows:

"33. We are of the opinion that the High Court clearly erred in recording such a conclusion. The language of Rule 8 does not demand such a construction. On the other hand, a Magistrate whose functioning is structured by the Code of Criminal Procedure is required to act in accordance with the provisions of the said Code unless expressly ordained otherwise by any other law. It is not a case that Cr.P.C. never prescribed for the procedure to be followed by the Magistrate in a case where the Magistrate is required to take possession of property. For example, under Section 83 of the Code, a criminal court is authorised to attach the movable or immovable property or both belonging to a proclaimed offender. Sub-sections (3) and (4) to Section 83 specifically provide that once an order of attachment under sub-section (1) is made by the criminal court, the property which is the subject-matter of such attachment shall either be seized or taken possession of as the case may be depending upon the fact whether the property is movable or immovable. Both the sub-sections contemplate the appointment of Receiver. It is declared under sub-section (6) that the powers, duties and liabilities of a Receiver appointed under Section 83 are the same as those of a Receiver appointed under the Code of Civil Procedure, 1908.

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36. Thus, there will be three methods for the secured creditor to take possession of the secured assets: 36.1. (i) The first method would be where the secured creditor gives the requisite notice under Rule 8(1) and where he does not meet with any resistance. In that case, the authorised officer will proceed to take steps as stipulated under Rule 8(2) onwards to take possession and thereafter for sale of the secured assets to realise the amounts that are claimed by the secured creditor.

36.2. (ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under Rule 8(1) is given. In that case he will take recourse to the mechanism provided under Section 14 of the Act viz. making application to the Magistrate. The Magistrate will scrutinise the application as provided in Section 14, and then if satisfied, appoint an officer subordinate to him as provided under Section 14(1-A) to take possession of the assets and documents. For that purpose the Magistrate may authorise the officer concerned to use such force as may be necessary.

After the possession is taken the assets and documents will be forwarded to the secured creditor. 36.3. (iii) The third situation will be one where the secured creditor approaches the Magistrate concerned directly under Section 14 of the Act. The Magistrate will thereafter scrutinise the application as provided in Section 14, and then if satisfied, authorise a subordinate officer to take possession of the assets and documents and forward them to the secured creditor as under clause 36.2.(ii) above.

36.4. In any of the three situations above, after the possession is handed over to the secured creditor, the subsequent specified provisions of Rule 8 concerning the preservation, valuation and

sale of the secured assets, and other subsequent rules from the Security Interest (Enforcement) Rules, 2002, shall apply."

37. Concededly, the Court was not called upon to consider the specific issue that arises for our consideration, in this batch of cases. To wit, whether the CJM is competent to deal with the request made by the secured creditor under Section 14 of the 2002 Act in the same manner as can be done by the CMM in metropolitan areas and DM in non-metropolitan areas. Nevertheless, what is significant to note is that this decision clearly delineates the nature of inquiry required to be conducted by the authority referred to in the Section 14 of the 2002 Act. By its very nature the inquiry, is an administrative or executive measure and to borrow the phrase used in the said judgment, "State's coercive power" for obtaining possession of the secured assets. It is possible to suggest that as the authority is required to make inquiry and pass an order, it would partake the colour of being a quasi-judicial inquiry. In any case, the stated authority is not empowered to adjudicate on any issue(s) that may be raised regarding the rights of the concerned parties.

38. Reliance was also placed on the exposition in Harshad Govardhan Sondagar (supra), wherein the appellants claimed to be tenants of a mortgaged premises (secured asset); and as borrowers (landlord/owner thereof) had committed default, the secured creditor had invoked provisions of 2002 Act to enforce the secured asset. In that backdrop, application was moved before the CMM, Mumbai under Section 14 of the 2002 Act to take possession of the premises and handover the possession thereof to the secured creditor. While dealing with the challenge to this action of the secured creditor, the Court noticing Section 14 of the 2002 Act concluded that for the purpose of transferring the secured asset and for realising the secured asset, the secured creditor will require the assistance of the CMM or the DM for taking of possession of a secured asset from the lessee, where the lease stands determined by any of the modes mentioned in Section 111 of the Transfer of Property Act. The Court then went on to examine the question about the remedies available to the lessee where he is threatened to be dispossessed by any action taken by the secured creditor under Section 13 of the 2002 Act. In that context, the Court noted that Section 34 of the 2002 Act makes it amply clear that no injunction can be granted by any Court or other authority in respect of any action taken or to be take in pursuance of any power conferred by or under the 2002 Act. Even this decision, if we may say so, deals with entirely different issue then the question under consideration in the present cases.

