REPORTABLE

IN THE SUPREME COURT OF INDIA
EXTRA ORDINARY APPELLATE JURISDICTION
SPECIAL LEAVE PETITION NO. 16013 OF 2022

Balkrishna Rama Tarle Dead Thr LRS & Anr..... Petitioner(s)

Versus

Phoenix ARC Private Limited & Ors. ...Respondent(s)

O R D E R

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 03.08.2022 passed by the High Court of Judicature at Bombay in Writ Petition No. 9749/2021, by which the Division Bench of the High Court has allowed the said writ petition preferred by the respondent No. 1 herein – secured creditor and has set aside order dated 27.08.2021 passed by the designated authority under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act, 2002) and directed the designated

authority under Section 14 of the SARFAESI Act to dispose of the application under Section 14 of the SARFAESI Act afresh, legal heirs of original respondent No. 2 claiming to be the tenant of the mortgaged property, have preferred the present Special Leave Petition.

2. The Religare Finvest Ltd. (hereinafter referred to as the Religare) sanctioned a loan of Rs. 6 crores in favour of the borrowers. The said loan was secured by a registered mortgage created by borrowers in favour of Religare in respect of the property - secured assets. The borrowers committed defaults in repayment of the said loan which led to Religare classifying borrowers' account as a Non-Performing Asset (NPA). The Religare thereafter, issued a notice dated 13.04.2018 under Section 13(2) of the SARFAESI Act calling upon borrowers to pay the amount then outstanding under the said facility. That thereafter, by a Deed of Assignment dated 29.09.2018, Religare assigned all its right, title, interest, and benefit under the said loan agreement to respondent No. 1 herein – original petitioner No. 1 before the High Court. Thus, respondent No. 1 – original petitioner No. 1 stepped into the shoes of

Religare and became the secured creditor and in that capacity issued a notice dated 21.05.2019 under Section 13(2) of the SARFAESI Act to borrowers calling upon borrowers to make payment of a sum of Rs. 5,83,22,866/-. That thereafter, the secured creditor took symbolic possession of the secured assets under Section 13(4) of the SARFAESI Act. On 21.09.2019, the same was intimated to the borrowers vide their letter dated 21.09.2019. A public notice was also issued by the secured creditor in two newspapers in compliance with the provisions of the Security Interest (Enforcement) Rules, 2002. That thereafter, the secured creditor filed an application under Section 14 of the SARFAESI Act seeking assistance of designated authority – respondent No. 3 herein – District Magistrate, Nashik, for taking physical possession of the secured assets. The petitioner herein – original respondent No. 2 claiming to be a tenant in respect of the ground floor plus first floor showroom along with service station on a part of the secured assets bearing Nos. 465 and 463 sought to intervene in the said proceedings filed under Section 14 of the SARFAESI Act. The petitioner placed

reliance upon an order dated 20.04.2018 passed in Regular Civil Suit No. 58/2018 filed by him against one of the borrowers, whereby one of the borrowers was restrained from dis-possessing him from the said premises. At this stage, it is required to be noted that neither the borrower(s) nor the petitioner(s) instituted any proceedings before the Debt Recovery Tribunal (DRT) under Section 17 of the SARFAESI Act against the steps taken under Section 13 of the SARFAESI Act. That thereafter, the designated authority passed the following order dated 27.08.2021 and declined to assist the secured creditor in taking possession of the secured assets and kept the said application pending by observing that after termination of the tenancy rights of the petitioner by the Finance Company by following due procedure of law the further orders regarding possession of the mortgage property will be decided. The order dated 27.08.2021 is as under: -

1. In consideration of the reasons recorded in the above referred issues and conclusions, the Application of the Finance Company is kept for decision.

2. After termination of the tenancy rights of the third-person Complainant Shri. Balkrishna

Rama Tarle by the Finance Company by following due procedure of law the further orders regarding possession of the mortgage property will be decided.

3. If any party feel aggrieved due to this order, then they may file an appeal under section 17 of the Securitisation Act, 2002 before Hon'ble Debts Recovery Tribunal, Mumbai.

4. No order as to cost."

2.1 Feeling aggrieved and dissatisfied with the order dated 27.08.2021 passed by the designated authority – Additional District Magistrate, Nashik in not passing any order of assisting the secured creditor in taking possession of the secured assets in exercise of powers under Section 14 of the SARFAESI Act, the secured creditor preferred writ petition before the High Court. By the impugned judgment and order, the Division Bench of the High Court has set aside order dated 27.08.2021 passed by the designated authority/Additional District Magistrate by observing that such an order is beyond the scope and ambit of the powers to be exercised under Section 14 of the SARFAESI Act. That thereafter, the Division Bench of the High Court has directed the designated authority/Additional District Magistrate to hear and

dispose of the application under Section 14 of the SARFAESI Act in accordance with the provisions of Section 14 of the SARFAESI Act.

2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the third party – petitioner(s) claiming to be a tenant in some of the secured assets have preferred the present Special Leave Petition.

3. Shri Vinay Navare, learned Senior Advocate, appearing on behalf of the petitioners has vehemently submitted that in the facts and circumstances of the case and when the petitioners claimed to be the tenant of the original landlord with respect to some of the secured assets of which the possession was sought and when the original writ petitioner stepped into the shoes of the original landlord as rightly observed by the designated authority – Additional District Magistrate unless the secured creditor who stepped into the shoes of the original landlord initiates the legal proceedings for eviction of the tenant cannot get the possession in an application under Section 14 of the SARFAESI Act.

