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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11425 of 2021

(In the matter of an application under Articles 226 and 227 of the Constitution of India)

Bajaj Finance Ltd. …. ***Petitioner***

-Versus-

M/s. Ali Agency and Others …. ***Opposite Parties***

Advocates appeared in the case through Hybrid Mode:

For Petitioner : Mr. Ramachandra Panigrahy, Advocate

For Opposite Parties : Mr. Santanu Kumar Sarangi, Advocate (for Opposite Party No.2)

Mr. S. P. Mishra, Senior Advocate &
Mr. Soumya Mishra, Advocate

(for Opposite Party No.3)

CORAM:
JUSTICE JASWANT SINGH
JUSTICE S.K. PANIGRAHI

DATE OF HEARING:- 06.12.2021
DATE OF JUDGMENT:- 10.01.2022

Jaswant Singh, J.

1. The secured creditor is before this Court challenging the order dated 9th of March, 2021 (Annexure-P/1) passed by the learned Chief Judicial Magistrate, Cuttack, rejecting the application filed by the Petitioner-Finance Company under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short referred to as "the SARFAESI Act").

2. The brief facts are that M/s. Ali Agency, a partnership farm (O.P. No.1) had been sanctioned and disbursed a loan amount of Rs.2,81,25,000/- (Rupees two crore

eighty-one lakhs and twenty-five thousand only) by the Petitioner. The Opposite Party Nos.2 and 3 are the partners of the Opposite Party No.1, and also co-borrowers. The loan was secured by mortgaging a residential property owned by Opposite Party No.3. Due to lack of financial discipline, the loan account was declared as Non-Performing Asset (NPA) on 4th October, 2017. A demand Notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 6th November, 2017 seeking to recall outstanding amount of Rs.2,85,04,685/- (Rupees two crore eighty-five lakh four thousand six hundred eighty-five only) due as on 6th of November, 2017. Symbolic possession of the mortgaged property was assumed vide Possession Notice dated 21st February, 2018 issued under Section 13 (4) of the SARFAESI Act.

3. The Petitioner-secured creditor filed an application under Section 14 of the SARFAESI Act before the District Magistrate (DM), Cuttack in April, 2018 seeking providing of official assistance for taking over actual physical possession of the secured asset-mortgaged residential property. Since the same was not decided within the stipulated time, the Petitioner approached this Court by filing a Writ Petition which was disposed of vide order dated 11th December, 2018 directing the District Magistrate (DM), Cuttack to dispose of the application within a period of six months.

4. The District Magistrate (DM), Cuttack vide order dated 19th of June, 2019 decided the application on merits of the case, while rejecting the application filed by the Petitioner-Finance Company. The Petitioner was constrained to file W.P.(C) No.16549 of 2019 assailing the aforesaid order dated 19th of June, 2019 which was disposed of by a Division Bench of this Court vide order dated 19th of September, 2019 directing the District Magistrate, Cuttack to decide the

application, within the scope of Section 14 of the SARFAESI Act, and after giving opportunity to the parties concerned, within the statutory period.

5. As the directions were not complied with by the District Magistrate, Cuttack, the Petitioner was constrained to file a CONTC before this Court on 4th of September, 2020 which is stated to be pending. The Petitioner, thereafter, filed a fresh application on 7th September, 2020 under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate, Cuttack who has vide the impugned order dated 9th September, 2020 rejected the application on the ground that similar application was pending before the District Magistrate, Cuttack. Consequently, the Petitioner withdrew its application pending before the District Magistrate, Cuttack with liberty to file a fresh one, if so required. The District Magistrate, Cuttack vide order dated 23rd December, 2020 permitted the withdrawal but without liberty as prayed for.

6. The Petitioner, thereafter, filed a fresh application along with the withdrawal order on 25th January, 2021 under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate, Cuttack.

7. The Chief Judicial Magistrate, Cuttack vide its impugned order dated 9th of March, 2021 has once again rejected the application. Hence, the present petition.

