Nkgsb Cooperative Bank Limited vs Subir Chakravarty on 25 February, 2022

Author: A.M. Khanwilkar

Bench: C.T. Ravikumar, A.M. Khanwilkar

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO……OF 2022
(@ S.L.P. (CIVIL) NO.30240 OF 2019)

NKGSB COOPERATIVE BANK LIMITED …APPELLANT

VERSUS

SUBIR CHAKRAVARTY & ORS. …RESPONDENTS

WITH

CIVIL APPEAL NO……OF 2022
(@ S.L.P. (CIVIL) NO.2055 OF 2020)
CIVIL APPEAL NO……OF 2022
(@ S.L.P. (CIVIL) NO……OF 2022)
(@ DIARY NO.17059 OF 2020)
CIVIL APPEAL NO……OF 2022
(@ S.L.P. (CIVIL) NO……OF 2022)
(@ DIARY NO.23733 OF 2020)

AND

S.L.P. (CIVIL) NO.12011 OF 2020

JUDGMENT

A.M. KHANWILKAR, J.

1. The seminal question involved in these cases is: whether it is open to the District Magistrate1 or the Chief Metropolitan Magistrate2 to appoint an advocate and authorise him/her to take 1 for short, “DM” 2 for short, “CMM” possession of the secured assets and documents relating thereto and to forward the same to the secured creditor within the meaning of Section 14(1A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 20023?

2. The High Court of Judicature at Bombay4 vide judgment and order dated 6.11.2019 in Writ Petition (L) No.28480 of 2019 opined that the advocate, not being a subordinate officer to the CMM or DM, such appointment would be illegal. Against this decision, four separate appeals5 have been

filed by the concerned parties. On the other hand, the High Court of Judicature at Madras6 vide judgment and order dated 18.3.2020 in C.R.P. No.790 of 2020 has taken a contrary view while following earlier decision of the same High Court on the reasoning that the advocate is regarded as an officer of the court and, thus, subordinate to the CMM or the DM. Having so held, it allowed the civil revision petition filed by the secured creditor 3 for short, "2002 Act" 4 for short, "Bombay High Court" 5 Civil Appeal No..... of 2022 @ SLP (Civil) No.30240 of 2019; Civil Appeal No..... of 2022 @ SLP (Civil) No.2055 of 2020; Civil Appeal No.....of 2022 @ SLP (Civil) No.....of 2022 @ Diary No.17059 of 2020; and Civil Appeal No.....of 2022 @ SLP (Civil) No.....of 2022 @ Diary No.23733 of 2020 6 for short, "Madras High Court" (Canara Bank). Against this decision, a special leave petition7 has been filed by the borrowers.

3. The High Courts of Kerala (in Muhammed Ashraf & Anr. vs. Union of India & Ors.8; The Federal Bank Ltd., Ernakulam vs. A.V. Punnus9; and V.S. Sunitha vs. Federal Bank Ltd.10), Madras (in S. Chandramohan & Anr. vs. The Chief Metropolitan Magistrate, Egmore, Chennai & Ors.11) and Delhi (in Rahul Chaudhary vs. Andhra Bank & Ors.12), have taken the same view as in the case of Canara Bank impugned in the special leave petition13 arising from the decision of the Madras High Court.

4. Additionally relying on the dictum in M/s. J. Marks Exim (India) Pvt. Ltd. vs. Punjab National Bank14 decided by the Division Bench of the Bombay High Court, it was urged that the coordinate Bench of the Bombay High Court had answered the issue under consideration in favour of the secured creditors and against 8 AIR 2009 Kerala 14 9 AIR 2014 Kerala 7 10 2018 SCC OnLine Ker 12866 11 2014-5-L.W. 620: 2014 SCC OnLine Mad 7869 12 2020 SCC OnLine Del 284 14 2017 SCC OnLine Bom 2246 the borrowers on the same lines as the view taken by other three High Courts, namely, High Courts of Kerela, Madras and Delhi. However, in the judgment of the Bombay High Court of coordinate Bench impugned before this Court, it has been observed that the dictum in the said decision had not considered the precise question that has been dealt with in the impugned judgment.

5. Briefly stated, in each of the cases under consideration, the CMM/DM appointed an advocate purportedly in exercise of powers under Section 14(1A) of the 2002 Act. In the cases arising from the judgment of the Bombay High Court, the borrowers had urged before the High Court that the Additional Chief Metropolitan Magistrate15, 3rd Court, Esplanade, Mumbai on application filed by the secured creditor (Bank) under Section 14 of the 2002 Act passed an order dated 26.7.2019, appointing an advocate to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor. The order passed by the ACMM records that the Bank had advanced a loan in the sum of Rs.4.44 crore on 31.1.2015 to the borrowers, who had mortgaged Flat No.262, 26th Floor, Building No.02 with two basement car spaces in 15 for short, "ACMM" a building known as 'Kalpataru Pinnacle' in Goregaon (West), Mumbai. Further, the borrowers had defaulted on 30.10.2017. Their account was declared Non-Performing Asset16. As a sequel, on 13.11.2017, a notice under Section 13(2) of the 2002 Act was issued to them and posted by Registered Post A.D. The docket was returned with 'intimation posted' meaning thereby, the noticees were not available at the given address. The order further records that the Bank served the notice upon the borrowers by publication on 31.12.2017 calling upon them to pay the outstanding dues within sixty days. However, loan amount remained unpaid. As a result, the secured creditor

approached the ACMM to pass appropriate directions, on which application the stated order dated 26.7.2019 came to be passed appointing an advocate. The same was communicated to the borrowers by the advocate on 11.10.2019. That order was challenged before the Bombay High Court by the borrowers by way of writ petition17 under Article 226 of the Constitution of India, which has been decided by the High Court vide impugned judgment and order holding that Section 14(1A) of the 2002 Act does not permit the CMM/DM to authorise an advocate. 16 for short, "NPA" 17 Writ Petition (L) No.28480 of 2019 The language used in the provision is amply clear. Such delegation could be done only to an officer subordinate and none else. The High Court rejected the argument that the overburdened CMM/DM had inadequate subordinate staff and it would be difficult, if not virtually impossible for the secured creditor to take possession of and realise the outstanding dues by disposing the secured asset. The High Court was not impressed with that argument and preferred to strictly construe the stated provision. The secured creditors have assailed this decision by way of appeals18 before this Court.

