Before Jaswant Singh & Harinder Singh Sidhu, JJ.

ALLAHABAD BANK—*Petitioner*

versus

DISTRICT MAGISTRATE, LUDHIANA AND OTHERS—*Respondents*

CWP No 4916 of 2020

September 6, 2021

A) Constitution of India, 1950— Article 226— Writ petition— Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) – Ss.13, 14, 17, 34 and 35 — Jurisdiction of civil court over a secured asset in a suit instituted by the borrower, guarantor or any third party — Held, civil court would have no jurisdiction to negate a secured creditor or its enforcement under the Act qua a secured asset — Such disputes would specifically fall within the jurisdiction of Debt Recovery Tribunal (DRT) under S.17 of the Act — Further held, since scope of adjudication before the civil court would not involve determination of any right of a secured creditor due to lack of jurisdiction in view of S.17 read with S.34 of the Act, no civil court order could be construed to be a restraint order on the secured creditor to enforce its security under the SARFAESI Act.

Held, that keeping in view the aforesaid principles, it is evident that the Civil Court would not have jurisdiction to negate of a secured creditor or its enforcement under the Act, 2002, qua the secured asset, in a civil suit or proceedings instituted by the borrower / guarantor / any third party. This is for the reason that such disputes would specifically fall within the ambit of jurisdiction of DRT under Section 17 of the Act, 2002. Moreover, it shall also be contrary to the very object and scheme of the Act, 2002 which provides a single forum for faster and efficient adjudication of such disputes. Only for a limited category of disputes as highlighted in para 51 of the judgment in Mardia Chemicals (supra), the jurisdiction of Civil Court involving challenge to an action of the secured creditor to enforce the security under the Act, 2002 would be maintainable. Consequently, if any person is aggrieved of such measure initiated by the secured creditor pursuant to an action taken under Section 13(4) of the Act, 2002, the appropriate remedy would be to invoke the jurisdiction of the Tribunal under Section 17 of the Act, 2002. We thus answer the first issue in Negative and hold that

the Civil Court would not have jurisdiction to negate any right of the secured creditor under the Securitisation Act, 2002, qua the secured asset in a civil suit instituted by the borrower / guarantor / any third party qua the secured asset.

(Para 15)

Further held, that since the scope of adjudication before the Civil Court would not involve determination of any right of a secured creditor on account of lack of jurisdiction in view of Section 17 read with Section 34 of the Act, 2002, no order passed by the Civil Court could be construed to be a restraint order on the secured creditor to enforce its security under the provisions of the Securitisation Act, 2002. This is subject to an exception that unless the secured creditor is specifically impleaded as a party defendant and an interim order is passed specifically restraining the secured creditor to enforce the security interest. We hasten to add, that the maintainability of such suit, would still have to be tested on the principles as noticed above.

(Para 23)

B) Constitution of India, 1950— Article 226— Writ petition— Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) – Ss.13, 14 and 17 — Scope of powers of the District Magistrate (DM) while exercising jurisdiction under S.14 to provide assistance to a secured accreditor to take physical possession of a secured asset – Held, passing of order by DM under S.14 is an administrative act — It does not involve rights of respective parties —Therefore, it would not be any illegality if the order is passed without effective service on the borrowers, being in the nature of execution process pursuant to notices served under S. 13 (3) and (4) of the Act — It is desirable, however, that before taking actual physical possession by the officer deputed by the DM, a reasonable notice of 15 days be served upon the occupant to avoid being taken by surprise — A person aggrieved of it shall have a cause of action to challenge the same by filing application under S.17, since an order under S.14 has been held to be an action under S.13 (4) of the Act — Further held, if a secured creditor is aggrieved of the DM's action or the manner and mode of its enforcement, the remedy under writ jurisdiction would be available to it.

Held, that it is also to be noticed that passing of the order by the District Magistrate under Section 14 is purely an administrative act

which does not involve any adjudication of the rights of the respective parties.

(Para 29)

Further held, that 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 vs. State of Maharashtra 2011 (2) SCC 782]. Similarly, we find that in case 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.

(Para 30)

C) Constitution of India, 1950— Article 226— Writ petition— Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) — Ss.13, 14 and 17 — Principle of construction of statutes — casus omissus — Implementation of the order passed by the District Magistrate (DM) under S.14 to take physical possession of a secured asset and complete the process —Held, though DM is required to pass the order under S.14 with a period of 60 days, there is no provision for the officer deputed by him to in terms of S.14 (1A) to implement the order in a time bound manner —Since the object of

the SARFAESI Act was to ensure speedier recovery of public money, time lines should be provided at the stage of execution as well — Applying the principle of casus omissus, the process of execution was also made time bound by holding that the officer deputed by the DM to execute the order under S.14 (1A) would complete the process within 60 days from the date of receipt of such order — In case for any reason the order cannot be executed, the officer shall report the matter back to the DM, who would then pass suitable orders as the situation might warrant.

Held, that 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.

(Para 31)

Further held, that 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/s Govind Singh 2005 (10) SCC 437]. 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. Moreso, 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 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.

(Para 32)

Navdeep Chhabra, Deputy Advocate General, Punjab for the **applicants** – respondents / State. (in CM No. 3178 of 2021)

K.K. Goel, Advocate, for the non-applicant / petitioner.

JASWANT SINGH, J.