8. Learned Counsel for the petitioner has argued that the process of consideration of an application submitted by the secured creditor under Section 14 before the Magistrate does not involve any adjudicatory mechanism and is purely administrative in nature. Section 14 (1) of the SARFAESI Act, 2002 was subjected to an amendment on 15.01.2013 consequent upon which now the secured creditor was required to support its application with 9 point affidavit. The provision requires the Magistrate only to examine whether the application is supported with a 9 point affidavit or not and in case, if the said affidavit contains all the stipulations as required for by virtue of amended Section 14, it is obligated to pass

an order providing for assistance to secured creditor to obtain physical possession of the secured asset. He thus submits that the impugned order dated 09.03.2021 (Annexure P-1) may be set aside as Opposite Party No.1 has exceeded its jurisdiction by rejecting the application of the petitioner/secured creditor in spite of being complete in all respects.

9. On the other hand, learned Counsel for the Opposite Party Nos.2 and 3 submits that the present petition is not maintainable, as the petitioner has not availed the alternative statutory remedy by filing an application under Section 17 of the SARFAESI Act, 2002 before the DRT to lay challenge to the impugned order dated 09.03.2021 passed by Chief Judicial Magistrate (Opposite Party No.1). He further submits that the petitioner has not brought on record the reply dated 04.04.2018 submitted by the Opposite Party Nos.2 and 3 pursuant to which Rs.7,57,108/- was deposited with the petitioner creditor which disentitles it to maintain the present petition. Still further, the petitioner cannot be permitted to maintain two parallel remedies for the same cause i.e. one before the District Magistrate and the other one before the Chief Judicial Magistrate (Opposite Party No.1). That apart, there is no notification issued by the Government of India authorizing Chief Judicial Magistrate to exercise jurisdiction under Section 14 of the Securitisation Act, 2002. He thus submits that the present petition is devoid any merit and prays for dismissal of the same.

10. Having heard both the sides and after carefully scrutinizing the record of the present case, we find that the following issues would arise for consideration of this Court :-

i. Whether the present writ petition is maintainable in view of the remedy provided under Section 17 of the SARFAESI Act, 2002?

ii. Whether Chief Judicial Magistrate would have the jurisdiction to entertain an application under Section 14 of the SARFAESI Act, 2002?

iii. Scope of exercise of jurisdiction by the authorities concerned, while examining an application under Section 14 of the Securitisation Act, 2002.

iv. Relief to which the petitioner would be entitled to in the instant petition.

ISSUE NO.1

11. The first issue which arises for consideration is regarding the maintainability of the present petition. According to the learned Senior Counsel for Opposite Party Nos.2 to 3 the impugned order dated 09.03.2021 is appealable before the DRT under Section 17(1) of the Securitisation Act, 2002. He contends that an order passed by the Magistrate under Section 14 is to be treated as an action under Section 13(4) and hence is appealable before DRT by filing an application under Section 17 and consequently without first availing such alternative statutory remedy under the Act, 2002 the present petition could not be maintained by the petitioner.

12. On the other hand, learned Counsel for the petitioner contends that the remedy under Section 17 before DRT is only available to a person who is aggrieved of an action taken by the secured creditor under Section 13(4). Since in the present case there is no action by the secured creditor rather the secured creditor itself is aggrieved of the order of the Magistrate therefore application under Section 17 would not be maintainable before the DRT. He further states that the writ petition is the only remedy as even the jurisdiction of civil court is barred under Section 34 of the SARFAESI Act, 2002.

13. Having heard both sides, we find the preliminary objection raised by the Opposite Party Nos.2 and 3 is liable to be rejected. Section 13(1) and Section 17 of the Act, 2002 reads as under :-

> **13. Enforcement of security interest.** - (1) Notwithstanding anything contained in section 69 or section 69-A of the Transfer of Property Act, 1882 (4 of 1882), **any security interest created in favour of any secured**

creditor may be enforced, **without the intervention of the Court or tribunal**, by such creditor in accordance with the provisions of this Act.