6. Reverting to the special leave petition19 arising from the decision of the Madras High Court. The Bank had given loan to the borrowers upon mortgage of their property. Despite the demand to clear the outstanding dues, the loan amount remained unpaid. Resultantly, the Bank classified the account as NPA followed by notice under Section 13(2) of the 2002 Act dated 21.7.2017 to the borrowers. Eventually, the Bank took symbolic possession of the property through its authorised officer after issuing possession notice. That was published in two leading newspapers. The borrowers challenged the notice issued to them under Section 13(4) of the 2002 Act. That challenge was unsuccessful. Whereafter, the Bank invoked action under Section 14 of the 2002 Act by filing application before the CMM for taking possession of the secured assets. The borrowers challenged the sale notice by filing application being S.A. No.59 of 2019. No injunction was granted in favour of the borrowers and to restrain the Bank from proceeding with the sale of the secured property. Hence, the Bank pursued the application under Section 14 of the 2002 Act before the CMM, which came to be disposed of on 6.8.2019 by appointing an Advocate Commissioner to take possession of the secured property. Thereafter, the application filed by the borrowers, being S.A. No.59 of 2019, came to be dismissed. In the interregnum, the borrowers filed another application in S.A. No.399 of 2019, challenging the order dated 6.8.2019 passed by the CMM, appointing an Advocate Commissioner, in Crl. M.P. No.2995 of 2019. The Debts Recovery Tribunal II20, Chennai was pleased to allow S.A.No.399 of 2019, inter alia, holding that the procedure mandated under clauses (i) to (ix) of the proviso to Section 14(1) of the 2002 Act had not been complied 20 for short, "Tribunal" with by the secured creditor (Bank) and in any case, the appointment of the Advocate Commissioner was illegal. The Tribunal allowed the challenge vide order dated 4.2.2020. That decision came to be assailed by the Bank before the Madras High Court by way of civil revision petition21 under Article 227 of the Constitution of India. The High Court noted two issues arising for its consideration, in paragraph 9 of the impugned judgment. The first issue was regarding the correctness of the conclusion recorded by the Tribunal on the plea of non-compliance of clauses (i) to (ix) of Section 14 of the 2002 Act. That came to be set aside being manifestly erroneous (see paragraphs 10 and 11 of the impugned judgment). However, on the second issue about power of the CMM/DM to appoint an Advocate Commissioner, the High Court, amongst other, relied upon its earlier decision as well as of the High Courts of Delhi and Kerala, to conclude that the Tribunal committed manifest error, including not to take notice of the decision of the same High Court

referred to in the impugned judgment. In short, the Madras High Court accepted the argument of the secured creditor (Bank) that it was open to the CMM/DM to appoint an Advocate Commissioner for taking possession of the secured assets and documents relating thereto for being forwarded to the secured creditor in terms of Section 14(1A) of the 2002 Act. This decision has been challenged by the borrowers by way of a special leave petition22 before this Court.

7. We have heard Mr. Rana Mukherjee, learned senior counsel, Mr. Viraj Kadam, Mr. Manish Shanker Srivastava, Mr. Devendra Kumar Singh and Mr. M.L. Ganesh, learned counsel appearing for the Banks, Mr. B. Raghunath, learned counsel appearing for the borrowers and Mr. Rahul Chitnis, learned counsel appearing for the State of Maharashtra.

8. As aforesaid, the one and only question common to all these cases is: whether the CMM/DM can appoint an advocate in exercise of powers under Section 14(1A) of the 2002 Act? This issue arises because of the expression used in the said provision, "may authorise any officer subordinate to him".

9. The earliest decision dealing with the issue under consideration is that of the High Court of Kerala in Muhammed Ashraf23 wherein the Division Bench of the High Court rejected the argument that mandate of Section 14 obliges the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. It noted that Section 14(2) of the 2002 Act enabled the CMM/DM to pass order even to take Police assistance and use all necessary powers in taking possession of the secured assets. To buttress this view, reference has been made to the decision of this Court in Sakiri Vasu vs. State of Uttar Pradesh & Ors.24 wherein the Court noted that an express grant of statutory powers carries with it by necessary implication the authority to use all reasonable means to make such grant effective. In other words, the authority had implied powers to grant relief which is not expressly granted to it by the Act. On that logic, the Division Bench of the High Court of Kerala opined that it would be open to the Magistrate who has the power under Section 14 of the 2002 Act to take possession of the secured assets including to take assistance of Police including an Advocate Commissioner so as to facilitate the secured creditor to take over the secured assets. As a result, the Magistrate could also appoint a commissioner for identification of the secured assets and 23 supra at Footnote No.8 24 (2008) 2 SCC 409 taking possession thereof. This decision has attained finality owing to the dismissal of S.L.P. (Civil) No.1671 of 2009 on 2.2.2009 by this Court. Notably, this decision was rendered before the amendment of Section 14 and in particular insertion of sub-Section (1A)25.

10. The aforementioned decision, however, had been followed by the learned Single Judge of the High Court of Kerala in the case of The Federal Bank Ltd., Ernakulam26 which had arisen after the amendment of Section 14 of the 2002 Act and insertion of sub- Section (1A) therein. Despite insertion of sub-Section (1A), learned Single Judge following the judgment in Muhammed Ashraf27, answered the issue in the following words:

> "5. ...It may however appear at first blush that such an Advocate Commissioner is not an officer subordinate to the District Magistrate or the Chief Judicial Magistrate. But a reference to Sections 12 and 17 of the Code of Criminal Procedure, 1973 indicates that the term District Magistrate or Chief Metropolitan Magistrate denotes the court

> and not the officer in person. An Advocate Commissioner is certainly an officer subordinate to the court and the words employed in Section 14 (1A) of the SARFAESI Act are not to be understood as meaning an officer subordinate in service. Section 284 of the Code of Criminal Procedure, 1973 in fact empowers an Advocate Commissioner to record the examination of witnesses whose personal appearance in court is dispensed with. Similar provisions can be found in Order XXVI Rule 17 of the Code of Civil Procedure, 1908 enabling the Advocate Commissioner to record evidence of witnesses and Section 25 Inserted by Act 1 of 2013, sec.6(b) (w.e.f. 15.1.2013, vide S.O.171(E), dated 15.1.2013) 26 supra at Footnote No.9 27 supra at Footnote No.8 75 (g) thereof to perform any ministerial act even. Taking over possession of the secured asset and handing over the same to the creditor bank is nothing but a ministerial act of the Advocate Commissioner on behalf of the court. The Advocate Commissioner exercising such function under Section 14 (1A) of the SARFAESI Act is only discharging his duty as an officer subordinate to the court presided by the Magistrate. The contention of the borrower that the Advocate Commissioner is not an officer subordinate in service to the Chief Judicial Magistrate and hence incompetent is only to be rejected." (emphasis supplied)

11. Once again, another learned Single Judge of the High Court of Kerala in V.S. Sunitha28 reiterated the same view and held that the Magistrate rendering assistance to the secured creditor is competent to appoint a commissioner to take possession of the secured assets.

12. This very issue had also arisen before the Madras High Court in S. Chandramohan29. The Division Bench of the Madras High Court after adverting to Section 14(1A) of the 2002 Act went on to observe as follows:

> "8. ....
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> The same is an enabling provision conferring power on the Chief Metropolitan Magistrate or District Magistrate to authorise any officer subordinate to him to take possession of the assets and documents relating thereto and forward the assets and documents to the secured creditors.
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> 9. The Advocate Commissioners appointed by the learned Chief Metropolitan Magistrate is in tune with Section 14(1-

A) of the SARFAESI Act, 2002. As per Section 14 of the Act, the secured creditors can approach the Chief Metropolitan Magistrate/District Magistrate to take possession of the 28 supra at Footnote No.10 29 supra at Footnote No.11 assets and documents of the secured creditor. The Chief Metropolitan Magistrate, instead of personally visiting the spot to take possession of assets and documents, can very well appoint the Advocate Commissioner to visit on his behalf, as in the case of issuing of commissions under the Civil Procedure Code, as it is not possible for the Chief Metropolitan Magistrate/District Magistrate to visit personally to take possession.

