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High Court of Judicature at Allahabad
(Lucknow)

Neutral Citation No. - 2024:AHC-LKO:72508-DB

Court No. - 2

Case :- WRIT - C No. - 8867 of 2024

Petitioner :- Bank Of Baroda Earlier Vijaya Bank Thru. Its Chief
Manager Author. Officer

Respondent :- State Of U.P Thru. Prin. Secy. Deptt. Of Home
Govt. Lko. And 8 Others

Counsel for Petitioner :- Shailendra Singh Rajawat

Counsel for Respondent :- C.S.C., Prashant Kumar

Hon'ble Rajan Roy, J.

Hon'ble Brij Raj Singh, J.

(1) Heard.

(2) Yet another petition under Article 226 of the Constitution of India by a Bank seeking disposal of its application under Section 14 of the SARFAESI Act, 2002 (the Act, 2002) which has remained pending before the District Magistrate, Amethi since 2022. Every day such petitions are filed before this Court where Banks or financial institutions seek disposal of their applications filed under Section 14 of the Act, 2002 which have remained pending for long. The very purpose of having a separate procedure for recovery of loan etc under the Act, 2002 and providing a separate forum for adjudication of disputes was that such matters were to be expeditiously decided. Taking of possession under Section 14 of the Act, 2002 is a measure

referable to Section 13(4) of the Act, 2002¹ but if applications under Section 14 of the Act, 2002 remain pending for long without there being any impediment in their disposal then it will create unimaginable consequences and unnecessary complications so far as recovery of loan etc is concerned as, often the Bank puts the secured asset to auction without having actual physical possession i.e. based on symbolic possession, but, in the absence of actual physical possession, the auction purchaser and the Bank both are put in an unenviable position leading to further litigation.

(3) On being asked, Sri Manish Mishra, learned Standing Counsel submitted on the basis of instruction provided by the District Magistrate that on 16.04.2022, notices were issued to the borrower who filed his objections on 10.06.2022. Thereafter, several dates have been fixed. Five dates were fixed till 01.02.2023 but hearing could not take place on account of absence of advocates. Likewise, twenty three dates have been fixed since 02.06.2023 till 28.09.2024 but hearing could not take place in the absence of advocates.

(4) We are surprised at the response of District Magistrate, Amethi. He is proceeding with the matter as if he is hearing a suit on the revenue side. Proceedings under Section 14 of the Act, 2002 are not such proceedings where notices are required to be issued to the borrowers or extensive hearing is to take place so as to decide a dispute. It does not involve adjudication of any dispute not even between the secured creditor and the borrower.

¹ (2011) 2 SCC 782 'Kanaiyalal Lalchand Sachdev & Ors. vs. State of Maharashtra & Ors.'; (2004) 4 SCC 311 'Mardia Chemicals Ltd. & Ors. vs. Union of India & Ors.'; (2013) 9 SCC 620 'Standard Chartered Bank vs. Noble Kumar & Ors.'.

(5) It appears that the District Magistrates who are seized with such matters are unaware of the scope of proceedings under Section 14 of the Act, 2002. This appears to be one of the reasons for pendency of the matter.

(6) The procedure to be followed is given in Section 14 of the SARFAESI Act, 2002 which reads as under:-

"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 assets¹ [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."

(7) For the benefit of the officers exercising power under Section 14, we may reiterate the law declared by Hon'ble the Supreme Court regarding purport and scope of Section 14 of the Act, 2002. We have already quoted the provision as aforesaid which itself lays down the procedure to be followed by the officers.

(8) The secured creditor is required to file an application supported by an affidavit containing the declarations referred in Section 14. On receipt of such affidavit, the District Magistrate or Chief Metropolitan Magistrate shall satisfy himself regarding the contents of the affidavit and on this satisfaction shall pass suitable order for the purpose of taking possession of the secured asset within a period of thirty days from the date of application. This period is extendable to an aggregate of sixty days after recording reasons if the said officer does not pass any order within thirty days for reasons beyond his control. In this context, we may refer to the decision of Hon'ble the Supreme Court in the case of '**C. Bright vs. District Collector**

and Ors.' (2021) 2 SCC 392 wherein it has been held that merely because a period of sixty days has lapsed as referred in Section 14 of the Act, 2002, it would not render the District Magistrate etc functus officio or unable to grant possession.