(1) The present application has been filed on behalf of Respondent No. 1 (District Magistrate, Ludhiana) and Respondent No. 3 Tehsildar (East), Ludhiana, seeking modification of the order dated

25.02.2020, which reads as under :-

> "Notice of motion to the respondents.
>
> Mr. I.P.S. Doabia, Learned Additional Advocate General, Punjab, who is present in Court, accepts notice.
>
> Learned counsel appearing on behalf of State of Punjab **undertakes to hand over the possession to petitioner bank within 3 weeks from today** after completing all the necessary formalities.
>
> In view of the aforesaid, the petition is disposed off."

[Emphasis supplied]

(2) In brief, the facts which emerge from the pleadings are that M/s Creative Yarn Private Limited having its Registered Office at K-1, Textile colony , Industrial Area-A Ludhiana availed a Cash Credit facility of Rs 7 Crore from Allahabad Bank (now merged with Indian Bank). Mr. Anuj Kapoor executed a guarantee deed dated 15.01.2015 in favor of the bank for the aforesaid loan facility availed by the borrower company. He also created an equitable mortgage of Factory land and building built over MC No. B- XII-667 and B-XXIII -2119/A, measuring 1769 Square Yards situated at Textile Colony, Ludhiana Consequent upon declaration of the account as Non Performing Asset, the petitioner bank issued notice dated 03.04.2018 under Section 13(2) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "*Act, 2002*") seeking a recall of Rs. 8,20,24,851 due as on 02.04.2018.

(3) An Application under Section 14 of the Act, 2002 filed by the bank was allowed by Respondent No. 1 vide order dated 15.11.2018 directing Respondent No. 3 to take physical possession and hand it over to the petitioner bank. Since the said order was not being implemented, the petitioner bank had approached this Court by filing the instant petition which was disposed off vide aforesaid order dated 25.02.2020.

(4) Learned State Counsel, contends that the necessity to file the instant application arose on account of the fact, that after the aforesaid order was passed, it was realized that the petitioner bank has concealed material facts, which subsequently came to the notice of the Applicant-Respondents No. 1 to 3, due to which implementation of the order was not possible to the carried out as physical possession of the secured assets could not be taken under Section 14 of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (hereinafter referred to as "*Act, 2002*").

(4.1) Learned State Counsel further contends that as per official record, on 18.11.2019 a representation was received from M/s Nalanda Woolens Ltd. alongwith copy of the order dated 13.07.2018 and 07.11.2019 passed by Ld. Civil Judge (Junior Division), Ludhiana in Civil Suit No. 3604 of 2018 titled as ***Nalanda Woolens Ltd.*** *versus* ***Anuj Kapoor***. The case set up by M/s Nalanda Woolens Ltd in the plaint was that the plaintiff company is a tenant and in possession of the suit property (secured asset) bearing No. B- XXIII-667 (old), B-XXIII-2119 (new) and Plot No. K-1, measuring 1769 Sq. Yards situated at Textile Colony, Industrial Area-A, Ludhiana, which is owned by the landlord/defendant – Sh. Anuj Kapoor (guarantor/mortgagor), and sought for a decree of permanent injunction against the defendant /landlord from interfering in its possession. The plaintiff company relies upon Telephone connection, Sales Tax Registration Number and VAT Registration Number to substantiate its possession. The plaintiff is seeking protection of its possession in view of the provisions of East Punjab Urban Rent Restriction Act, 1949. It is to be noticed that this very property is claimed to be a secured asset of which the Petitioner - Bank, intends to take physical possession under Section 14 of the Act, 2002.

(4.2) Learned State Counsel points out that the learned Civil Court, vide order dated 13.07.2018 granted an injunction in favor of the Plaintiff- Tenant, restraining the defendant-landlord from interfering into its possession. Subsequently, even an application was filed by the plaintiff- tenant under Order 1 Rule X of the Code of Civil Procedure, seeking impleadment of the petitioner-bank (secured creditor) in the civil suit. The said application is yet to be allowed. The said interim protection to the aforesaid Plaintiff-tenant is stated to be still in continuation due to which, the order dated 25.02.2020 passed by this Court on the statement of the Ld. State Counsel, could not be implemented by the Respondent No. 1 and 3. It is further argued that Applicants-Respondent No. 1 and 3, had asked the petitioner bank to get the said interim order vacated, in order to obtain assistance of the State authorities to take physical possession of the secured asset but instead of seeking vacation of stay, instant writ petition has been filed by the petitioner-bank.

(4.3) It has been further argued, that the Respondent No. 3, with an intent to comply with the order dated 25.02.2020 passed by this

Court, issued notice dated 02.03.2020 to the borrowers to handover the possession of the secured assets on or before 06.03.2020, failing which the possession shall be taken with Police help on 09.03.2020.

(5) In response thereto, another representation dated 06.03.2020 was received by Respondent No. 3, from M/s Nalanda Spinners Ltd alongwith a certified copy of the order dated 03.09.2019 passed by the Ld. Civil Judge (Junior Division), Ludhiana in Civil Suit No. 2673 of 2019 titled as "*Nalanda Spinners Ltd. V/s Creative Yarn Pvt. Ltd*.", as per which the secured asset has been attached by the Court under Order 38 Rule 5 of the Code of Civil Procedure. The said suit is in the nature of a recovery suit seeking to recover Rs.4.32 Lacs alongwith interest @ 24% p.a. from the date of filing of suit till the receipt of the claimed amount. The said order has been passed in view of the statement given by the defendant therein (defaulting borrower), that it had no objection to the application for attachment filed by plaintiff therein, being allowed and the defendant shall not transfer the property to anyone. Though, it is incomprehensible as to how property owned by Mr. Anuj Kapoor, who could at best be a Director of Defendant No. 1 therein i.e. M/s Creative Yarn Pvt. Ltd could be got attached for dues recoverable from the defendant No 1 Company therein, which is a separate juristic person. Alongwith the representation, copy of the said application under Order 38 Rule 5 of the Code of Civil Procedure was also attached.