10. The amendment inserted by Act 1 of 2013 viz., Section 14(1-A) is permitting the Subordinate Officers to do the above said acts and nowhere prohibits the Chief Metropolitan Magistrate from authorising an Advocate Commissioner to go on his behalf for taking possession of assets and documents and forwarding the same to the secured creditor. The amendment gives discretion to the Chief Metropolitan Magistrate/District Magistrate either to authorise or take possession of such assets and document and the word used being 'may', it is not always necessary on the part of the Chief Metropolitan Magistrate to authorise any officer subordinate to him. It is a well settled proposition of law that the observance of the word 'may' used in the statute is only directory, in the sense, non- compliance with those provisions will not render the proceedings invalid. Sometimes, the word 'shall' may also be directory and not mandatory. ....” It then adverted to the decisions of this Court in Dattatraya Moreshwar vs. The State of Bombay & Ors.30, Mahadev Govind Gharge & Ors. vs. Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka31 and Sangram Singh vs. Election Tribunal, Kotah & Anr.32 on the principles of interpretation of statute and noted thus:

> “11. The object of the amendment introduced in Act 1 of 2013 being to give assistance to the Chief 30 AIR 1952 SC 181 31 (2011) 6 SCC 321 32 AIR 1955 SC 425 Metropolitan Magistrate/District Magistrate, the Chief Metropolitan Magistrate is justified in appointing Advocate Commissioners, instead of authorising Subordinate Officers to take possession. It is well settled in law that Advocates are also Officers of the Court, though not subordinate to Chief Metropolitan Magistrate. As Officers of the Court, the Advocates can perform their duty more effectively than the Officers, subordinate to the Chief Metropolitan Magistrate in taking possession of assets and documents and in delivering the same to the Secured Creditor. Thus, in any event, the contention raised by the learned counsel appearing for the petitioner is devoid of merits.” (emphasis supplied)
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> 13. The issue also received attention of the High Court of Delhi in Rahul Chaudhary33. The High Court answered the issue in the following words:
>
> “3.1 To be noted, the receiver has been appointed by the learned CMM vide order dated 05.12.2019.
>
> 4. The learned CMM has appointed an advocate to take possession of the secured asset.
>
> 5. Counsel for the petitioner does not dispute that fact that the receiver appointed by the learned CMM has taken possession of the subject secured asset on 16.01.2020.
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> 6. It is, however, the say of the counsel for the petitioner that appointment of an advocate as a receiver was contrary to the provisions of Section 14 (1A) of the SARFAESI Act and, therefore, that part of the order passed by the learned CMM should be set aside as was done by the Bombay High Court in the aforementioned matter.

7. To my mind, the writ petition, in fact, has been rendered infructuous, in a sense, that the receiver would have handed over the possession of the subject asset to the secured creditor, that is, the Andhra Bank.

8. Nevertheless, according to me, the language of Section 14(1A) of the SARFAESI Act uses the expression “may” and not “shall”.

8.1 There are two ways of appreciating the provision. First, that the expression “may” relates to the choice of the 33 supra at Footnote No.12 subordinate officer. The other meaning that can be placed on the provision is that District Magistrate/CMM is vested with discretion to appoint officers subordinate to him to take possession of the secured asset.

8.2 The District Magistrate/CMM is obliged to take possession once an application in that behalf is preferred under sub-section (1) of Section 14 of the SARFAESI Act by the secured creditor.

8.3 It is in the exercise of such power that recourse can be taken by the District Magistrate/CMM to the provisions of sub-section (1A) of Section 14. This provision was introduced via Act 1 of 2013. Before that the District Magistrate/CMM were perhaps taking recourse to sub-

section (2) of Section 14 and, thus, appointing advocates as receiver.

8.4 To my mind, after the insertion of sub-section (1A) in Section 14, the only change that has been brought about is that the District Magistrate/CMM has now the discretion to appoint even their subordinate officers as receivers. 8.5 Pertinently, sub-section (1A) of Section 14 does not bar the appointment of advocates as receivers. The same position obtains vis-à-vis Rule 8(3) of The Security Interest (Enforcement) Rules, 2002, which has been cited in the aforementioned judgment of the Bombay High Court.

9. As was noticed in Subir Chakravarty’s case34, the District Magistrates and the CMMs are overburdened. The position is no different in Delhi.

10. Thus, in my view, since the provision vests discretion in the District Magistrate/CMM and as long the discretion is exercised with due care and caution, the appointment of advocates as receivers cannot be faulted.” (emphasis supplied) As noticed from the extracted portion of the judgment, the High Court of Delhi disagreed with the view taken by the Bombay High Court in the impugned judgment which has been assailed in the cases under consideration.

14. Concededly, there is conflict of opinion between the three High Courts35 on the one side and the Bombay High Court on the other. In the impugned judgment, the Bombay High Court observed as follows:

> "9 The language of the legislature is clear. The District Magistrate or the Chief Metropolitan Magistrate may authorize any officer subordinate to take possession of such asset and this means that the person authorized to take possession has to be an officer subordinate to the District Magistrate or the Chief Metropolitan Magistrate. 10 The decision dated 17th March 201736 passed by the Division Bench was not premised on a challenge to the authorization in favour of an Advocate to take possession of a secured asset. The observations at the end of the order are probably the result of the facts noted in the impugned order. The overburdened Metropolitan Magistrates or the District Magistrates having inadequate subordinate staff find it a handicap to deal with large number of applications under Section 14 of the SARFAESI Act, 2002, but this would be no ground to violate the language of the statute.

The legislature may be requested to intervene. We propose to do that at the end of the present order.

11 .....

12 A perusal of the sub-rule37 shows that after possession of immovable property is physically taken over by the Officer authorized custody thereof can be handed over for care and protection of the property to any person authorized or appointed by him. Thus, after possession of a secured asset is taken over, its custody can be entrusted to any person who need not be an Officer of the Court or authorized subordinate staff of the Court. This could perhaps solve half the problem faced by District Magistrates and Chief Metropolitan Magistrates. 13 The cry of anguish in paragraph No.7 of the impugned order is also justified. Each day, atleast two, if not three petitions, are filed by way of mercy pleading to this Court that some time be given to the defaulting borrower to clear 35 High Courts of Kerala, Madras and Delhi 36 supra at Footnote No.14 37 Rule 8(3) of the Security Interest (Enforcement) Rules, 2002 the defaulting loan so that the property mortgaged can be saved. Wide and varied facts such as exams of the children are ensuing, old and aged parents, paternal or maternal aunt are suffering from an ailment and are under going treatment at a nearby hospital are pleaded. The borrower is making attempts to sell another property to clear the outstanding amounts etc. Equities are pleaded. 14 Courts in India being not only Courts of Justice but Courts of Equity, the orders passed under Section 14 are stayed, but ultimately the petitions fail.