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

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

[Explanation. For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

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

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

(b) where the secured asset is located; or

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

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

[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-

section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,-

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

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

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

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

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[Emphasis supplied]

A perusal of Section 13(1) of the Act, 2002 reflects the intention of the legislature to enable the creditor to enforce the charged securities without the intervention of the Court or tribunal. Further, the remedy under Section 17 of the Act, 2002 is only available to a person aggrieved of an action initiated by the secured creditor. **Noticeably, remedy to the secured creditor to approach the Tribunal to lay challenge to an order passed by the Magistrate is conspicuous by its absence.** The scheme of the Act, does not provide for a remedy to the secured creditor within the ambit and scope of Section 17 in absence of an impugned act

of a secured creditor. In order to invoke the jurisdiction of the Tribunal and maintain an application before it, it is necessary that there ought to be an action of a secured creditor which is a subject matter of challenge before the DRT. The scope of relief which the Tribunal is intended to grant is provided for under Section 17(4) which also does not in any way provide for an order which the secured creditor is looking for in the present petition. The secured creditor therefore would not have a remedy to challenge an order of the Magistrate before the Tribunal in such circumstances.

14. Still further Division Bench of Punjab and Haryana High Court ***Allahabad Bank V/s District Magistrate, Ludhiana***[1] authored by one of us (J. Jaswant Singh) while considering a similar issue has held in extracted Para 30 as under :-

> **"30.** …….. It thus clear, that the District Magistrate does not assume any adjudicatory function while examining the application of the secured creditor under Section 14 of the Act, 2002. For the same reason, we find that it would amount to no illegality if an order is passed without effective service upon the borrowers being in the nature of execution process pursuant to statutory notices served under Section 13(2) and (4) as envisaged under the scheme of the Act, 2002. Though, it would be desirable that before proceeding to take actual physical possession by the officer so deputed by the District Magistrate, a reasonable notice of say 15 days be served on the occupant so that they are not taken by surprise. It is also to be noticed that in case, a person who is aggrieved of such order, is not remediless as an order under Section 14, has been held to be an action under Section 13(4) of the Act, 2002 and any person aggrieved of the same, shall have a cause of action to challenge the same by filing an application under Section 17 of the Act, 2002. [refer to Para 20 of the judgment of Hon'ble Supreme Court in ***Kaniyalal Lalchand Sachdev v. State of Maharashtra 2011 (2) SCC 782***]. **Similarly, we find that in case**

[1] *2021 (3) PLR 690; 2021 (4) RCR (Civil) 571*

if the secured creditor is aggrieved of any action of the District Magistrate or the manner and mode of its enforcement, not involving adjudication of rights of any other secured creditor, the remedy under writ jurisdiction would be available to such a secured creditor. This is because, Section 17 of the Act, 2002 can be invoked only in case, if the applicant is aggrieved of the action of the secured creditor, while in the instant case, the grievance of the secured creditor is against the non-implementation of its rights under Section 14 of the Act, 2002."

[Emphasis supplied]

15. Similarly, in yet another judgment a Division Bench of Punjab and Haryana High Court in ***Kotak Mahindra Bank V/s Raj Paul Oswal***[2] held in Para 13 as under :-

"…….A perusal of the above would show that any person which includes a borrower, who is aggrieved by any of the measures taken by the secured creditor or his authorized officer referred to in sub-section 4 of Section 13 of the SARFAESI Act under the Chapter, can make an application under Section 17 of the SARFAESI Act. **The language itself makes in amply clear that the remedy is available to a person aggrieved by any of the measures referred in sub-section 4 of Section 13 of the SARFAESI Act, which are taken by the secured creditor or his authorized officer. The remedy, therefore, under Section 17 of the SARFAESI Act, would not be available to the secured creditor or his authorized officer for rejection of an application preferred by the said secured creditor or his authorized person under the SARFAESI Act.**

In the light of the above, the order which has been passed by the District Magistrate under Section 14 of the SARFAESI Act is final qua the petitioner and under these circumstances, the remedy available to the petitioner is only under Article 226/227 of the Constitution of India, which remedy the petitioner has rightly availed of. Reliance on the judgment of the Hon'ble Supreme Court in ***Kaniyalal Lalchand Sachdev and others' case*** (supra) by the counsel for respondent No.2 is