(9) Section 14 itself provides for an order being passed by the concerned officer within thirty days and if no such order is passed within the said period for reasons beyond his control then he can pass it after recording reason in writing for the same within further period but not exceeding a period of sixty days which itself is indicative of the nature and the proceedings.

(10) We may now refer to certain decisions on the subject.

(11) A Division Bench of Bombay High Court in Writ Petition No.9749 of 2021 '**Phoenix ARC Pvt. Ltd. vs. the State of Maharashtra & Ors.'** decided on 03.08.2022, while considering Section 14 of the Act, 2002, held as under:-

"18. Section 14 does not contemplate the following :-

(i) Any notice to be given to either Borrower or a Third Party,

(ii) Borrower or a Third Party to file any reply to the application,

(iii) Borrower/Third Party to be heard,

(iv) Adjudication as to the legality or validity of the mortgage.

(v) Adjudication as to the quantum of the debt claimed by the secured creditor.

(vi) Adjudication of any issues such as limitation, etc."

(12) Against the aforesaid judgment of the Bombay High Court, special leave petition/ appeal was preferred before Hon'ble the Supreme Court and the Supreme Court of India dismissed the Special Leave Petition by a reasoned and

speaking order and affirmed the decision of the Bombay High Court in Special Leave Petition No.16013 of 2022 '**Balakrishna Rama Tarle Dead Thr. LRS & Anr. vs. Phoenix ARC Private Limited and Ors.**', decided on 26.09.2022. After considering the provisions of Section 14 of the Act, 2002, Hon'ble the Supreme Court held in **Balakrishna Rama Tarle (supra)** as under:-

"On a fair reading of Section 14 of the SARFAESI Act, it appears that for taking possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the District Magistrate/Chief Metropolitan Magistrate by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action.

The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under Section 14(1) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. As observed and held by this Court in the case of NKGSB Cooperative Bank Limited Vs. Subir Chakravarty & Ors. (Civil Appeal No. 1637/2022) decided on 25.02.2022, the aforesaid act is a ministerial act. It cannot brook delay. Time is of the essence and this is the spirit of the special enactment. In the recent decision in the case of M/s R.D. Jain and Co. Vs. Capital First Ltd. & Ors. (Civil Appeal No. 175/2022) decided on 27.07.2022, 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 paragraphs 7 to 9 as under:-

"7. Now so far as the powers exercisable by DM and CMM under Section 14 of the SARFAESI Act are concerned,

statement of objects and reasons for which SARFAESI Act has been enacted reads as under:-

"STATEMENT OF OBJECTS AND REASONS

The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of nonperforming 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 nonperforming assets by adopting measures for recovery or reconstruction."

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 subsection (2), the secured creditor may take recourse to one or more of the measures provided in subsection (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.

*7.1 After taking over possession of the secured assets, further steps to lease, assign or sale the same could also be taken by the secured creditor. **However, Section 14 of the SARFAESI Act predicates that if the secured creditor intends to take possession of the secured assets, must approach the CMM/DM by way of an application in writing, and 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.*

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

8. Thus, considering the scheme of the SARFAESI Act, it is explicit and crystal clear that possession of the secured assets

can be taken by the secured creditor before confirmation of sale of the secured assets as well as post-confirmation of sale. For taking possession of the secured assets, it could be done by the "authorised officer" of the Bank as noted in Rule 8 of the Security Interest (Enforcement) Rules, 2002.

8.1 However, for taking physical possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under Section 14(1) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. As mandated by Section 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment. As observed and held by this Court in the case of NKGSB Cooperative Bank Ltd. (supra), the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the advocate commissioner who is considered as an officer of his/her court. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. Thus, we reiterate that the step to be taken by the CMM/DM under Section 14 of the SARFAESI Act, is a ministerial step. While disposing of the application under Section 14 of the SARFAESI Act, no element of quasi-judicial function or application of mind would require. The Magistrate has to adjudicate and decide the correctness of the

information given in the application and nothing more. Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets.

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

It thereafter went on to observe as under:-

"Thus, the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial step 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 Debts Recovery Tribunal."