(5.1) It is thus contended that since the property / secured asset has been attached in these civil proceedings, therefore on this account also, the physical possession could not be taken.

(5.2) It is, therefore, contended that since the aforesaid legal impediments were concealed by the petitioner, at the time of filing of the writ petition therefore, the statement given to take physical possession could not be implemented. Hence, prayer is for modification of the aforesaid order.

(6) Upon notice having been issued on the aforesaid application, the non-applicant / petitioner bank appeared and filed reply. It is stated that as regards the first civil suit is concerned, i.e. "Nalanda Woolens Ltd. V/s Anuj Kapoor", the interim order passed therein cannot bind the petitioner bank because it is not a party-defendant in the suit. Furthermore, the claim of the plaintiff is only against the defendant/landlord and the interim order passed by the Ld. Civil Court only restrains the defendant in the suit from interfering into the possession of the plaintiff and hence, the interim stay order has no applicability *qua* the rights of the petitioner-Bank to take physical

possession.

(7) As regards the second civil suit is concerned titled as "Nalanda Spinners Ltd. V/s Creative Yarn Pvt. Ltd.", it is contended that the Ld. Civil Court has passed an order of attachment before judgment under Order 38 Rule 5 CPC and since the bank has a prior charge of mortgage upon the property in question, the said interim order cannot be construed to be a bar on the rights of the petitioner to take possession of the secured asset.

(7.1) It is further argued, that the jurisdiction of Civil Court stands excluded in view of Section 34 of the Act, 2002 qua the action taken by the secured creditor under the said Act, 2002. Hence, the orders passed by the Ld. Civil Court cannot be construed to have determined any right *inter-se* of the borrower and the secured creditor with respect to secured asset. The Petitioner-Bank has thus prayed for dismissal of the instant application.

(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 :-

> a. 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?
>
> b. 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?
>
> c. Scope of powers of the District Magistrate in exercise of its jurisdiction under Section 14 of the Securitisation Act, 2002?

ISSUE NO. 1

(9) It is to be noticed that the banks and the financial institutions had extended substantial credit facilities to various borrowers in the commercial world. Part of it having been declared

Non-Performing Asset led to accumulation of huge unrecovered amounts. Since the conventional process of recovery of debts through Civil Courts was lengthy and time consuming, it became counter-productive exercise on account of mounting interest. A necessity was felt to have a special forum in place, for adjudication of sizeable category of such disputes i.e. between the creditor and the borrower and all such ancillary issues. Considering all these circumstances, Recovery of Debts Due to Banks and Financial Institutions Act was enacted in the year 1993 but that also did not bring the desired results and was not found to be an effective remedy to deal with mounting levels of NPA in the country.

(10) In the aforesaid backdrop, Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms suggested enactment of a new legislation for empowering the banks and financial institutions to take possession of securities and to sell them without intervention of Court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on 21.06.2002 which then paved the path for the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(11) For better appreciation of the issues, certain provisions of the Securitisation Act, 2002 are reproduced as under :-

> **SECTION 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.**
>
> Xxxxx xxxxx
>
> **(4)** In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:
>
> **(a) 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;

[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

SECTION 14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset. - (1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, **the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof,** and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him

(a) **take possession** of such asset and documents relating thereto; and

(b) forward such 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 secl1red assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, **shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets [within a period of thirty days from the date of application]**

Provided also that 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.]

[**Provided** further 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**.]

[(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 anyauthority.

SECTION 34 - Civil Court not to have jurisdiction. - No Civil Court shall have jurisdiction to entertain any suit or proceeding **in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is**

> **empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken** or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).
>
> **SECTION 35 - The provisions of this Act to override other laws.** - The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.
>
> **[Emphasis supplied]**

A perusal of the above would show that Section 13(1) clearly brings out the legislative intent of permitting the secured creditors to enforce the securities without the intervention of the courts. Enforcement of securities are provided under Section 13(4) of the Act, 2002 which entitles the secured creditor to take over the possession or management of the secured asset for the purpose of its enforcement by transfer by way of sale, lease or assignment etc., after the borrower fails to make the payment within 60 days of the issuance of the demand notice under Section 13(2) and objections if any, having been filed by the borrower are rejected by the secured creditor under Section 13(3-A) of Act, 2002. If the secured creditor decides to take physical possession the bank can avail of assistance of the District Magistrate on making an application supported by an affidavit in terms of proviso to Section 14 of the Act, 2002.

(12) The enactment also provides for an adjudicatory mechanism under Section 17 before the Debts Recovery Tribunal, which is a specialised Tribunal constituted under Section 4 of the Recovery of Debts and Bankruptcy Act, 1993 to adjudicate such disputes which may arise while the secured creditor proceeds to enforce the secured assets under the scheme of the Securitisation Act, 2002. The jurisdiction of the Tribunal includes adjudication of inter-se disputes between any person who is aggrieved of any action taken by the secured creditor under Section 13(4) and/or the measures pursuant to thereof [see Para 20-21 of ***Kaniyalal Lalchand Sachdev*** *versus* ***State of Maharashtra***[1]. The Tribunal on adjudication if finds that the action of the secured creditor in not in accordance with the provisions of the Act, 2002 would restore

[1] 2011(2) SCC 782

the possession back. By way of amendment vide Act, of 44 of 2016, Section 17(4-A) of the Act, 2002 was also introduced vide which a dispute inter-se between a tenant and the secured creditor was also brought within the ambit of adjudication of the Tribunal. Although the words used under Section 17(1) is *"any person (including the borrower)"* itself is of wide amplitude to include any person whosoever it may be, aggrieved of an action of the secured creditor to institute such proceedings before the DRT, but the amendment which is primarily clarificatory in nature reinforces the view that the Legislature intended to restrict the adjudication of any dispute touching the enforceability of the secured asset at the hands of secured creditor at only one single forum i.e. the DRT and to the exclusion of other adjudicatory forums. To further make the issues clear, Section 34 of the Act, 2002 excludes the jurisdiction of the Civil Court in so far as those issues which fall within the ambit of adjudicatory jurisdiction of the Tribunal.