15 Howsoever inconvenient it may be to a Court, rights of parties cannot be curtailed in the manner done in the impugned order. If law permits, the borrower can always tender the outstanding amounts to the Bank or the Financial Institution before a sale of the secured assets take place.

16 The two troubling parts of the impugned order being dealt with by us resulting in the hurdle in the way of the petitioner to seek further reliefs from the Debt Recovery Tribunal having been clear, we dispose of the petition expunging the directions in paragraph No.7 of the impugned order, as also expunging the authorization in favour of Ms.Priti S. Chavan, Advocate to take possession of the Security as a Court Commissioner requiring the learned Metropolitan Magistrate to appoint an officer subordinate to take possession of the secured asset who, in turn may give custody thereof to any person.

16 We terminate the proceedings in the instant writ petition observing that on the merits of the order passed, the petitioners may approach the Debt Recovery Tribunal." The above view taken by the Bombay High Court is one of strict or literal interpretation of the provision as it exists.

15. At the outset, we must notice that the expression "any officer subordinate to him" has been used in several legislations38 enacted 38 Section 14 of the Suppression of Immoral Traffic in Women and Girls Act, 1956; Section 5 of the Orphanages and other Charitable Homes (Supervision and Control) Act, 1960; Section 166 of the Manipur Land Revenue and Land Reforms Act, 1960; Section 10K of the Export (Quality Control and Inspection) Act, 1963; Section 43A of the Unlawful Activities (Prevention) Act, 1967; by Parliament/State Legislature. Somewhat similar expression has been used in Articles 53, 154 and 311 of the Constitution of India and in other legislations39 enacted by Parliament/State Legislature with little variation to further the intent of the concerned enactment. Section 5 of the Wild Life (Protection) Act, 1972; Sections 55 and 165 of the Code of Criminal Procedure, 1973; Sections 64 and 70 of the Delhi Police Act, 1978; Section 41 of the Narcotic Drugs and Psychotropic Substances Act, 1985; Sections 11 and 16 of the Foreign Trade (Development and Regulation) Act, 1992; Section 44 of the Delhi Rent Act, 1995 (also in 1958); Section 22 of the Chemical Weapons Convention Act, 2000; Section 17 of the Prevention of Money-Laundering Act, 2002; Section 30 of the Food Safety and Standards Act, 2006; Sections 107, 108 and 112 of the Central Goods and Services Tax Act, 2017; Section 8 of the Fugitive Economic Offenders Act, 2018; and Section 31 of the Banning of Unregulated Deposit Schemes Act, 2019.

39Article 53 ("officers subordinate to him"), Article 154 ("officers subordinate to him" and "any authority subordinate to the Governor") and Article 311 ("an authority subordinate to that") of the Constitution of India;

Section 376 ("police officer subordinate to such police officer") of the Indian Penal Code, 1860; Section 2 ("members of the subordinate ranks of any police-force") and Section 7 ("any police-officer of the subordinate ranks") of the Police Act, 1861; Section 4A ("any such officer subordinate to him") of the Guardians and Wards Act, 1890; Section 3(5) ("Officer subordinate to the Governor General of India") of the General Clauses Act, 1897;

Sections 8 and 22 ("officers subordinate to the Jailer") and Section 48 ("officer subordinate to the Superintendent") of the Prisons Act, 1894;

Section 195 ("any officer subordinate to the Collector") of the Indian Succession Act, 1925; Section 34H ("any subordinate officer of his"), and Sections 110A and 110B ("any person subordinate to him") of the Insurance Act, 1938; Section 2(a) ("any officer subordinate to that officer") of the Indian Coconut Committee Act, 1944;

Section 14A ("such officer or authority subordinate to the Central Government" and "such officer or authority subordinate to the State Government") of the Industrial Employment (Standing Orders) Act, 1946;

Section 39 (“authority subordinate to the Central Government” and “authority subordinate to the State Government”) of the Industrial Disputes Act, 1947; Section 2(g) (“subordinate officer”) of the Central Reserve Police Force Act, 1949; Section 47 (“his subordinate in rank”) of the Army Act, 1950; Section 17 (“by an officer subordinate to that Government” and “by an officer subordinate to the State Government”) and Section 23 (“by an officer or authority subordinate to that Government”) of the Requisitioning and Acquisition of Immovable Property Act, 1952; Sections 24A and 24B (“any such officer subordinate to the Central Government or a State Government”) and Section 43 (“such officer or authority subordinate to the Central Government” and “such officer or authority subordinate to the State Government”) of the Arms Act, 1959; Section 56 (“an officer subordinate to the Administrator”) of the Children Act, 1960; Section 5 (“the officers subordinate to him”), Section 7 (“subordinate to the Administrator and subordinate to the deputy commissioner or the sub-divisional officer”), Section 68 (“subordinate to such officer”), Section 84 (“any revenue officer subordinate to him”), Section 93 (“an officer subordinate to the sub-divisional officer”), Section 95 (“any revenue officer subordinate to him”), Section 96 (“revenue officer subordinate to the deputy commissioner” and “any officer subordinate to the appellate or revisional authority”) and Section 166 (“any officer or authority subordinate to him”) of the Manipur Land Revenue and Land Reforms Act, 1960; Section 5 (“any other officer of customs who is subordinate to him”), Section 28J (“the customs authorities subordinate to him”), Section 129D (“adjudicating authority subordinate to him” and “any officer of Customs subordinate to him”) and Section 129DA (“adjudicating authority subordinate to him”) of the Customs Act, 1962;

Section 10M (“any officer subordinate to the Director of Inspection and Quality Control”) and Section 13 (“authority subordinate to the Central Government”) of the Export (Quality Control and Inspection) Act, 1963;

Section 79 (“any officer subordinate to the Board”) of the Punjab Reorganisation Act, 1966; Section 42 (“any person subordinate to the State Government”) of the Unlawful Activities (Prevention) Act, 1967;

Section 21 (“authority subordinate to the Central Government” and “authority subordinate to such Government”) of the Passports Act, 1967;

Section 34 (“any officer subordinate to it”) and Section 154 (“any police officer subordinate to him”) of the Code of Criminal Procedure, 1973;

Section 12 (“an officer subordinate to that Government” and “an officer subordinate to a State Government”) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974;

Section 3 (“subordinate ranks of the police force”), Section 12 (“other officers of subordinate rank”), Section 20 (“his subordinates”), Sections 21 and 25 (“any police officer of subordinate rank”), Section 58 (“officers subordinate to him”), Section 70 (“any officer subordinate to the Commissioner of Police”), Section 122 (“police officer of subordinate rank”) and Section 147 (“any police officer of subordinate rank”) of the Delhi Police Act, 1978; Section 14 (“to which that officer is subordinate”)

of the National Security Act, 1980; Section 23 ("an Income-tax Officer subordinate to him") of the Hotel-Receipts Tax Act, 1980; Section 17A ("the officer, subordinate to him") of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986;

Section 13 ("an officer subordinate to that Government") of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988; Section 93 ("by an officer or authority subordinate to the Central Government") of the Railways Act, 1989;

Section 6 ("such other officer subordinate to the Director General") and Section 15 ("an officer subordinate to the Director General") of the Foreign Trade (Development and Regulation) Act, 1992;

Sections 46 and 328 ("an officer subordinate to him") of the New Delhi Municipal Council Act, 1994;

16. The construct of the provision, however, must depend on the context of the legislative intent and the purpose for which such dispensation has been envisaged. The setting in which the expression has been used in the concerned section of the Act would assume significance.