(13) In Para no.22, the Supreme Court has clearly affirmed the judgment of Bombay High Court, in the case of **Phoenix ARC Private Limited & Ors. (supra)** quoted earlier, in the following terms:-

"22. In view of the above and for the reasons stated above, we are of the opinion that the High Court has not committed any error in passing the judgment and order and directing the designated authority to dispose of the application under

Section 14 of the SARFAESI Act. We are in complete agreement with the view taken by the High Court. The Special Leave Petition stands dismissed."

(14) Dismissal of an S.L.P. against judgment of a High Court by a reasoned order stating the law on a point constitutes binding precedents under Article 141 of the Constitution of India vide judgments reported in (2000) 6 SCC 359 '**Kunhayammed & Ors. vs. State of Kerela & Anr.**' and (2019) 4 SCC 376 '**Khoday Distilleries Limited (now known as Khoday India Ltd.) & Ors. vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd, Kollegal (Under liquidation)**'.

(15) Therefore, veritably the issue as to whether any notice etc is required to be issued to the borrower or a third party in proceedings under Section 14 is settled by the aforesaid decision of the Bombay High Court as affirmed by Hon'ble the Supreme Court in the case of **Balakrishna Rama Tarle (supra)**. No such notice is required to be issued proceedings under Section 14 of the Act, 2002.

(16) We are conscious of the fact that a Co-ordinate Bench of this Court in the case of '**Kumkum Tentiwal vs. State of U.P. & Ors.**' reported in (2019) 2 All LJ 332 has opined that a borrower is entitled to notices and opportunity of hearing in proceedings under Section 14 but, apart from the fact that this judgment has been considered in a subsequent judgment rendered in Writ-C No.22594 of 2022 '**Shipra Hotels Limited & Anrs. vs. State of U.P. & Ors.**' and connected petitions decided on 25.11.2022 by another Co-ordinate Bench which had the occasion to consider the question of issuance of notice to the

borrower or a third party and arrived at the same conclusion as referred hereinabove, the Co-ordinate Bench in **Kumkum Tentiwal (supra)** did not have the benefit of perusing the judgment of Supreme Court in **Balakrishna Rama Tarle (supra)** rendered on 26.09.2022 and as we are bound by the dictum of the Supreme Court, we follow the same.

(17) We may also in this context refer to a decision of Supreme Court in **Standard Charter Bank vs. Noble Kumar & Ors (supra)** wherein after considering the amended Section 14 therein observed as under:-

"23. We must make it clear that these provisions were not in existence on the date of the order impugned [V. Noble Kumar v. Standard Chartered Bank, (2010) 8 MLJ 282 : (2011) 1 CTC 513] in the instant proceedings. These amendments are made to provide safeguards to the interest of the borrower. These provisions stipulate that a secured creditor who is seeking the intervention of the Magistrate under Section 14 is required to file an affidavit furnishing the information contemplated under various sub-clauses (i) to (ix) of the proviso and obligates the Magistrate to pass suitable orders regarding taking of the possession of the secured assets only after being satisfied with the contents of the affidavits."

24. An analysis of the nine 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:

24.1. (i) there was a loan transaction under which a borrower is liable to repay the loan amount with interest,

24.2. (ii) there is a security interest created in a secured asset belonging to the borrower,

24.3. (iii) that the borrower committed default in the repayment,

24.4. (iv) that a notice contemplated under Section 13(2) was in fact issued,

24.5. (v) *in spite of such a notice, the borrower did not make the repayment,*

24.6. (vi) *the objections of the borrower had in fact been considered and rejected,*

24.7. (vii) *the reasons for such rejection had been communicated to the borrower, etc.*

25. *The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset."*

(18) The satisfaction to be arrived at by the District Magistrate / Chief Metropolitan Magistrate is as to correctness of the assertions made in the affidavit to be filed by the secured creditor. It does not involve adjudication of any dispute between the secured creditor and the borrower or any third party.