[2] *2021 AIR (Punjab and Haryana) 118*

totally misplaced, where the Hon'ble Supreme Court was considering Section 17 of the SARFAESI Act when the person aggrieved was neither the secured creditor nor the authorized officer but any other person. The said judgment, therefore, would not be attracted to the present case.**"**

[Emphasis supplied]

16. We respectfully agree with the aforesaid views and while reiterating the same, reject the aforesaid submission of the Opposite Party Nos.2 and 3 regarding the maintainability of the present petition. Accordingly, it is held that the petitioner does not have any alternative and statutory remedy before the Tribunal to lay challenge to the impugned order of the Magistrate rejecting its application under Section 14 of the Act, 2002. It is well settled that any aggrieved person cannot be left remediless as held by the Hon'ble Supreme Court in ***Sunil Vasudeva V/s Sundar Gupta*** [3] **(Para 31**), which has been relied upon by a Division Bench of Punjab and Haryana High Court in ***Anu Bhalla V/s District Magistrate, Pathankot*** [4] ***(Para 35)***. Consequently, the present petition under Article 226 of the Constitution of India is held to be maintainable.

ISSUE NO. 2

17. Coming to the heart of the controversy, the next issue is whether Chief Judicial Magistrate would have the jurisdiction to entertain an application under Section 14 of the SARFAESI Act, 2002.

18. Learned Counsel for the petitioner – Secured Creditor while placing reliance upon Section 14 of the Securitisation Act, 2002 contends that the jurisdiction to entertain an application is equally vested with the Chief Judicial Magistrate as well as is with the District Magistrate. The legislature has not created any such distinction between the two authorities and hence both the authorities are equally

[3] *2019 (8) SCALE 488*
[4] *2021 AIR Punjab 1*

competent to entertain application of the secured creditor and to pass orders for providing assistance to the secured creditor in taking over of physical possession by the secured creditor.

Per contra, learned Counsel for the Opposite Party Nos.2 and 3-Borrower contends that once the District Magistrate is available which is entrusted with administrative jurisdiction the secured creditor cannot maintain an application before the Chief Judicial Magistrate. Moreover, the legislature never contemplated to provide for an overlapping jurisdiction with two authorities and therefore an application would not be maintainable before the Chief Judicial Magistrate, in the presence of availability of District Magistrate. He further contends that the reason why Chief Metropolitan Magistrate finds mention in the provision is that it is only in those districts, where there is no District Magistrate, could the jurisdiction be treated to be vested with the Chief Judicial Magistrate and not otherwise. He therefore supports the impugned order and prays for dismissal of the present petition.

19. Having heard learned counsel for the respective parties, we find that this issue would not detain us any longer, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case of ***Authorised Officer, Indian Bank V/s D. Visalakshi and another***[5] wherein in Para 34 and 48, it has been held as under-

> **"**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

[5] *2019 AIR SC 4619*

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 nonmetropolitan 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.**

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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)**."**

[Emphasis supplied]

20. As regards the contention of the learned Senior Counsel representing Opposite Party Nos.2 to 3 that the petitioner would not be entitled to avail two parallel remedies, this Court is of the opinion that the said issue would not arise in the present petition, as the petitioner has already withdrawn its application before the District Magistrate concerned on 23.12.2020 and it is only thereafter that it preferred a fresh application before the Chief Judicial Magistrate on 25.01.2021

which led to the passing of the impugned order dated 09.03.2021 (Annexure P-1). In view of the aforesaid fact, the aforesaid argument of the Opposite Party Nos.2 and 3 would not sustain for consideration. Further, Hon'ble Supreme Court in ***Authorised Officer, Indian Bank*** (supra) has held that jurisdiction under Section 14 can be exercised by either of the two authorities namely Chief Judicial Magistrate and District Magistrate. Therefore, both the authorities are equally competent to exercise the jurisdiction.