(13) Hon'ble Supreme Court in while examining the jurisdiction of the Tribunal in ***Mardia Chemicals Ltd.*** *versus* ***Union of India***[2] held as follow :

> **"50**. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in subsection (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub- section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. **A full reading of Section 34 shows that the jurisdiction of the Civil Court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that**

[2] 2004 (4) SCC 311

> **direction has so far been taken under sub-section (4) of Section 13.** It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil Court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil Court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.
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> **51. However, to a very limited extent jurisdiction of the civil Court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe**, whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil Court in the cases of English mortgages"
>
> **[Emphasis supplied]**

It is thus clear that the jurisdiction of the Civil Court shall be completely barred in so far as those matters, which would fall for adjudication within the jurisdiction of the Tribunal. It is only for those limited cases like for example, where the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe, that the jurisdiction of the Civil Court could be invoked. We find that the procedure before the DRT, being more of a summary nature, it is precisely for this reason that cases involving *prima-facie* substantial allegations of fraud, would be permitted to invoke the jurisdiction of Civil Court as it would require full length evidence to prove such an allegation which may be not effectively possible during a summary trial before DRT. Except for such limited category of cases, for all other matters, the jurisdiction of the Civil Court has been completely excluded. We would hasten to add that while examining such a plea taken by the plaintiff to maintain a civil suit on the basis of aforesaid exception, the Trial Court would be competent to examine as to whether such a plea has been taken just to camouflage the cause, under the garb of clever drafting to attract jurisdiction of the civil court, or whether the suit would actually fall within the scope of such exceptions.

(14) The aforesaid judgment was then followed by the Hon'ble

Supreme Court in a subsequent judgment of ***Jagdish Singh*** *versus* ***Heeralal***[3]**,** wherein the issue involved was with regard to the jurisdiction of Civil Court to entertain suit for declaration of title, partition and permanent injunction involving right of enforcement of an un- partitioned secured asset by the secured creditor under the provisions of the Act, 2002. The argument raised was that since the issue of partition of secured asset was involved in the suit, therefore the civil Court would have the jurisdiction to try and entertain such suit. The said argument was rejected by the Hon'ble Supreme Court in view of Section 17 read with Section 34 of the Securitisation Act, 2002. Para 21 to 22 of the judgment reads as under:-

> **"21**. Section 13, as already indicated, deals with the enforcement of the security interest without the intervention of the Court or tribunal but in accordance with the provisions of the Securitisation Act.
>
> **22.** Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil Court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no

[3] 2014(1) SCC 479

jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub- section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.

23. We are of the view that the Civil Court jurisdiction is completely barred, so far as the "measure" taken by a secured creditor under sub-section (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal. to determine as to whether there has been any illegality in the "measures" taken. The bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondent Nos. 6 to 8 have been crystalised, before creating security interest in respect of the secured assets. In such circumstances, we are of the view that the High Court was in error in holding that only civil Court has jurisdiction to examine as to whether the "measures" taken by the secured creditor under sub-section (4) of Section 13 of the Securitisation Act were legal or not. In such circumstances, the appeal is allowed and the judgment of the High Court is set aside. There shall be no order as to costs."

[Emphasis Supplied]

(15) Keeping in view the aforesaid principles, it is evident that the Civil Court would not have jurisdiction to negate of a secured creditor or its enforcement under the Act, 2002, qua the secured asset, in a civil suit or proceedings instituted by the borrower / guarantor / any third party. This is for the reason that such disputes would specifically fall within the ambit of jurisdiction of DRT under Section 17 of the Act, 2002. Moreover, it shall also be contrary to the very object and scheme of the Act, 2002 which provides a single forum for faster and efficient adjudication of such disputes. Only for a limited category of disputes as highlighted in para 51 of the judgment in ***Mardia Chemicals (supra)***, the jurisdiction of Civil Court involving challenge to an action of the secured creditor to enforce the security under the Act, 2002 would be maintainable. Consequently, if any person is aggrieved of such measure initiated by the secured creditor pursuant to an action taken under

Section 13(4) of the Act, 2002, the appropriate remedy would be to invoke the jurisdiction of the Tribunal under Section 17 of the Act, 2002. We thus answer the first issue in Negative and hold that the Civil Court would not have jurisdiction to negate any right of the secured creditor under the Securitisation Act, 2002, qua the secured asset in a civil suit instituted by the borrower / guarantor / any third party qua the secured asset.

ISSUE NO. 2

(16) The next issue which comes up for consideration is 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 secured creditor? Learned State Counsel has argued that even though the bank is not a party in the said civil suits, but since the Court has restrained interference in the possession of the plaintiff therein, therefore taking over physical possession at the instance of the bank, would amount to infringement of the interim stay orders. In other words, the argument is that the interim stay order in favor of the plaintiff would bind even the bank even if it is not a party to the civil suit.