17. This Court has had occasion to deal with identical provision in the Motor Vehicles Act, 193940, in the case of A. St. Arunachalam Pillai vs. M/s. Southern Roadways Ltd. & Anr.41. Even in that case, the Court had to resolve the conflicting views of the Full Bench Sections 23 and 24 ("any such subordinate officer to the enforcement officer") and Section 37 ("any subordinate officer") of the Chemical Weapons Convention Act, 2000; Section 80 ("any officer subordinate to the Board") of the Bihar Reorganisation Act, 2000; Section 81 ("any officer subordinate to the Board") of the Uttar Pradesh Reorganisation Act, 2000;

Section 26 ("such officer subordinate to the Central Government or the State Government") of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005; Section 22 ("the officer, subordinate to him") of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007;

Section 54 ("such officer subordinate to it") of the Legal Metrology Act, 2009; Section 43 ("employees who shall be subordinate to him") of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 86 ("any officer subordinate to the Board") of the Andhra Pradesh Reorganisation Act, 2014;

Section 5 ("any other officer who is subordinate to him") of the Central Goods and Services Tax Act, 2017;

Section 45 ("an officer subordinate to that Government or the local authority") of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017;

Section 100 ("authority subordinate to the Central Government" and "authority subordinate to the State Government") of the Industrial Relations Code, 2020. 40 for short, "1939 Act" 41 AIR 1960 SC

1191 (5-Judge Bench) of the Madras High Court and of the High Court of Andhra Pradesh. The Full Bench of the Madras High Court in S. Krishnaswamy Mudaliar & Anr. vs. P.S. Palani Pillai & Anr.42 had occasion to consider the question as to whether Regional Transport Officer was subordinate to the State Transport Commissioner. While examining that question, the Full Bench of the Madras High Court dealt with three views pressed into service before it. The first view was founded on "administrative subordination", the second on "functional subordination" and the third on "statutory subordination". The Full Bench accepted the third view, namely, "statutory subordination", being a safer and logical approach. In the context of the provisions of that Act, it was held that the Regional Transport Officer was not subordinate to the State Transport Commissioner.

18. Analysing the same provision, being Section 44-A of the 1939 Act, the Full Bench of the High Court of Andhra Pradesh, however, opined to the contrary in B. Veeraswamy & Ors. vs. State of Andhra Pradesh & Ors.43. It followed the root of "administrative subordination". The matter reached this Court where the Constitution Bench by majority upheld the view taken by the Full 42 AIR 1957 Mad 599 43 AIR 1959 AP 413 Bench of the High Court of Andhra Pradesh and, thus, invoked the "administrative subordination" logic. This Court in the context of the statutory provisions and the Government Orders issued by the concerned department concluded that the Regional Transport Officers were subordinate to the Transport Commissioner. It was also observed that in the matter of interpretation, the words of provisions must be looked at; and if they are expansive enough to mean any officer subordinate to the Transport Commissioner, that must be given effect to.

19. As aforesaid, while considering the purport of the expression in Section 14(1A) of the 2002 Act, it must be noticed that the said provision was inserted vide Act 1 of 2013 with effect from 15.1.2013. In absence of express provision, such as sub-Section (1A) under the unamended Act, the CMM/DM could take possession of secured assets on a written application made by the secured creditor under Section 14(1); and while doing so in terms of Section 14(2) of the 2002 Act, it was open to the CMM/DM to take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion be necessary. This would include taking assistance of the local Police to obviate any untoward situation or law and order problem at the site while taking over possession. While construing that provision as early as in 2008, the High Court of Kerala in the case of Muhammed Ashraf44 gave expansive meaning to the rule that it was open to the CMM/DM to take assistance of an advocate to be appointed as a commissioner for taking possession of the secured assets and documents relating thereto for being handed over or forwarded to the secured creditor. It was an inherent or implicit power vested in the stated authority and more particularly because advocates were no less than officers of the court of the CMM/DM. This view has been consistently followed not only by the High Court of Kerala, but also by other High Courts such as High Courts of Madras and Delhi. Most of the CMMs/DMs across the country have been following that dispensation. The only discordant note can be discerned from the decision of the Bombay High Court which is impugned before us. The Bombay High Court has followed the strict and literal interpretation rule and, thus, preferred "statutory subordination" logic. The view so taken can be sustained only if we were to hold that legislative intent in using the expression "any officer subordinate to him" completely rules out the other 44 supra at Footnote No.8 option which is being followed since commencement of the Act

in 2002.

20. Indeed, in the case of advocate, the logic of "administrative subordination" or "statutory subordination" cannot be extended. Inasmuch as, for being a case of "statutory subordination", the provisions of the 2002 Act and the Security Interest (Enforcement) Rules, 200245 made thereunder, must expressly provide for such mechanism. This cannot be said about the provisions of the 2002 Act and the Rules made thereunder. Even the logic of "administrative subordination" as considered by this Court in A. St. Arunachalam Pillai46 cannot be invoked. For, the advocate by no stretch of imagination can fit into the administrative set up of the Office of the CMM/DM.

21. That leaves us with the third possibility of "functional subordination". For invoking that logic, we must necessarily conclude that the provisions under consideration are wide enough and expansive to encompass engaging services of Advocate Commissioner. For that purpose, we must first advert to the 45 for short, "2002 Rules" 46 supra at Footnote No.41 Statement of Objects and Reasons for which the 2002 Act has been enacted. The same reads thus:

> "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 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. 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 non- performing assets by adopting measures for recovery or reconstruction." (emphasis supplied)

> 22. The underlying purpose of the 2002 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 2002 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)47 of the 2002 Rules. 47 2. Definitions.—In these rules, unless the context otherwise requires,—

(a) "authorised officer" means an officer not less than a chief manager of a public sector bank or equivalent, as specified by the Board of Directors or Board of Trustees of the secured creditor or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the secured creditor, as the case may be, to exercise the rights of a secured creditor under the Act;

23. 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 2002 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 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 2002 Act. As noted earlier, Section 14(2) is an enabling provision and permits the CMM/DM to take such steps and use force, as may, in his opinion, be necessary. This position obtained even before the amendment of 2013 i.e., insertion of sub-Section (1A) and continues to this date.

24. Incidentally, it needs 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 2002 Act whereby the secured creditor (Bank/Financial Institution) 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. The insertion of sub-Section (1A) is not to invest a new power for the first time in the CMM/DM as such.