21. As regards the next contention advanced on behalf of Opposite Party Nos.2 to 3 that there is no notification issued by the Government of India authorizing Chief Judicial Magistrate to exercise powers under Section 14 is concerned, the same is also equally without merit. A perusal of Section 14 nowhere reflects that the authorities mentioned therein are required to act only after issuance of a notification to that effect. Besides, learned Senior Counsel for the Opposite Parties have not been able to show any provision, whereby a notification was contemplated to be issued for any authority to exercise jurisdiction and/or Chief Judicial Magistrate could only act thereafter. Once the notified provision (Section 14) itself enables the authority to exercise jurisdiction, it is sufficient for the said authority to exercise powers as provided for within the ambit of the provision. Consequently, the aforesaid argument of the Opposite Party Nos.2 and 3 cannot sustain and hence is rejected.

22. In view of above, we answer the first issue in affirmative and therefore hold that the Chief Judicial Magistrate would be equally competent to entertain an application filed by the secured creditor under Section 14 of the Act, 2002 and would be entitled to pass such orders as would be required to provide assistance to the secured creditor to take over physical possession of the secured assets.

ISSUE NO.3

23. The next issue which arises for consideration is the scope of exercise of jurisdiction by either the Chief Judicial Magistrate or District Magistrate, as the case may be, while proceeding to entertain an application filed by the secured creditor under Section 14 of the Securitisation Act, 2002.

24. The necessity to decide this issue has arisen on account of number of such petitions coming up for consideration before this Court which is a regular feature. In an endeavor to reduce multiplicity of litigation and to clear out the grey areas, it is necessary for this Court to examine this issue in detail.

25. As is apparent, the very purpose of Section 14 is to ensure assistance to the secured creditor to peacefully take over physical possession of the secured asset if it is faced by resistance from the borrower/occupant. Further, a reading of Section 14 reveals that the authority concerned does not possess any adjudicatory mechanism while entertaining such application under Section 14 of the Act, 2002. This legal position has been reiterated by a Division Bench of Punjab and Haryana High Court in ***Asset Reconstruction Company (India) Ltd. v. State of Haryana***[6] and a Division Bench of Madras High Court in ***M/s Shriram Housing Finance Ltd. v. District Collector*** [7]***.***

26. Further, the enactment does not leave the aggrieved person remediless. In case if any person is aggrieved of any action taken by the creditor including of an order passed by the District Magistrate or Chief Judicial Magistrate the remedy lies with DRT in view of Section 17 (1) of the Act, 2002 [See Para 20 of ***Kaniyalal Lalchand Sachdev v. State of Maharashtra***[8]**].** Section 34 of the Act, 2002, excludes the jurisdiction of any court or other authority from granting any

[6] *2018 (1) PLR 443*
[7] *2019 (2) CWC 697*
[8] *2011 (12) SCC 782*

injunction in respect of any action taken or to be taken by the secured creditor under the provisions of the Act. Thus, the DRT shall be competent to examine the validity of not only the steps taken by the secured creditor under Section 13(4) but also all subsequent and consequential actions taken by the secured creditor under the Act.

27. It is to be noticed that Section 14 of the Act, 2002 was amended with effect from 15.01.2013 and a proviso was added, which requires the secured creditor to file an application accompanied with an affidavit duly affirmed by the authorised officer of the secured creditor with respect to 9 points stipulated therein. Such recording of satisfaction is only to be restricted with regard to the factual correctness of the affidavit filed by the secured creditor and cannot be stretched to include any quasi-judicial or an adjudicatory function. Hon'ble Supreme Court in ***Standard Chartered Bank v. Noble Kumar*** [9] held as under :-

> **"**26. An analysis of the 9 sub-clauses of the proviso which deal with the information that is required to be furnished in the affidavit filed by the secured creditor indicates in substance that (i) there was a loan transaction under which a borrower is liable to repay the loan amount with interest, (ii) there is a security interest created in a secured asset belonging to the borrower, (iii) that the borrower committed default in the repayment, (iv) that a notice contemplated under Section 13(2) was in fact issued, (v) in spite of such a notice, the borrower did not make the repayment, (vi) the objections of the borrower had in fact been considered and rejected, (vii) the reasons for such rejection had been communicated to the borrower etc.
>
> **27. 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**