(17) We do not find merit in the aforesaid argument. It has been noticed above, that admittedly in none of the two civil suits, the bank is a party defendant. The first civil suit is filed by a plaintiff / tenant and the relief so claimed is also restricted therein to the defendant / landlord and not against the bank. Not only this, the interim order dated 13.07.2018 itself clarifies that the said injunction would not be applicable to third parties which are not impleaded in the said civil suit. The relevant portion of the order dated 13.07.2018 is extracted as under:-

> **"8.** Before parting with this order, it is hereby made clear that due compliance of Order 39 Rule 3 CPC be made forthwith and copy of this order also given for effecting service upon the defendant on filing of PF, RC and copies of documents immediately, failing which, this order shall cease to have its effect. **It is further made clear that nothing contained herein shall be construed so as to effect the rights of other parties, who are not formally arrayed as a party in the present suit."**
>
> **[Emphasis supplied]**

It is thus more than clear, that the Civil Court in its order has

clearly restricted the applicability of the interim protection only to the parties to the said suit. Since the bank is not a party to the said suit **as yet** and there is no specific restraint order against the bank, the said order, could not have been treated to have restrained respondents Nos. 1 to 3 or the bank to take physical possession of the secured asset, as none of them have been restrained by virtue of the aforesaid order.

(18) Even otherwise, it is well settled that any order passed by the Civil Court, would bind only those, who are arrayed as a party in the said civil suit. Rights of a third party who is not a party to the civil suit cannot be said be adversely effected by an order passed by the civil Court in such a suit, unless specifically impleaded in a representative capacity. Hon'ble Supreme Court in ***Bengal Ambuja Housing Development Ltd.*** *versus* ***Promila Sanfui***[4] held in Para 18 and 19 as under :-

> **"18**. Further, in the instant case, the order of temporary injunction dated 03.07.2006 was purportedly granted by consent is also not sustainable in law. The question of consent being given by either the appellant Housing Board or the predecessors in interest who are its vendors did not arise as they were not parties to the said suit. **It is a well settled principle of law that either temporary or permanent injunction can be granted only against the parties to a suit.** Further the purported consent order in terms of Order XXXIX of the Code of Civil Procedure is only binding as against the parties to the suit. In such a case, the order of the Subordinate Judge to grant police protection against the appellant Housing Board which is enjoying the property is erroneous in law and is liable to be set aside.
>
> **19.** The original owner in the instant case, late Gangadas Pal was an intermediary in khas possession of the land in question in terms of Section 6 of the West Bengal Estates Acquisition Act, 1953. **Thus, the learned Subordinate Judge did not have the jurisdiction to entertain any suit with respect to the said property, in light of the provision of Section 57B (2)(a), (b) and (c) of the West Bengal Estates Acquisition Act, 1953,** which states as under:
>
> "57B. Bar to jurisdiction of Civil Court in respect of certain matters.-

[4] 2016 (1) SCC 743

XXX XXX XXX

(2) No Civil Court shall entertain any suit or application concerning any land or any estate, or any right in such estate, if it relates to---

a. alteration of any entry in the record-of-rights finally published, revised, made, corrected or modified under any of the provisions of Chapter V,

b. a dispute involving determination of the question, either expressly or by implication, whether a raiyat, or an intermediary, is or is not entitled to retain under the provisions of this Act such land or estate or right in such estate, as the case may be, or

c. any matter which under any of the provisions of this Act is to be , or has already been, enquired into, decided, dealt with or determined by the State Government or any authority specified therein."

In view of the fact that the right, title and interest upon the disputed property has been settled in favour of the vendors of the appellant Housing Board, who are the legal heirs of the late Gangadas Pal, who was an intermediary of the land in question in terms of Section 6 of the West Bengal Estates Acquisition Act, 1953, **adding of the property in question to the suit schedule property in dispute cannot be the subject matter of partition in view of the express provisions of the West Bengal Estates Acquisition Act, 1953 which excludes the jurisdiction of the civil Court in respect of any rights in such estate as entry in record of rights is published.** In the instant case, the names of the heirs of late Gangadas Pal were included in the record of rights in pursuance of the order passed in the Writ Petitions in connection with the Big Raiyat Case No. 5 of 1967, which order was affirmed by this Court in the case of Sulekha Pal, referred to supra.

[Emphasis supplied]

It thus clear that an order passed in a civil dispute would bind only those who are impleaded in the suit. The argument of the learned counsel for the applicants / respondent Nos. 1 and 3, that the civil court order would still bind the bank even if it is not a party to the suit,

therefore cannot sustain.

(19) Still further, we find that the instant issue is squarely covered in favor of non-applicant / petitioner Bank by a Division Bench judgment of this Court in the case of ***Punjab and Sind Bank*** *versus* ***District Magistrate Mohali bearing CWP No. 13068 of 2014 decided on 22.12.2014***. In the cited case, the bank was denied assistance to take physical possession of a secured asset under Section 14 of the Securitisation Act, 2002 by the District Magistrate on the ground that a civil suit has been filed by an occupant of a part of the secured asset, and the Civil Court has granted interim stay against the defendant/landlord. Consequently, the District Magistrate contended that the tenant cannot be evicted even though the bank may not have been a party in the said civil suit. While rejecting the argument of the respondent (District Magistrate), the Division Bench held as under :-

> "We find that the following three questions are required to be adjudicated upon:
>
> a. **What is the effect of the order of status quo granted by the Civil Judge (Junior Division), Mohali on 15.04.2013 in a civil suit tilted "M/s Eclat Institute of Hospitality Management & another Vs. Hotel Ashiana & others" for permanent injunction restraining the defendants from interfering in the peaceful running of the plaintiff-institute in the premises of Hotel Marc Royale**. The order dated 15.04.2013 reads as under:
>
> "Counsel for the plaintiff suffered a statement that plaintiff shall not make fresh admission in the garb of the stay order and if any admission is made, it shall not be utilized to agitate grant of interim injunction. Now to come up for filing written statement on 29.04.2013, in the meantime, the parties shall maintain status quo ante regarding the possession over the suit property at the time of filing of suit."
>
> b. What is the effect of attachment proceedings initiated by the Tax Recovery Officer pursuant to demands of Rs.1,62,92,047/- in terms of the order of the Settlement Commission?
>
> c. Whether the affidavit in support of application under Section 14 of the SARFAESI Act is a forged and fabricated document?

