

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 138 of 2024

Bank of Baroda Petitioner
Versus
1. The State of Jharkhand
2. Dy. Commissioner, Seraikella-Kharsawan ... Respondents

CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

For the Petitioner : Mr. P.A.S. Pati, Advocate
For the State : A.C. to Sr.S.C.-I

03/25.01.2024 Heard Mr. P.A.S. Pati, learned counsel appearing for the petitioner and learned A.C. to Sr.S.C.-I.

In this writ application the petitioner has prayed for a direction upon the respondent no.2 to show-cause as to why the application preferred by the petitioner under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been kept pending. Further direction has been sought for on the respondent no.2 to pass a final order upon the pending application in terms of Section 14 of the Securitisation Act.

It has been submitted by learned counsel for the petitioner that the petitioner had filed the application on 23.11.2020 but without considering Section 14 of the SARFAESI Act, the respondent no.2 has kept the matter pending for years together. Learned counsel has referred to the case of **Balkrishna Rama Tarle Dead through Legal Representatives & Anr. Vrs. Phoenix ARC Private Limited & Ors.** reported in **(2023) 1 SCC 662** while submitting that the respondent no.2 should have immediately acted upon the application preferred by the petitioner in terms of Section 14 of the SARFAESI Act.

I have heard also learned A.C. to Sr.S.C.-I.

The factual aspects reveal that M/s Assay Ceramics & Chemicals Pvt. Ltd. which is an incorporated company, had availed loan from the petitioner bank by creation of equitable mortgage with respect to a land situated at Adityapur measuring an area of 45,000/- sq.ft. acquired through lease deed no.4547

dated 13.10.2006. The account could not be maintained by the borrower, which resulted in it becoming NPA and consequently a demand notice under Section 13(2) of the SARFAESI Act was issued to the borrowers and the guarantors.

Since the borrower did not pay the amount as demanded by the petitioner, a possession notice was issued on 7.7.2020 and symbolic possession of the property in question was taken by the bank. Subsequently the petitioner had made an application before the respondent no.2 under Section 14 of the SARFAESI Act on 23.11.2020 and though in terms of Section 14 the respondent no.2 was ordained to pass an order within 30 days and if not possible within 60 days by recording reasons for the delay, but the same has been kept pending by the respondent no.2.

In the case of **Balkrishna Rama Tarle (supra)** reference has been made to the case of **R.D. Jain & Co. Vs. Capital First Ltd.** reported in **(2023) 1 SCC 675** and the relevant reads as follows

“17. In the recent decision in R.D. Jain & Co. v. Capital First Ltd., this Court had an occasion to consider the powers exercisable by District Magistrate/Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act. After considering the object and purpose of Section 14 of the SARFAESI Act and the scheme of the Act under Section 14, it is observed and held in paras 18 to 26 as under:

“18. Now so far as the powers exercisable by DM and CMM under Section 14 of the SARFAESI Act are concerned, Statement of Objects and Reasons for which the SARFAESI Act has been enacted reads as under:

‘Statement of Objects and Reasons

The financial sector has been one of the key drivers in India’s efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions

has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them 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 21-6-2002 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.'

19. Thus, the underlying purpose of the SARFAESI Act is to empower the financial institutions in India to have similar powers as enjoyed by their counterparts, namely, international banks in other countries. One such feature is to empower the financial institutions to take possession of securities and sell them. The same has been translated into provisions falling under Chapter III of the SARFAESI Act. Section 13 deals with enforcement of security interest. Sub-section (4) thereof envisages that in the event a default is committed by the borrower in discharging his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the measures provided in sub-section (4). One of the measures is to take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset. That, they could do through their "authorised officer" as defined in Rule 2(a) of the Security Interest (Enforcement) Rules, 2002.

20. After taking over possession of the secured assets, further steps to lease, assign or sell the same could also be taken by the secured creditor. However, Section 14 of the SARFAESI Act predicates that if the secured creditor intends to take possession of the secured assets, it 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 SARFAESI 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.

21. At this stage, it is required to be noted that along with insertion of sub-section (1-A), a proviso has also been inserted in sub-section (1) of Section 14 of the SARFAESI Act whereby the secured creditor is now required to comply with 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 (1-A) is in the nature of an explanatory provision and it merely restates the implicit power of the CMM/DM in taking services of any officer subordinate to him. As observed and held by this Court in NKGSB Coop. Bank⁴, the insertion of sub-section (1-A) is not to invest a new power for the first time in the CMM/DM as such.

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

23. However, for taking physical possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under Section 14(1) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity.

24. As mandated by Section 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time-limit and pass a

suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment.

25. As observed and held by this Court in *NKGSB Coop. Bank⁴*, the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the Advocate Commissioner who is considered as an officer of his/her court. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. Thus, we reiterate that the step to be taken by the CMM/DM under Section 14 of the SARFAESI Act, is a ministerial step. While disposing of the application under Section 14 of the SARFAESI Act, no element of quasi-judicial function or application of mind would require. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets.

26. Thus, in view of the scheme of the SARFAESI Act, more particularly, Section 14 of the SARFAESI Act and the nature of the powers to be exercised by the learned Chief Metropolitan Magistrate/learned District Magistrate, the High Court in the impugned judgment and order⁶ has rightly observed and held that the power vested in the learned Chief Metropolitan Magistrate/learned District Magistrate is not by way of *persona designata*. ”

Mr. Pati has also referred to para-18 of the judgment rendered in the case of **Balkrishna Rama Tarle (supra)** while submitting that the respondent no.2 does not have any adjudicatory role on an application under Section 14 of the SARFAESI Act preferred before him. In such context para-18 of the said judgment is quoted herein under :-

“18. *Thus, the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial steps and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section 14 of the SARFAESI Act are complied*

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

At para-24 of the judgment in **R.D. Jain & Co.** (supra) it has been specifically mentioned that time is of the essence and there should not be any delay once an application under Section 14 of the SARFAESI Act is preferred before the District Magistrate (respondent no.2).

In the circumstances noted above therefore, this writ application stands disposed of with a direction to the respondent no.2 to take note of the judgment which has been referred to in the preceding paragraphs and consider and dispose of the application preferred by the petitioner under Section 14 of the SARFAESI Act, expeditiously and preferably within a period of three weeks from the date of receipt/production of a copy of this order.

Let a copy of this order be handed to the learned counsel for the respective parties.

(Rongon Mukhopadhyay, J.)

Shamim/-