25. Thus understood, the question is: whether the past practice followed by most of the courts across the country in recognising the power of the CMM/DM to appoint an advocate as a commissioner to assist him in merely taking possession of the secured assets and documents relating thereto and to forward the same to the secured creditor, needs to be discontinued as being prohibited owing to insertion of sub-Section (1A)? Section 14 of the 2002 Act, as amended and applicable to the cases on

hand, 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 assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—
>
> (a) take possession of such asset and documents relating thereto; and
>
> (b) forward such asset and documents to the secured creditor:
>
> Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—
>
> (i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;
>
> (ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;
>
> (iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;
>
> (iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;
>
> (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 within a period of thirty days from the date of application:

Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

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

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

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

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

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary. (3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority." (emphasis supplied)

26. Considering the scheme of the 2002 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, that could be done

by the "authorised officer" of the Bank as noted in Rule 8 of the 2002 Rules, which reads thus:

> "8. Sale of immovable secured assets.—(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property. (2) The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer.

(2-A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8.

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of. (5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:—

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction including through e- auction mode; or

(d) by private treaty.

Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provisions of Jammu and Kashmir Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State. (6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

> Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading

newspapers including one in vernacular language having wide circulation in the locality. (7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web-site of the secured creditor, which shall include;

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price of the immovable secured assets below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) deposit of earnest money as may be stipulated by the secured creditor;

(f) any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property.

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the secured creditor and the proposed purchaser in writing."

27. However, for taking physical possession of the secured assets in terms of Section 14(1) of the 2002 Act, as aforementioned, 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.

28. 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 2002 Act from the secured creditor for that purpose. As soon as such 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 2002 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. The latter is a ministerial act. It cannot brook delay. Time is of the essence. This is the spirit of the special enactment. However, it is common knowledge that the CMM/DM are provided with limited resources. That inevitably makes it difficult, if not impossible, for the CMM/DM to fulfil his/her obligations with utmost dispatch to uphold the spirit of the special legislation.

29. It is common knowledge that in the respective jurisdictions, there is only one CMM/DM. If he is expected to reach at every location himself for taking possession, in some jurisdictions it would be

impracticable, if not impossible, for him to do so owing to large number of applications in the given jurisdiction being a commercial city. Accordingly, strict construct would defeat the legislative intent and purpose for enacting the 2002 Act. Indeed, logistical problems of the Office of the CMM/DM cannot be the basis to overlook the statutory provision. However, we are persuaded to take the view that an advocate is and must be regarded as an officer of the court and subordinate to the CMM/DM for the purposes of Section 14(1A) of the 2002 Act.

30. Furthermore, as was the situation obtaining before insertion of sub-Section (1A) wherein the CMM/DM could avail the services of an advocate or any officer subordinate to him for discharging the ministerial work of taking possession of the secured assets and documents relating thereto, nothing prevents him/her from continuing to follow the same regime even after the insertion of sub-Section (1A). At the same time, while entrusting the act of taking possession of the secured assets consequent to the order passed under Section 14(1) of the 2002 Act to any officer subordinate to him, the CMM/DM ought to exercise prudence in appointing such person who will be capable of executing the orders passed by him. Merely because he has power to appoint "any" officer subordinate to him, it would not permit him to appoint a peon or clerk, who is incapable of handling the situation.

31. Be that as it may, the expression "any" in section has not been defined in the 2002 Act or the 2002 Rules. So also, the expressions "officer" and "subordinate" are not defined singularly or collectively. The meaning of expression "any" as given in Black's Law Dictionary48 reads thus:

> "Any. Some; one out of many; an indefinite number. One indiscriminately of whatever kind or quantity. Federal Deposit Ins. Corporation v. Winton, C.C.A. Tenn., 131 F.2d 780, 782. One or some (indefinitely). Slegel v. Slegel, 135 N.J.Eq. 5, 37 A.2d 57, 58. "Any" does not necessarily mean only one person, but may have reference to more than one or to many. Doherty v. King, Tex.Civ.App., 183 S.W.2d 1004, 1007.
>
> Word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject matter of the statute. Donohue v. Zoning Bd. of Appeals of Town of Norwalk, 155 Conn. 550, 235 A.2d 643, 646, 647.
>
> It is often synonymous with "either", "every" or "all". Its generality may be restricted by the context; thus, the giving of a right to do some act "at any time" is 48 6th Edition commonly construed as meaning within a reasonable time;

and the words "any other" following the enumeration of particular classes are to be read as "other such like," and include only others of like kind or character." (emphasis supplied)

32. The expression "officer" as defined in the Black's Law Dictionary49 reads thus:

> "officer. (14c) 1. Someone who holds an office of trust, authority, or command. • In public affairs, the term refers esp. to a person holding public office under a national,

> state, or local government, and authorized by that government to exercise some specific function. In corporate law, the term refers esp. to a person elected or appointed by the board of directors to manage the daily operations of a corporation, such as a CEO, president, secretary, or treasurer. Cf. DIRECTOR (2).
>
> (emphasis supplied)

33. The expression "subordinate" as given in P. Ramanatha Aiyar's Advanced Law Lexicon50 reads thus:

> "Subordinate" defined. Act 24, 1859, section 1; Mad Act 3, 1909, section 2.
>
> Belonging to an inferior rank, grade, class or order; dependent upon the authority or power of another [Section 121, Indian Evidence Act (1 of 1872)]; a person or thing that is ranked lower.
>
> By the use of the word 'subordinate' without any qualifying words, the legislature has expressed its legislative intention of making punishable such subordinates also who have no connection with the functions with which the business or transaction is concerned. An Assistant Controller of Imports in the office of the Joint Chief Controller of Imports and Exports is a subordinate of the joint Chief Controller through the acceptance of the bribe has nothing to do with the appeal 49 11th Edition 50 Volume 4 (6th Edition) pending before the Joint Chief Controller. R.G. Jacob v Republic of India, AIR 1963 SC 550, 553. [Indian Penal Code (45 of 1860), section 165 (omitted by Prevention of Corruption Act, 1988)] The construction placed on the expression 'subordinate' occurring in Rule 14(2) of the Rules is in consonance with the meaning and import of the word 'subordinate' occurring in Article 311(1) of the Constitution. There is nothing in the Constitution which debars the Government from exercising the power of appointing authority to dismiss a Government servant from service. These Rules cannot be read as implying that dismissal must be by the very authority who made the appointment or by his immediate superior. There is a compliance with Article 311(1) if the dismissing authority is not lower in rank or grade than the appointing authority. [Govt. of A.P. v N. Ramanaiah, (2009) 7 SCC 165, 172, paras 23, 24] [Constitution of India, Article 311(1); A.P. Civil Services (CCA) Rules, 1991, rule 14(2)] The word 'subordinate' in section (2)(f) means subordinate in law and not in fact. Although a person looking after the business of another person as manager, may not in fact be subordinate to the other person and may be acting on his own initiative, yet if, as an individual manager, he is in law subordinate to the employer, namely, the other person, he cannot be regarded as the "managing agent" of employer as defined in section 2(1)(f), and no order of compensation can be made against him. Raghunath Sahai v Sarup Singh, MLJ : QD (1961-1965) Vol V C1952-1953 : 1962 All LJ 104 : 1962 All WR (HC) 91 : (1962) 1 LLJ 19 : (1961) 3 Fac LR 445 : (1962-63) 23 FJR 624 : AIR 1962 All 620 [Workmen's Compensation Act (8 of 1923), section 2(1)(f)] The word 'subordinate' also means judicial or quasi judicial

> administrative subordination to the Director of consolidation. Ram Narain v Director of Consolidation, AIR 1965 All 172, 173. [U.P. Consolidation of Holdings Act (5 of 1954), section 48 (as amended in 1963), section 48] The provisions made in Section 133-A were already there when Section 44-A was added to the Act by the Madras Act (XX of 1948). The latter Act does not contain any separate definition of the word "subordinate".