Having heard learned counsel for the parties at length, we find that the interim order passed by the Civil Court on 15.04.2013 relates to running of the plaintiff- M/s Eclat Institute of Hospitality Management in the premises of the Hotel Marc Royale. The stand of the borrower is that the said Institute was given permission to run hospitality management on leave and license basis in pursuance of Memorandum of Arrangement dated 04.06.2008. The plaintiff- Institute in the said suit has claimed limited relief against forcible dispossession in respect of premises in its possession for carrying on the Hospitality Management Institute. **The Bank is not a party to such suit. The order of status quo passed in the said suit does not affect the rights of the mortgagee to take possession of the property mortgaged. The rights of the person in possession is subject to the rights of the owner to be adjudicated upon in accordance with law. But the said order of status quo cannot be made a shield to deny the right of recovery of possession to the Bank being a secured creditor. Therefore, the order of status quo has been wrongly made basis by the Additional District Magistrate to deny the right of possession to the Bank. The Bank is entitled to the possession of the mortgaged property subject to the rights of the plaintiff in the suit.**

xxxx xxxx

Reliance of Mr. Ratta on a judgment of Gujarat High Court in **Manjudevi R. Somani Vs. Union of India** decided on 25.11.2013 is not tenable. In the said case, the borrower challenged an order passed in the proceedings under Section 14 of the SARFAESI Act. It was found that the Chief Metropolitan Magistrate or Additional Chief Metropolitan Magistrate have not been authorized to exercise the powers conferred under Section 14 of the Act. **Thus, we find that the dues of the Income Tax Department, in these circumstances, will have preference amongst only the unsecured creditors, but the Bank as a secured creditor has a priority over the assets of the borrower."**

[Emphasis supplied]

(20) While applying the aforesaid principles to the facts of the present case, it is clear that since the petitioner bank is not a party to

either of the civil suits which have been referred to by respondents Nos. 1 and 3, the interim orders passed therein would not effect the rights of the petitioner. In view of conspicuous absence of the bank in the civil suit, the Civil Court in both the above referred matters shall be construed to be adjudicating the dispute involved between the two private parties in suit and not with respect to the entitlement of the petitioner-secured creditor to enforce the secured asset, even though the suit may involve rights upon secured/mortgaged asset.

(21) Apart from having examined broad legal principles, it would now be relevant to deal with the respective orders passed in each of the two civil suits, which are being treated as legal impediment by the Applicant / Respondent No. 1 to 3 to deny assistance to the petitioner bank under Section 14 of the Act, 2002. The first civil suit, is filed by the plaintiff claiming itself to be a tenant in the secured asset. In our view the same cannot be treated to be a legal impediment for the secured creditor to enforce it claim, for the following reasons :-

> (i) The relief claimed in the suit is only against the defendant / landlord and no relief has been claimed by the plaintiff therein against the petitioner bank.
>
> (ii) Secured Creditor - Petitioner Bank is not a party to the civil suit and hence no order can adversely effect its rights.
>
> (iii) There is no prayer for seeking an injunction against the secured creditor by the plaintiff / tenant for enforcement of security interest (nor such a prayer could be maintainable before the Civil Court).
>
> (iv) If the plaintiff / tenant would have been aggrieved of the action of the secured creditor/bank to take physical possession, the remedy was to approach the DRT under Section 17(4-A) of the Act, 2002.

(22) As regards the second civil suit is concerned, we find that the order of attachment before judgment passed under Order 38 Rule 5 CPC, would also not effect the rights of the secured creditor/petitioner to take physical possession for the following reasons:-

> **(i)** Firstly, in terms of Section 48 of the Transfer of Property Act, 1882 undisputedly attachment vide order dated 03.09.2019, is subsequent to the mortgage already having been created upon the secured asset in favor of the

secured creditor and hence cannot have preference over the prior charge of mortgage in favor of the secured creditor [see para 27.5 of ***Kamla Engg & Steel Industries V/s Punjab National Bank 2020 (4) PLR 669***].

(ii) Secondly, an act of attachment amounts to creation of an unsecured charge which is always subject to charges already created prior in time, especially a prior secured charge upon a property.

(iii) Thirdly, the effect of attachment is only to create a charge in order to restrain the owner from dealing with the property and hence cannot in any way be equated with an injunction against a secured creditor (who even otherwise is not a party defendant in the civil suit) to enforce a security already created in its favor.

(iv) Fourthly, as noticed above, keeping in view the jurisdiction of the Civil Court as discussed above, proceedings before civil Court cannot be treated to be an adjudication of the rights of the secured creditor, for which aggrieved party is to approach the DRT.

(v) Even otherwise, it is not understandable as to how property/secured asset concededly owned by Sh. Anuj Kapoor (guarantor in Securitisation proceedings) could be got attached for the dues recoverable from the defendant No. 1 company M/s Creative Yarn Pvt. Ltd. which a separate juristic person.