[9] *2013 (6) SCC 690*

recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset. ”

[Emphasis supplied]

28. Further in the case of ***Allahabad Bank*** (supra)**,** particularly in Para 8 and Para 31 to 33 it was held as under:-

“8. Having heard both the parties and on noticing that several writ petitions of such like disputes are regularly being filed by the secured creditors, seeking enforcement of their rights under Section 14 of the Act, 2002 *inter alia* involving issues as regards impact of the orders passed by the Civil Courts, we deem it appropriate to cull out the following issues, which are required to be decided in the present application :-

(1) Whether Civil Court would have jurisdiction to negate any right of the secured creditor under the Securitisation Act, 2002, qua the secured asset in a civil suit or proceedings instituted by the borrower/guarantor/any third party qua the secured asset?

(2) Whether the petitioner bank/secured creditor would be bound by an order passed by a Civil Court in a *lis inter-se* between parties pertaining to the secured asset, not having impleaded the Bank/Secured Creditor ?

(3) Scope of powers of the District Magistrate in exercise of its jurisdiction under Section 14 of the Securitization Act, 2002 ?”

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ISSUE NO.3

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31……..**Even though the time provided under Section 14 to the District Magistrate to pass an order is directory, it is still to be noticed that the discernable intent of the legislature while providing for such time line was to ensure that the applications filed by the secured creditor are not unduly delayed**. It is to be acknowledged that even after the order is passed by the District Magistrate, it is the implementation of the same which becomes the next hurdle for the secured creditor to complete the process of possession. Incidentally, even though the District Magistrate is required to pass an order within 60 days, but there is no similar provision

for the officer so deputed by him in terms of Section 14(1A) of the Act, 2002 to implement the order in a time bound manner. Since the very object of the Act, 2002 is for ensuring speedier recovery of public money we find, that there ought to have been time limits provided for such officer as well. This would ensure that the orders passed, by the District Magistrate are not frustrated by undue delay by the implementing officer(s). **Therefore, we find that the intent of timely action under Section 14 would be complete only when time lines are equally provided at the stage of execution as well. It is only then, in our considered opinion would the real object of Act, 2002 be fully achieved.**

[32] Two principles of construction one relating to *casus omissus* and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle, a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. However, at the same time the need for supplying *casus omissus* should not be readily inferred. As for that purpose all the parts of the statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes it consistent to the whole statute. [See ***State of Jharkhand v. Govind Singh***[10]**].** The object of the Act, 2002 is speedier recovery of public dues. For its effective implementation, provisions like Section 14 were included which enables the creditor to take physical possession with the help of State machinery for the purpose of realizing the security by way of sale etc. Section 14 itself requires District Magistrate to pass an order within 60 days which again aims at timely enforcement and recovery. Applying the said principle of *casus omissus* to the instant case, we find that the provision requires the necessity of making the process of execution also time bound. More so, when it is within the four corners of the statute and consistent with the object of the Act, 2002 as well. It is ironical to note that even though times lines are provided for District Magistrate to pass an order, but for implementing officers, the proviso to Section 14 does not lay down any stipulated time for enforcing the order of

[10] ***2005 (10) SCC 437***

the District Magistrate. This at times defeats the very object of the provision and also runs counter to the scheme of the Act, 2002. **It is in these circumstances, that we feel the need of applying the principle of *casus omissus*, to fill in the gap of not having provided the time limits for implementation of the order, on the same lines like the District Magistrate is obliged to do so**. It is only then, that the legislative intent of Section 14 becomes complete. Consequently, we hold that after the order is passed by the District Magistrate, the officer so deputed to execute the said order under Section 14(1A) of the Act, 2002 would also complete the process of execution within 60 days from the date of receipt of such order. **Further in case if for any reason, the order is unable to be executed, the officer shall report the matter back to the District Magistrate, who would then pass such suitable orders as the situation may warrant. Even though the said period is directory but it is to be noticed that such actions of the officer concerned would be open to judicial scrutiny to ensure that the object of the said provision is not frustrated.**