39. It is no more res integra that the CJM is equated with the CMM for the purposes referred to in the Cr.P.C.; and those expressions are used interchangeably being synonymous of each other. This Court in All India Judges' Association (supra), in paragraph 31, opined as under:

> "31. As we have already mentioned, the Shetty Commission had recommended that the Chief Metropolitan Magistrates should be in the cadre of District Judges. In our opinion, this is neither proper nor practical. The appeals from orders passed by the Chief Metropolitan Magistrates under the provisions of the Code of Criminal Procedure are required to be heard by the Additional Sessions Judge or the Sessions Judge. If both the Additional Sessions Judge and the Chief Metropolitan Magistrate belong to the same cadre, it will be paradoxical that any appeal from one officer in the

> cadre should go to another officer in the same cadre. If they belong to the same cadre, as recommended by the Shetty Commission, then it would be possible that the junior officer would be acting as an Additional Sessions Judge while a senior may be holding the post of the Chief Metropolitan Magistrate. It cannot be that against the orders passed by the senior officer it is the junior officer who hears the appeal. There is no reason given by the Shetty Commission as to why the post of the Chief Metropolitan Magistrate be manned by the District Judge, especially when as far as the posts of the Chief Judicial Magistrates are concerned, whose duties are on a par with those of the Chief Metropolitan Magistrate, the Shetty Commission has recommended, and in our opinion rightly, that they should be filled from amongst Civil Judges (Senior Division). Considering the nature and duties of the Chief Judicial Magistrates and the Chief Metropolitan Magistrates, the only difference being their location, the posts of Chief Judicial Magistrate and Chief Metropolitan Magistrate have to be equated and they have to be placed in the cadre of Civil Judge (Senior Division). We order, accordingly."

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

41. It is well established that no Civil Court can interdict the action initiated in respect of any matter, which a Debt Recovery Tribunal or Debt Recovery Appellate Tribunal is empowered by or under the 2002 Act, to determine and in particular, in respect of any action taken or to be taken in pursuance of any power conferred by or under the 2002 Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. That has been ordained by Section 34 of the 2002 Act.

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

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

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

> "37 □Application of other laws not barred.□The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force." The bare text of this provision predicates that the provisions of the 2002 Act or the Rules made thereunder shall be in addition to the stated enactments or "any other law for the time being in force". Having said that the provisions of the Section 14 of the 2002 Act are in no way inconsistent with the provisions of Code of Criminal Procedure, it must then follow that the provisions of the 2002 Act are in addition to, and not in derogation of the Code.

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

45. It would be apposite to now advert to Section 17 of the General Clauses Act, 1897. The same reads thus:

> "17 □Substitution of functionaries.□(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.
>
> (2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887." This Court in Janardhan Vs. State of Maharashtra62 was called upon to examine

somewhat similar challenge. In that case, the challenge was to the search warrant issued by the Assistant Commissioner of Police in respect of offences punishable under Section 6 of the Bombay Prevention of Gambling Act, 1887. The Court repelled that challenge by relying on Section 17 of the Bombay General Clauses Act, 1886, which is pari materia to Section 17 of the General Clauses Act, 1897. The Court opined that though Section 6 of the Gambling Act specified the office of Commissioner of Police as the authorised officer, however, considering the sweep of Section 2(6) of the Bombay Police Act, 1951, which mentions that the term "Commissioner of Police" would include an Assistant Commissioner, went on to hold that the search warrant issued by the Assistant Commissioner was valid. The Court, while dealing with the said challenge observed as follows:

62 (1978) 2 SCC 465 "8. Analysing this definition it would appear that any official title of the officer mentioned in any Act made after the General Clauses Act would deem by fiction of law to include any such official title referred to in any Act passed after the General Clauses Act.

9. Furthermore, not only the official title but even the functions executed by the said officer would also be deemed to have been exercised by the officer designated in the subsequent Act. The combined effect, therefore, of Section 6 of the Gambling Act and Section 17(1) of the General Clauses Act would be that the term "Commissioner of Police" would include all officers who are executing or performing the functions of the Commissioner of Police as defined or authorised under the latter Act, namely, the Police Act. It would thus be seen that sub-section (6) of Section 2 of the Police Act clearly mentions that the term "Commissioner of Police" would include an Assistant Commissioner. Thus sub-section (6) runs thus:

"2. In this Act, unless there is anything repugnant in the subject or context:

* * * (6) ... A Commissioner of Police including an Additional Commissioner of Police, a Deputy Inspector General of Police (including the Director of Police Wireless and Deputy Inspector General of Police appointed under Section 8-A), a Deputy Commissioner of Police and Assistant Commissioner of Police..." Section 11 of the Police Act runs thus:

"11. (1) The State Government may appoint for any area for which a Commissioner of Police has been appointed under Section 7 such number of Assistant Commissioners of Police as it may think expedient.

(2) An Assistant Commissioner appointed under sub-section (1) shall exercise such powers and perform such duties and functions as can be exercised or performed under the provisions of this Act or any other law for the time being in force or as are assigned to him by the Commissioner under the general or special orders of the State Government." A perusal of Section 11 of the Police Act leads to the inescapable

conclusion that an Assistant Commissioner appointed under sub-section (1) is to perform such duties and functions as can be exercised under the Act or any other law for the time being in force, which undoubtedly includes the Gambling Act which was a law in force at the time when the Police Act was passed. Apart from this the Assistant Commissioner could also perform those functions which could be assigned to him by the Commissioner under the general or special orders of the State Government. The provision for assignment of powers by the Government to the Commissioner are contained in Section 10(2) of the Police Act which runs thus:

"10. (2) Every such Deputy Commissioner shall, under the orders of the Commissioner, exercise and perform any of the powers, functions and duties of the Commissioner to be exercised or performed by him under the provisions of this Act or any other law for the time being in force in accordance with the general or special orders of the State Government made in this behalf."