(23) Further, since the scope of adjudication before the Civil Court would not involve determination of any right of a secured creditor on account of lack of jurisdiction in view of Section 17 read with Section 34 of the Act, 2002, no order passed by the Civil Court could be construed to be a restraint order on the secured creditor to enforce its security under the provisions of the Securitisation Act, 2002. This is subject to an exception that unless the secured creditor is specifically impleaded as a party defendant and an interim order is passed specifically restraining the secured creditor to enforce the security interest. We hasten to add, that the maintainability of such suit, would still have to be tested on the principles as noticed above.

(24) For the reasons stated aforesaid, we thus hold, that none of the two orders passed by the Ld. Civil Court i.e. dated 13.07.2018/07.11.2019 and 03.09.2019 passed in "Nalanda Woolens

Ltd. V/s Anuj Kapoor" and "Nalanda Spinners Ltd. V/s Creative Yarn Pvt. Ltd.", respectively could have been treated to have restrained the petitioner bank or Respondent No. 1 or 3 to enforce the secured assets under the provisions of the Securitisation Act, 2002.

ISSUE NO. 3

(25) The next issue which arises for consideration is the scope of powers of the District Magistrate while exercising powers under Section 14 of the Securitisation Act, 2002. It is to be noticed that the very purpose of Section 14 is to provide assistance to the secured creditor to take physical possession of the secured asset. Hon'ble Supreme Court in ***Manager, ICICI Bank*** *versus* ***Parkash Kaur***[5] , was considering a situation where the bank on its own by engaging enforcement agencies, had taken physical possession of the charged assets. The said practice was deprecated and it was held that the banks should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the installments instead of resorting to strong arm tactics. Para 15 of the said judgment reads as under :-

> **"15**. Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. **The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law to take possession of vehicles** in cases where the borrower may have committed default in payment of the installments instead of taking resort to strong arm tactics. "
>
> **[Emphasis supplied]**

(26) The significance of taking physical possession, by the secured creditor and then transfer of the same to the auction purchaser to complete the process of transfer, was recognized to be an integral part of the scheme of Securitisation Act, 2002 by the Hon'ble Supreme Court in ***ITC*** *versus* ***Blue Coast***[6]. In the cited case, it has been held that the transfer of the property by the secured creditor shall be treated to be complete only when both the aspects of transfer i.e. proprietary and

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[5] 2007 (2) SCC 711

[6] 2018 AIR SC 3063

possessory rights are transferred to the auction purchaser, pursuant to the sale conducted by the secured creditor. It was thus held, that in case if the bank conducts the sale on the basis of symbolic possession, then the bank would retain its character as a secured creditor till actual possession is transferred by the secured creditor to the auction purchaser to complete the process of transfer pursuant to such sale. Till such time the actual physical possession of the secured asset is not transferred to the auction purchaser, the process of transfer is not complete. For the said purpose, the bank would be competent to maintain an application under Section 14 of the Act, 2002 before the District Magistrate even after the sale certificate is issued, to obtain physical possession for onward transfer to the auction purchaser, which would then complete the process of transfer. Para 50 of the said judgment reads as under:-

> **"50.In this case, the creditor did not have actual possession of the secured asset but only a constructive or symbolic possession. The transfer of the secured asset by the creditor therefore cannot be construed to be a complete transfer as contemplated by section 8 of the Transfer of Property Act. The creditor nevertheless had a right to take actual possession of the secured assets and must therefore be held to be a secured creditor even after the limited transfer to the auction purchaser under the agreement**. Thus, the entire interest in the property not having been passed on to the creditor in the first place, the creditor in turn could not pass on the entire interest to the auction purchaser and thus remained a secured creditor in the Act."
>
> **[Emphasis supplied]**

(27) It is also noticed that many a times, after physical possession is obtained by the bank but before it is transferred to the auction purchaser, certain persons intrude into the property and the secured creditors are left helpless. While the District Magistrate would contend that it had complied with its obligation, whereas the secured creditor is still without possession which further delays onward possession to the auction purchaser. Since the secured creditor continues to retain its character as a secured asset qua the secured asset till such time the asset is completely transferred to the auction purchaser, the secured creditor would still well within its right to claim restoration of possession through the assistance of District Magistrate. The secured creditor would still be entitled to maintain another

application(s) before the District Magistrate, who will be obligated to provide assistance to restore the possession.

(28) It therefore becomes necessary to examine the scope of functions to be discharged by the District Magistrate under Section 14 of the Act, 2002. A bare perusal of the said provision reveals that it provides a lawful mechanism to take physical possession of the secured assets which is required to complete the process of transfer as noticed above. The District Magistrate is therefore obligated to provide requisite assistance to the secured creditor on such application having been filed by the secured creditor claiming physical possession of the secured asset subject to the secured creditor filing the 9-point affidavit as has been provided by the proviso inserted to Section 14 by the Act 1 of 2013 w.e.f. 15.01.2013. Section 14 further provides that the District Magistrate is required to record his satisfaction on such application and then proceed to pass suitable orders for taking possession of the secured asset. 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*** *versus* ***Noble Kumar***[7] 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**

[7] 2013 (6) SCC 690

> **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."**
>
> **[Emphasis supplied]**
>
> We find that the proviso requiring submission of 9 point affidavit alongwith the application to be filed by the secured creditor was inserted by way an amendment brought into the Act, 2002 with effect from 15.01.2013. The purpose of the same was to have some accountability of the secured creditor who is proceeding to take State assistance to dispossess the occupant of the secured asset.