(19) From a bare reading of the said judgment in **Balakrishna Rama Tarle (supra)** it is apparent that the order to be passed under Section 14 of the Act, 2002 has been termed as a ministerial act. It cannot brook delay. Time is of essence and this is the spirit of the special enactment. Hon'ble the Supreme Court has referred to the decision of Supreme Court reported in (2023) 1 SCC 675 '**R.D. Jain and Company vs. Capital First Limited and Ors.**' wherein it has been held *inter alia* that the step to be taken by the officer mentioned in Section 14 of the Act, 2002 is a ministerial step. While disposing of the application under Section 14 of the Act, 2002 no element of quasi-judicial function or application of mind is required. The Magistrate has to adjudicate and decide 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. It being so, we fail to understand as to for what purpose a notice is issued to the borrower by such officers while acting under Section 14 of the Act, 2002.

(20) Hon'ble the Supreme Court of India further went on to observe in the case of **Balakrishan Rama Tarle (supra)**-'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 Chief Metropolitan Magistrate/District Magistrate 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'. It has categorically held - **"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 Debts Recovery Tribunal."** Now, these observations which constitute law of the land clinch the issue and from a bare reading of these observations, it is evident that there is no requirement of issuing any notice to a third party and such third party whether it be the borrower or any other person has to be relegated to raise objections in the proceedings under Section 17 of the Act, 2002 before the D.R.T. The officers

exercising their powers under Section 14 of the Act, 2002 have to keep in mind the aforesaid dictum of Hon'ble the Supreme Court.

(21) We may also quote Article 141 of the Constitution of India:-

"141. Law declared by Supreme Court to be binding on all courts- The law declared by the Supreme Court shall be binding on all courts within the territory of India."

(22) The law declared by Hon'ble the Supreme Court in the case of **Balkrishna Rama Tarle (supra)** and other decisions is binding on all High Courts as also on all executive authorities. We may in this context refer to Article 144 of the Constitution of India which is to the effect - '**All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court**'. We may also refer to Article 141 of the Constitution of India which is to the effect - '**The law declared by the Supreme Court shall be binding on all courts within the territory of India**'.

(23) We may also fruitfully refer to a decision of a Division Bench judgment rendered by the Madhya Pradesh High Court reported in I.L.R. 2024 M.P. 437 (DB) '**Equitas Small Finance Bank Ltd. vs. State of M.P.**' wherein similar issues were considered and a slew of directions were issued for facilitating expeditious disposal of application under Section 14 of the Act, 2002. Relevant extract of the said decision reads as under:-

20. Accordingly, the present petition is allowed with the following directions:-

A. The Chief Judicial Magistrate, Khargone is directed to decide the pending application of the petitioner as well as

other pending applications in accordance with law keeping in view the statutory provisions as contained in Section 14 of the SARFAESI Act as well as in the light of the judgments mentioned above, within a period of 30 days from the date of receipt of certified copy of the order passed today.

B. Looking to the fact that being aggrieved by the inaction of the DM/ADM/CJM in deciding the applications filed under Section 14 of SARFAESI Act, the secured creditors rushed to this Court leading to opening of a flood gate of writ petitions, in the considered opinion of this Court, it would be apposite to issue guidelines/directions to be followed by these DM/ADM/CJM while passing orders for deciding applications u/S 14 of the SARFAESI Act which are as follows :

(i) DM/ADM/CJM have to determine whether secured assets fall within their territorial jurisdiction.

(ii) whether notice u/S 13(2) of the SARFAESI Act has been furnished by the secured creditor and also whether the case of secured creditor falls under the any of the exceptions provided under Section 31 of the SARFAESI Act?

(iii) DM/ADM/CJM is not at all required to hear the application u/S 14 of the SARFAESI Act for the purpose of registration of the case.

(iv) DM/ADM/CJM acting under Section 14 of the SARFAESI Act is not required to give notice either to the borrower or to the 3rd party.

(v) The DM/ADM/CJM shall ensure that the secured creditor should file an affidavit declaring that the terms and conditions prescribed u/S 14(1) of the SARFAESI Act are satisfied.

(vi) DM/ADM/CJM should ensure that application filed u/S 14 of the SARFAESI Act shall be decided as expeditiously as possible, preferably within 45 days from the date of filing of such an application.

(24) The above quoted observations/ directions have to be understood subject to the statutory period prescribed in the proviso to Section 14 for disposal of such applications.