Naturally, no definition was necessary in view of the provision already made in Section 133-A. It must be assumed that the Madras Legislature was aware of the existence of Section 133-A when it introduced Section 44- A, and, when it used the word "subordinate" in that section, it must have intended that the word "subordinate" should be understood only in the manner to determine which provision had already been made in Section 133-A of the Act. Krishna Swamy Mudaliar v Palani Pillai, MLJ : QD (1956-1960) Vol.IV C151 : (S) AIR 1957 Mad 599 (FB). [Motor Vehicles Act (4 of 1939), section 133-A] The word 'subordinate' occurring in Article 311(1), has reference to subordination in rank and not subordination in respect of powers and duties. Article 311(1) cannot be read as implying that the removal must be by the very same authority who made the appointment or by his direct superior. It is enough that the removing authority is of the same rank of grade. Laxminarayana Sarangi v State of Orissa, MLJ : QD (1961-1965) Vol. II C1050 : AIR 1963 Orissa 8 : ILR (1962) Cut 492. [Constitution of India, Article 311(1)] The word 'subordinate' in Article 311(1) Constitution of India, means subordination in rank and not subordination of function. Mahadev Prasad Roy v. S.N. Chatterjee, AIR 1954 Pat 285.

The word 'subordinate' in Article 311(1) of the Constitution of India means subordinate in rank and not with reference to the functions exercised. Consequently when no officer of equal rank to the appointing officer is available then the order of dismissal or removal will have to be passed by an officer of superior rank. In no circumstances can such an order be passed by an officer of lesser rank. Any rule or statute which permits such an action must be held to be ultra vires as infringing the provisions of Article 311(1) of the Constitution. Gurmukh Singh v UOI, New Delhi, MLJ :

> QD (1961-1965) Vol.II C1050 : 65 Punj LR 964 : AIR 1963 P&H 370 For the purposes of transfer applications of suits from the Original Side of the High Court the Judge sitting on the original side is subordinate to the appellate side of the High Court. (AIR 1923 Rang. 22)" (emphasis supplied)

34. The expression "officer subordinate" as defined in Venkataramaiya's Law Lexicon & Legal Maxims51 reads thus:

> ""Officer subordinate."— What is the exact purport of the component words of the expression "any officer subordinate" used in the Sec.44-A of the Motor Vehicles Act, 1939. "Any" is a word which excludes limitation or qualification. It connotes wide generality. Its use points to a distributive construction. The word "any" is used in the sense of "any body", "any person". The individual who is invested with the authority and is required to perform the duties incidental to an office is an officer. For determining whether officers are subordinate or not the test is not whether a review

> of such of their determinations as are quasi-judicial may be had, but whether in the performance of their various duties they are subject to the direction and control of a superior officer, or are independent officers subject only to such directions as the statute gives.— B. Veeraswamy v. State of Andhra Pradesh, (1959) Andh. W.R.308 at p.314: A.I.R. 1959 A.P. 413 (F.B.)" (emphasis supplied)

35. The expressions "officer, subordinate" and "officers subordinate to him" as given in P. Ramanatha Aiyar's Advanced Law Lexicon52 read thus:

> "Officer, subordinate. Officer belonging to an inferior rank, grade, class or order.
>
> Officers subordinate to him. A Minister is an officer subordinate to the Governor. Shiv Bahadur Singh v State of Uttar Pradesh, AIR 1953 SC 394." 51 Vol.III (2nd Edition) 52 Volume 3 (6th Edition)

36. As regards the procedure for taking possession of the secured assets, it can be discerned from Section 13 read with Section 14 of the 2002 Act. Section 13(4) permits the secured creditor to take recourse to one or more of the specified measures; and to enable the secured creditor to do so even at the stage of pre-confirmation of sale; in terms of Section 14, the CMM/DM has power in that regard albeit after passing order on a written application given by the secured creditor for that purpose. Once the order is passed, the statutory obligation cast upon the CMM/DM stands discharged to that extent. The next follow-up step is of taking possession of the secured assets and documents relating thereto. The same is 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. The Advocate Commissioner is not a new concept. The advocates are appointed as Court Commissioner to perform diverse administrative and ministerial work as per the provisions of Code of Civil Procedure and Code of Criminal Procedure. An advocate is an officer of the court. This has been expounded in Virginia Law Review53, in the following words:

> "The duties of the lawyer to the Court spring directly from the relation that he sustains to the Court as an officer in the administration of justice. The law is not a mere private calling but is a profession which has the distinction of being an integral part of the State's judicial system. As an officer of the Court the lawyer is, therefore, bound to uphold the dignity and integrity of the Court; to exercise at all times respect for the Court in both words and actions; to present all matters relating to his client's case openly, being careful to avoid any attempt to exert private influence upon either the judge or the jury; and to be frank and candid in all dealings with the Court, "using no deceit, imposition or evasion," as by misreciting witnesses or misquoting precedents. "It must always be understood," says Mr. Christian Doerfler, in an address before the Milwaukee County Bar Association, in December, 1911, "that the profession of law is instituted among men for the purpose of aiding the administration of justice. A proper administration of justice does not mean that a lawyer should succeed in winning a lawsuit. It means that he should properly bring to

> the attention of the Court everything by way of fact and law that is available and legitimate for the purpose of properly presenting his client's case. His duty as far as his client is concerned is simply to legitimately present his side of the case. His duty as far as the public is concerned and as far as he is an officer of the Court is to aid and assist in the administration of justice." (emphasis supplied)

37. It would be useful to advert to the enunciation in Black's Law Dictionary54 in respect of expression "amicus curiae" which reads thus:

> "amicus curiae. [Latin "friend of the court"] (17C) Someone who is not a party to a lawsuit but who petitions the court 54 11th Edition or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter.— Often shortened to amicus. — Also termed friend of the court. Pl. amici curiae"

38. Even this Court had occasion to expound about the role of the advocate as being an officer of the court in Lalit Mohan Das vs. The Advocate-General, Orissa & Anr.55. The Constitution Bench observed thus:

> "(11) ..... A member of the Bar undoubtedly owes a duty to his client and must place before the Court all that can fairly and reasonably be submitted on behalf of his client. He may even submit that a particular order is not correct and may ask for a review of that order. At the same time, a member of the Bar is an officer of the Court and owes a duty to the Court in which he is appearing. He must uphold the dignity and decorum of the Court and must not do anything to bring the Court itself into disrepute. ...." (emphasis supplied)

39. It is well established that an advocate is a guardian of constitutional morality and justice equally with the Judge. He has an important duty as that of a Judge. He bears responsibility towards the society and is expected to act with utmost sincerity and commitment to the cause of justice. He has a duty to the court first. As an officer of the court, he owes allegiance to a higher cause and cannot indulge in consciously misstating the facts or for that matter conceal any material fact within his knowledge. In the case of O.P. 55 AIR 1957 SC 250 Sharma & Ors. vs. High Court of Punjab & Haryana56, the Court noted that in all professional functions, an advocate should be diligent and his conduct should conform to the requirements of the law by which he plays a vital role in the preservation of society and justice system. As an officer of the court, he is under a higher obligation to uphold the rule of law and justice system.