10. The High Court has found as a fact that there was a notification by the State Government dated March 10, 1967 by which all the Assistant Commissioners of Police including that of Nagpur were conferred powers and functions of the Commissioner of Police. Thus, in the instant case at the time when the offence was committed two things had happened: (1) that in Nagpur where the offence had taken place there was a Commissioner of Police, and (2) that the Commissioner of Police had been conferred the power by the Government notification to assign his functions, powers and duties to the Assistant Commissioner. In these circumstances, therefore, we do not find any difficulty in accepting the contention of the respondent that having regard to the combined reading of the provisions of Section 17 of the General Clauses Act and the Police Act the term "Commissioner of Police" appearing in Section 6 of the Gambling Act would include even an Assistant Commissioner who was legally and validly assigned the powers, functions and duties of the Commissioner of Police by the State Government under Section 10(2) of the Police Act. As the General Clauses Act was a statute which was passed before the Gambling Act came into force, Section 17 of the General Clauses Act could be called into aid to interpret the scope and ambit of the term "Commissioner of Police" as used in Section 6 of the Gambling Act.

11. Learned counsel for the appellant, however, submitted that the power of assignment of functions by the Government given to the Commissioner of police or the Assistant Commissioner could be exercised only in respect of matters covered by the Police Act and not beyond that. I am however unable to agree with this contention which completely overlooks the avowed object of Section 17 of the General Clauses Act which has been passed to resolve such anomalies and it is not possible to construe the provisions of the Police Act in complete isolation by ignoring the provisions of the General Clauses Act which undoubtedly apply to the facts and circumstances of the present case. For these reasons, therefore, the second contention put forward by the appellant also fails." (emphasis supplied) In the

concurring judgment, additionally, the Court observed thus:

"19. It remains for consideration whether the Assistant Commissioner of Police could be said to be executing the functions of the Commissioner of Police under Section 6(1) of the Act at the time when he issued the special warrant. Reference in this connection may be made to Section 11(2) of the Bombay Police Act, 1951, which provides as follows:

"11. (2) An Assistant Commissioner appointed under sub-section (1) shall exercise such powers and perform such duties and functions as can be exercised or performed under the provisions of this Act or any other law for the time being in force or as are assigned to him by the Commissioner under the general or special orders of the State Government." It was therefore permissible for the Assistant Commissioner of Police not only to exercise such powers and perform such duties and functions as he could, in terms, exercise or perform under the provisions of the Bombay Police Act, or any other law for the time being in force, but also the duties and functions assigned to him by the Commissioner of Police under the general or special orders of the State Government. The High Court has taken note in this connection of the State Government Order APO-3463-C-2896-(III)-(E)-V, dated March 10, 1967, which empowered all Commissioners of Police to assign to the Assistant Commissioners of Police working under them any of their powers, duties and functions not only under the provisions of the Bombay Police Act, 1951, but also under any other law for the time being in force. The existence of such an order has not in fact been challenged before us. The Assistant Commissioner of Police was therefore the functionary who could, by virtue of Section 17 of the Bombay General Clauses Act, discharge the functions of the Commissioner of Police under Section 6(1) of the Act in the matter of issuing a special warrant like the one issued in the present case. It is also not disputed that the Commissioner of Police issued Order 2036, dated September 19, 1967, authorising all Assistant Commissioners of Police working under him to issue search warrants under Section 6 of the Act to any Police Officer working under them not below the rank of a Sub-Inspector of Police. As has been shown, this was legally permissible, and it is futile to contend that the High Court erred in rejecting the appellant's contention to the contrary.

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

47. Having said this, we need not to dilate on other decisions pressed into service regarding the approach to be adopted in the matter of interpretation of statutes.

48. To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (Banks).

49. While parting we must note that Civil Appeal arising from SLP (C) No.7121 of 2019 is directed against an interlocutory order passed by the High Court in a pending appeal. This appeal is, therefore, disposed of with liberty to the parties therein to pursue the appeal pending before the High Court on any other issue(s), if available as per law. That be decided in accordance with law.

50. All these appeals are disposed of in the above terms with liberty to the parties to pursue such other remedies as may be permissible in law with regard to other issues, if any. The same shall be considered on its own merits, in accordance with law. No order as to costs. Pending applications in the respective appeals are also disposed of in the above terms.

.....J (A.M. Khanwilkar) .....J (Dinesh Maheshwari) New Delhi;

September 23, 2019.

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION SPECIAL LEAVE PETITION (C) NO(S).4665 of 2016 P.M. Kelukutty & Ors. .....Petitioner(s) Versus Young Mens Christian Association & Ors. .....Respondent(s) With SLP (C) No.5109 of 2016 and SLP (C) No.5141 of 2016 ORDER These matters are detagged. List on 27 th September, 2019, at the bottom of the miscellaneous list for passing necessary order(s).

.....J (A.M. Khanwilkar) .....J (Dinesh Maheshwari) New Delhi;

September 23, 2019.