(25) We may also refer to another Division Bench judgment of Bombay High Court reported in A.S. Writ Petition Nos.15285

of 2022 'L&T Finance Limited & Ors. vs. the State of Maharashtra' wherein similar issues were considered and again several directions were issued for ensuring expeditious disposal of Section 14 applications relevant extract of which is quoted hereinbelow:-

"18. Thus, we dispose of this writ petitions directing as follows:

(a) The Application filed by a Secured creditor under section 14 of the SARFAESI Act with due compliance (the Application) should be disposed of by the District Magistrate/Collector in the State of Maharashtra not later than 30 days of the Application is filed.

(b) Every order (Order) passed by the District Collector under section 14 of the SARFAESI Act should be implemented and executed not later than four weeks of the passing of the Order.

(c) If the officers entrusted with implementation of the Order are engaged in other pressing public duties, the option of appointing an advocate to implement the Order be explored within the parameters of the law. The same option can also be considered by the Judicial Magistrate, if so permissible in law.

(d) The District Magistrates/Collectors shall submit a report giving the details of the Applications which have not been disposed of within thirty days or any Order which has not been implemented within thirty days with reasons thereof to the Divisional Commissioner in the first week of each month.

(e) Any party whose Application is not disposed of within sixty days of its filing or the Order has not been implemented within sixty days of passing it, may make representation to the Divisional Commissioner who shall within 15 days of receipt of the representation consider the representation and after satisfying that there is a no justifiable reason, will pass appropriate directions to ensure that the Application is disposed off or the Order is implemented within fifteen days of the direction.

(f) Each District Magistrate/Collector shall maintain proper details and records of the filing of the Applications, the disposal thereof, the implementation of the Orders and submit monthly statistics in that regard to the Divisional

Commissioner on or before the seventh day of the following month in the specified format of submissions.

(g) The State Government will take steps to implement an e-system placing information on an online platform regarding the Applications, such as the date of filing of the Application, the date of passing the Order on the Application, and the date of implementation of the Order, on an online platform. The same shall be done within a period of sixteen weeks from today.

(h) The High Court Administration would consider issuing necessary directions to the Chief Metropolitan Magistrate to take a special drive for the disposal of pending Applications under section 14 of the SARFAESI Act.

(i) The High Court Administration would consider creating a separate category in the Case Information System software for the Applications under Section 14 of the SARFAESI Act so that these cases can be identified for the special drive."

(26) In the aforesaid case also, it was categorically held that no notice is required to be issued to the borrower or any third person before passing an order under Section 14 of the Act, 2002.

(27) We find that similar approach, as has been adopted by District Magistrate, Amethi in this case, has been adopted by other officers who have been assigned the job of disposing of applications under Section 14 of the Act, 2002. We, therefore, find it necessary to issue a direction to the Chief Secretary, Government of U.P., Lucknow to kindly circulate this order to all District Magistrates/ Additional District Magistrates who exercise powers under Section 14 of the Act, 2002. The State of U.P. should evolve a mechanism for monitoring disposal of applications by District Magistrate under Section 14 of the Act. 2002.

(28) We also find that wherever orders under Section 14 of the Act, 2002 have already been passed, they are not implemented and writ petitions are being filed by Banks and financial institutions for their implementation. This is also not a happy state of affairs. Why should the litigant, who already has an order under Section 14 of the Act, 2002, be compelled to approach the High Court for implementation of the said orders, as, it is the duty of the officer who has passed the order to ensure its implementation and all district authorities who have a role to play in the implementation of such orders are obliged to extend all co-operation for such implementation and if they do not do so, unless it is a case where there are legal impediments or it is virtually impossible to implement it for some reason, they should be made accountable for not doing so.

(29) Considering the discussion made hereinabove especially in view of decisions of Hon'ble the Supreme Court regarding the scope and procedure under Section 14 of the Act, 2002, issuance of notice to the private opposite parties/ borrowers is dispensed with.

(30) Let the District Magistrate, Amethi dispose of the proceedings positively within one month in the light of what has been stated hereinabove.

(31) With these observations/ directions, the petition is **disposed of.**

(32) Sri Manish Mishra, learned Addl. C.S.C. shall communicate this order to the Chief Secretary, Government of

U.P., Lucknow and the District Magistrate, Amethi for compliance.

(33) A copy of this judgment be also sent to Director, Judicial Training & Research Institute, Lucknow.

(Brij Raj Singh,J.) (Rajan Roy,J.)

Order Date :- 25.10.2024

Shanu/-