[33] In view of the aforesaid discussion, in our opinion, following principles would emerge as regards the scope of functions of the District Magistrate while exercising powers under Section 14 of the Securitisation Act, 2002:-

(i) District Magistrate would not involve in any process of adjudication of any *inter se* rights of the parties, while examining any application under Section 14 of the Act, 2002.

(ii) Proviso to Section 14 makes it mandatory to record satisfaction by the District Magistrate which is to be restricted with regard to the factual correctness of the 9-point affidavit to be filed by the secured creditor. It cannot examine the legal validity of the steps so taken by the secured creditor as depicted in the affidavit. If the borrower is aggrieved of such steps the remedy would be to approach the DRT.

(iii) If any person is aggrieved of the order of the District Magistrate, the aggrieved person can approach the Debts Recovery Tribunal, under Section 17 of the Act, 2002 as an order passed under Section 14 is in pursuance to the steps provided under Section 13(4).

(iv) In case, if the District Magistrate fails to pass the order in terms of what is provided under Section 14 of the Act, 2002 or if the same is not being implemented, the secured creditor would have the remedy of invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

(v) After the order is passed by the District Magistrate, the officer so deputed to execute the said order under Section 14(1A) of the Act, 2002 would also complete the process of its execution within 60 days from the date of receipt of such order. Further in case if for any reason, the order is unable to be executed, the officer shall report the matter back to the District Magistrate, who would then pass such suitable orders as the situation may warrant.

(vi) Though, there is no provision for an advance notice to be given to the occupant/owner of the property before taking physical possession, but it would be desirable, that an advance notice of at least 15 days be served on the occupant before taking physical possession by the officer so deputed by the District Magistrate, so that persons to be dispossessed are not caught unawares**."**

29. Since the aforesaid judgment deals with the identical issue as seized by us in the present petition in great detail, we deem it appropriate to reiterate all of the aforesaid conclusions and directions in the present order as well and hereby **direct** all the District Magistrates and Chief Judicial Magistrates in the State of Odhisa to act strictly within the scope and ambit of the aforesaid directions as contained in para 33 of the judgment in the case of ***Allahabad Bank*** case (supra)**,** while exercising jurisdiction under Section 14 of the Act, 2002.

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30. Having considered the legal issues involved in the present petition and as delineated hereinabove, we now proceed to consider the relief to which the petitioner would be entitled to. Vide impugned order dated 09.03.2021 (Annexure

P-1), the Chief Judicial Magistrate, Cuttack has dismissed the application of the petitioner/secured creditor under Section 14 of the Act, 2002. We find that such an observation is not sustainable and is not in tune with the discussion and consequent directions as noticed above.

31. As a sequel to the aforesaid conclusions, we allow the present petition and set aside the impugned order dated 09.03.2021 (Annexure P-1) passed by the Chief Judicial Magistrate, Cuttack. Since, we have held that both the authorities i.e. District Magistrate as also Chief Judicial Magistrate would have the jurisdiction to entertain an application under Section 14 of the SARFAESI Act, 2002 therefore, the petitioner would be at liberty to approach either of the authorities by filing a fresh application in terms of Section 14 which shall then be decided by the authority concerned, in accordance with law.

32. As already noticed hereinabove, there have been number of similar petitions, where secured creditors are aggrieved of either the authorities not passing the order or the officer concerned, not implementing the orders in a time bound manner. We therefore, direct the Registry of this Court to circulate this order to all the District Magistrates and Chief Judicial Magistrates of the State of Odhisa for information and compliance.

(Jaswant Singh)
Judge

S.K. Panigrahi, J. I agree.

(S.K.Panigrahi)
Judge

Orissa High Court, Cuttack
The 10th day of January, 2022/AKK