(29) It is also to be noticed that passing of the order by the District Magistrate under Section 14 is purely an administrative act which does not involve any adjudication of the rights of the respective parties. A Division Bench of this Court in ***Asset Reconstruction Company (India) Ltd*** *versus* ***State of Haryana***[8] **,** while examining the scope of the functions to be performed by the District Magistrate under Section 14 held as under :-

> **"22. It is well settled by now that a District Magistrate is neither vested with any quasi-judicial power nor the obligation cast upon him under Section 14 of the SARFAESI Act involves any adjudicatory process. The nature of the duty assigned to a District Magistrate under this provision is essentially administrative in nature which he has to exercise after due application of mind.** The duty entrusted to a District Magistrate is akin to an executing agency designated for the aid and assistance of a Bank or financial institution to secure physical possession of the 'secured asset' when it cannot be taken over in the ordinary process under Section 13(4) of the Act. The District Magistrate is vested with no discretion to refuse assistance where the ingredients of first proviso to Section 14(1) are unambiguously satisfied. "
>
> **[Emphasis supplied]**

(30) Similarly, a Division Bench of Madras High Court in ***M/s***

[8] 2018 (1) PLR 443

Shriram Housing Finance Ltd. *versus* ***District Collector***[9] held as under:-

> **"10.** It must be borne in mind that section 14 of the SRFAESI Act, 2002 does not visualise any judicial process or work. As a matter of fact, no adjudicatory process is involved, of course, it is an assistance provided by a Lawful Authority by means of non- Adjudicatory process under Section 14 of the Act.
>
> **11.** Moreover, the powers that are exercised by the District Magistrate or Chief Metropolitan Magistrate under section 14 of the SRFAESI Act are purely executory in character. To put it precisely, Section 14 of the Act provides for rendering of an assistance to a secured creditor by the authority specified in the provision for the purpose of taking the possession of 'Secured Assets' by the 'Secured Creditor', as per decision **Bharatbhai Ramniklal Sata v. Collector and District Magistrate reported in AIR 2010 Gujarat at Page 72**.
>
> **12.** It is to be pointed out that when the Chief Metropolitan Magistrate or the District Judge failed to adhere to the Provision of section 14 of the SRFAESI Act, 2002, then, the 'Writ Petition is Maintainable in Law'. Further, the Authority acting under Section 14 of Act is not required to act beyond the purview of Section 14 by usurping the powers available to the Debt Recovery Tribunal under Section 17 of the Act."

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

[9] 2019 (2) CWC 697

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*** *versus* ***State of Maharashtra***[10]**.** Similarly, we find that in case 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.

(31) Further, as per proviso to Section 14 of the Act, 2002 it requires the District Magistrate to pass an order within a period of thirty days from the date of application which period can be extended by another 30 days i.e. maximum period 60 days are available. We are conscious of the legal position that the time period of 60 days within which an order is to be passed by the District Magistrate is directory in nature. Hon'ble Supreme Court in ***C. Bright*** *versus* ***District Collector***[11] held in para 12 and 20 as under:-

> **"12.**This Court distinguished between failure of an individual to act in a given time frame and the time frame provided to a public authority, for the purposes of determining whether a provision was mandatory or directory, when this Court held that **it is a well settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified Nasiruddin & Ors. v. Sita Ram Agarwal, (2003) 2 SCC 577.**
>
> xxxxx xxxxx
>
> **20.** The Act was enacted to provide a machinery for empowering banks and financial institutions, so that they

[10] 2011 (2) SCC 782
[11] 2021 (2) SCC 392

may have the power to take possession of secured assets and to sell them. The DRT Act was first enacted to streamline the recovery of public dues but the proceedings under the said Act have not given desirous results. Therefore, the Act in question was enacted. This Court in Mardia Chemical, Transcore and Hindon Forge Private Limited has held that the purpose of the Act pertains to the speedy recovery of dues, by banks and financial institutions. **The true intention of the Legislature is a determining factor herein. Keeping the objective of the Act in mind, the time limit to take action by the District Magistrate has been fixed to impress upon the authority to take possession of the secured assets. However, inability to take possession within time limit does not render the District Magistrate Functus Officio. The secured creditor has no control over the District Magistrate who is exercising jurisdiction under Section 14 of the Act for public good to facilitate recovery of public dues. Therefore, Section 14 of the Act is not to be interpreted literally without considering the object and purpose of the Act. If any other interpretation is placed upon the language of Section 14, it would be contrary to the purpose of the Act.** The time limit is to instill a confidence in creditors that the District Magistrate will make an attempt to deliver possession as well as to impose a duty on the District Magistrate to make an earnest effort to comply with the mandate of the statute to deliver the possession within 30 days and for reasons to be recorded within 60 days. In this light, the remedy under Section 14 of the Act is not rendered redundant if the District Magistrate is unable to handover the possession. The District Magistrate will still be enjoined upon, the duty to facilitate delivery of possession at the earliest.

[Emphasis supplied]

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*** *versus* ***Govind Singh***[12]]. 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. Moreso, 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 the District Magistrate. This at times defeats the

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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 atleast 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.

(34) With the aforesaid observations, the **application** of the respondent-State is dismissed. Respondent Nos. 1 and 3 are **directed** to ensure handing over of actual physical possession of the secured asset to the petitioner bank within four weeks with an advance notice of 15 days to the occupants/borrowers as noticed above.

(35) Registry of this Court is **directed** to forward a copy of this judgment to the respective Chief Secretaries of the States of Punjab and Haryana and Advisor to Union Territory, Chandigarh for issuance of necessary instructions to the officers exercising jurisdiction under Section 14 of the Securitisation Act, 2002 for ensuring compliance.

Tribhuvan Dahiya