40. Be it noted that Section 38 of the 2002 Act empowers the Central Government to make rules for carrying out the provisions of the 2002 Act. Sub-Section (2) thereof does not specifically/expressly refer to power to make rule in respect of matter provided for in Section 14 unlike other provisions noted therein. However, it is open to the Central Government to frame rules in that regard by invoking clause (g) of sub-Section (2) of Section 38. The same reads thus:

> "38. Power of Central Government to make rules.—(1) ....

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) to (fc) .....

(g) any other matter which is required to be, or may be, prescribed, in respect of which provision is to be, or may be, made by rules." 56 (2011) 6 SCC 86 (para 38)

41. Pertinently, no such rule has been framed by the Central Government in reference to sub-Section (1A) of Section 14 of the 2002 Act much less to expressly or by necessary implication prohibiting the CMM/DM to engage an Advocate Commissioner for taking possession of the secured assets. In absence thereof, exclusion of engagement of an advocate as commissioner cannot be countenanced.

42. Whereas, applying the "functional subordination" test, we are persuaded to take the view that sub-Section (1A) of Section 14 of the 2002 Act is no impediment for the CMM/DM to engage services of an advocate (an officer of the court) — only for taking possession of secured assets and documents relating thereto and to forward the same to the secured creditor in furtherance of the orders passed by the CMM/DM under Section 14(1) of the 2002 Act in that regard. It does not follow that the advocate so appointed needs to be on the rolls in the Office of the CMM/DM or in public service. There is intrinsic de jure functional subordinate relationship between the CMM/DM and the advocate being an officer of the court. The apprehension of the borrowers about improper execution of orders of the CMM/DM passed under Section 14(1) of the 2002 Act by the Advocate Commissioner, is plainly misplaced. Further, being an officer of the court and appointed by the CMM/DM, the acts done by the Advocate Commissioner would receive immunity under Section 14(3) of the 2002 Act — as an officer authorised by the CMM/DM. There is no reason to assume that the advocate so appointed by the CMM/DM would misuse the task entrusted to him/her and that will not be carried out strictly as per law or it would be a case of abuse of power. Rather, going by the institutional faith or trust reposed on advocates being officers of the court, there must be a presumption that if an advocate is appointed as commissioner for execution of the orders passed by the CMM/DM under Section 14(1) of the 2002 Act, that responsibility and duty will be discharged honestly and in accordance with rules of law.

43. For the view taken by us hitherto, the exposition in Satheedevi vs. Prasanna & Anr.57, M/s. Hiralal Rattanlal etc. etc. vs. State of U.P. & Anr. etc. etc.58, and Dipak Babaria & Anr. vs. State of Gujarat & Ors.59, will be of no avail to the borrowers. In that, we have not invoked the principle of casus omissus. In our view, in law, 57 (2010) 5 SCC 622 58 (1973) 1 SCC 216 59 (2014) 3 SCC 502 an advocate is an officer of the court and, thus, subordinate to the CMM/DM. Further, there is no indication in the 2002 Act or the Rules made thereunder to exclude such interpretation. For the same reason, the plea regarding applying principle of ejusdem generis or noscitur a sociis and for that matter, expressio unius est exclusio alterius, also need not detain us.

44. The secured creditors would rely on the dictum of this Court in Authorised Officer, Indian Bank vs. D. Visalakshi & Anr.60 wherein this Court upon considering the nature of activities of the Chief Judicial Magistrate61 on the one hand and that of the CMM/DM on the other, held that the CJM is

competent to process the request of the secured creditor to take possession of the secured assets under Section 14 of the 2002 Act. However, it is unnecessary to dilate on that decision considering the view taken hitherto that the advocate must be regarded as an officer of the court and, in law, subordinate to the concerned CMM/DM within their jurisdiction. This interpretation in applying "functional subordination" test, would further the legislative intent and the purpose for enacting the 60 (2019) 20 SCC 47 61 for short, "CJM" 2002 Act. We hold that it would be open to the CMM/DM to appoint an advocate commissioner to assist him/her in execution of the order passed under Section 14(1) of the 2002 Act.

45. A fortiori, the judgment and order of the Bombay High Court impugned in the present appeals62 is declared as not a good law. Whereas, we uphold the conclusion of the three High Courts, namely, High Courts of Kerala, Madras and Delhi on the question under consideration.

46. Although, we have agreed with the view taken by the Madras High Court about the power of the CMM/DM to appoint an Advocate Commissioner, yet S.L.P (Civil) No. 12011 of 2020 filed by the borrowers needs to be delinked and heard for admission separately, limited to the first issue about compliance or non-compliance of clauses (i) to (ix) of Section 14 of the 2002 Act. That issue has been answered by the High Court in favour of the secured creditor and against the borrowers, in paragraphs 10 and 11 of the impugned judgment. The correctness whereof will have to be considered on its own merits.

47. In view of the above:

(i) the appeals63 filed by the secured creditors are allowed.

Resultantly, the impugned judgment and order passed by the Bombay High Court is set aside and the subject writ petition64 stands dismissed.

(ii) The special leave petition65 filed by the borrowers against the impugned judgment and order of the Madras High Court is delinked for being heard for admission on 4.3.2022, on the limited issue (first issue) regarding compliance or non-compliance of clauses (i) to (ix) of Section 14 of the 2002 Act in the fact situation of the present case.

(iii) No order as to costs.

Pending application(s), if any, stands disposed of.

.....J. (A.M. Khanwilkar) .....J. (C.T. Ravikumar) New Delhi;

February 25, 2022.

63 Civil Appeal No..... of 2022 @ SLP (Civil) No.30240 of 2019; Civil Appeal No..... of 2022 @ SLP (Civil) No.2055 of 2020; Civil Appeal No.....of 2022 @ SLP (Civil) No.....of 2022 @ Diary No.17059 of 2020; and Civil Appeal No.....of 2022 @ SLP (Civil) No.....of 2022 @ Diary No.23733 of 2020

[Footnote No.5] Writ Petition (L) No.28480 of 2019 [Footnote No.17] 65 SLP (Civil) No.12011 of 2020 [Footnote No.7]