3.1 It is vehemently submitted by Shri Navare, learned Senior Advocate, appearing on behalf of the petitioners that the High Court ought to have appreciated that the tenancy was subsisting and continuing since prior to the mortgage of the property and therefore, their rights are to be protected and unless and until the proceedings are initiated for eviction of the tenant, the secured creditor who will be in the shoes of the original landlord, cannot get the possession in an application under Section 14 of the SARFAESI Act. Reliance is placed upon the decisions of this Court in the cases of **Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and Ors.; (2014) 6 SCC 1** and **Vishal N. Kalsaria Vs. Bank of India and Ors.; (2016) 3 SCC 762.**

4. We have heard learned counsel appearing on behalf of the petitioners at length. At the outset, it is required to be noted that after initiation of the proceedings and taking steps under Section 13(2) and 13(4) of the SARFAESI Act, thereafter, the secured creditor has approached the District Magistrate by submitting an application under

Section 14 of the SARFAESI Act and has requested the District Magistrate/Additional District Magistrate to assist the secured creditor in obtaining the possession of the secured assets. It is required to be noted that neither the original borrowers nor even the petitioners who are claiming to be a tenant of the secured assets have initiated any proceedings before Debt Recovery Tribunal under Section 17 of the SARFAESI Act. The proceedings before the District Magistrate were under Section 14 of the SARFAESI Act. In the said application under Section 14 of the SARFAESI Act instead of passing any final order to assist the secured creditor in getting the possession of the secured assets and while keeping the said application, the Additional District Magistrate has passed an order that only after the termination of the tenancy rights of the petitioner by the finance company (secured creditor) by following due procedure of law the further orders regarding possession of the mortgage property, the said application shall be decided. The aforesaid order passed by the Additional District Magistrate has been set aside by the

High Court which is the subject matter of the present Special Leave Petition.

5. Therefore, the short question which is posed for consideration of this Court is whether while exercising the powers under Section 14 of the SARFAESI Act, the District Magistrate/designated authority could have passed such an order that unless and until the secured creditor terminates the tenancy rights of the third person by following due procedure of law and further orders regarding possession of the mortgaged property then and then only an application under Section 14 of the SARFAESI Act will be decided?

5.1 While considering the aforesaid question/issue, the scope, ambit, and jurisdiction of the District Magistrate/designated authority under Section 14 of the SARFAESI Act are required to be considered. Section 14 of the SARFAESI Act 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 assets [within a period of thirty days from the date of application]

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

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

[(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,— (i)to take possession of such assets and documents relating thereto; and (ii) to forward such assets and documents to the secured creditor.]

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority."

5.2 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: -
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> "STATEMENT OF OBJECTS AND REASONS
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> The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial

sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the 21st June, 2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance would enable banks and financial institutions to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce 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 sub-section (2), the secured creditor may take recourse to one or more of the measures provided in sub-section (4). One of the measures is to take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset. That, they could do through their "authorised officer" as defined in Rule 2(a) of the Security Interest (Enforcement) Rules, 2002.

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."

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. Under the circumstances in the present case no error has been committed by the High Court in setting aside the order dated 27.08.2021 passed by the designated authority keeping the application pending till the secured creditor initiates the legal proceedings for eviction of the tenant cannot get the

possession in an application under Section 14 of the SARFAESI Act. The High Court has rightly directed the designated authority to proceed further with the application under Section 14 of the SARFAESI Act, and to dispose of the same in accordance with the provisions of Section 14 of the SARFAESI Act.

6. Now so far as the reliance placed upon the decision of this Court in the case of **Harshad Govardhan Sondagar** (supra) by the learned counsel appearing on behalf of the petitioner is concerned, the same shall not be applicable to the facts of the case on hand, what is observed by this Court in the aforesaid case is the DM/CMM has to give a notice and opportunity of hearing to the person in possession of the secured assets claiming to be a "Class (1) or (2)" lessee of mortgagor/borrower, as well as to secured creditor, consistent with principles of natural justice, and then take a decision. In the said decision, it is not observed that the DM/CMM has to adjudicate the rights between the parties.

7. Now so far as the reliance placed upon the decision of this Court in the case of **Vishal N. Kalsaria** (supra) by the

learned counsel appearing on behalf of the petitioner is concerned, the said decision shall also not be applicable to the facts of the case on hand. In the said decision, the question before this Court was of conflict of claim under the Maharashtra Rent Control Act, 1999 and the provisions of the SARFAESI Act, and which law will prevail. The scope and ambit of the powers to be exercised under Section 14 of the SARFAESI Act were not directly in question before this Court. Even as observed and held by this Court in the aforesaid decision, a judgment cannot be interpreted and applied to fact situations by reading it as a statute. One cannot pick up a word or sentence from a judgment to construe that it is the ratio decidendi on the relevant aspects of the case (para 33).

8. 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.

.....J.
[M.R. SHAH]

NEW DELHI;.....J.
SEPTEMBER 26, 2022 [KRISHNA MURARI]