

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

FMA 778 of 2022

With

IA No. CAN 1 OF 2022

(Through Video Conference)

Reserved on : 17.08.2022

Pronounced on: 13.09.2022

Joy Kali Oil Industries Pvt. Ltd.

...Appellant

-Vs-

Union of India & Ors.

...Respondents

Present:-

Mr. Dilip Kumar Samanta, Advocate,
... for the Appellant

Mr. Amitesh Banerjee, Advocate,
... for the State

Mr. Abhishek Banerjee,
Ms. Payel Ghosh, Advocates
... for the Respondent Nos. 2 and 3

Mr. Debashis Karmakar,
Mr. Arya Nandi, Advocates
...for the Respondent No.12.

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, the correctness of the order of the learned Single Judge dated 04.03.2022 passed in W.P.A. No 28021 of 2014 (Joy Kali Industries Pvt. Ltd. -versus- Union of Indian and Others) has been questioned by the appellant/writ petitioner.
2. The facts of the case are that the appellant/writ petitioner is a company registered under The Companies Act, 1956. The appellant had taken a loan from the respondent no. 2, i.e., United Bank of India now Punjab National Bank.
3. On 05.04.2007 the respondent no.4 herein the Branch Manager of the said Bank communicated to the appellant regarding the modified terms of compromise settlement of the loan amount. Subsequently, the loan was taken over by AEREC (India) Ltd. being the respondent No. 12 from the respondent No. 2. As the compromise failed, on 10.01.2021, AEREC (India) Ltd. being the respondent no. 12 took physical possession of the assets of the appellant with the help of the police assistance of Memari Police Station owing to the default in making payment of the loan. The entire incident took place in the presence of the Executive Magistrate being the respondent no. 9 in terms of the order passed under section 14 of the SARFAESI (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest) Act, 2002, by the District Magistrate, Purba Burdwan.
4. The order passed by the District Magistrate being the respondent No. 5 for taking possession of the assets of the appellant in presence of the Executive Magistrate, being the respondent No.9 is challenged by the appellant before the Learned Single Judge of this Court.
5. The Learned Single Judge upon having carefully considered the contentions and the arguments of the counsels for respective parties held that “the issue as to whether the Executive Magistrate could be delegated the

powers of the District Magistrate under section 14 of the SERFAESI Act, 2002 is academic in nature since sub-section (2) of section 14 has been amended” and dismissed the writ petition.

6. Being aggrieved by the impugned order passed by the Learned Single Judge the instant appeal has been filed by the appellant. Hence, the question before this Hon’ble Court is:

- I. Whether the impugned memo issued by the District Magistrate, being the respondent no.5 under section 14 of the SERFAESI Act, 2002 delegating his powers to the Executive Magistrate herein the respondent No.9 for taking possession of the assets of the appellant by the respondent no. 12 and the order of the Executive Magistrate for taking possession of the assets of the appellant is violative of the rule of law, illegal and invalid?
7. The learned Counsel appearing for the appellant relying on an unreported judgement dated 24th July, 2014, passed by a Single Bench of this Court in Swastyan Agro Industries and Anr. –vs- Union of India and Ors. [W.P. No. 379 (W) of 2013] submits that the Executive Magistrate was not the District Magistrate as contemplated under Section 14 of the SARFAESI Act, 2002. A District Magistrate cannot delegate his powers to an Executive Magistrate. Thus, the order of the District Magistrate delegating his powers to the Executive Magistrate for taking possession of the assets of the appellant is illegal and prays for quashing of the orders of both the District Magistrate and the Executive Magistrate, to return the assets and to restore the physical possession of such assets to the appellant.

8. Heard the learned counsels for the parties and perused of the records of the order passed by the Learned Single Judge. In *M/s R. D. Jain and Co. v. Capital First Ltd. & Ors.* reported in 2022 SCC Online SC 921, Supreme Court held that the terms District Magistrate (DM), Chief Metropolitan Magistrate (CMM) is not a persona designata for the purposes of Section 14 of

the SARFAESI Act. The expression “District Magistrate” and the “Chief Metropolitan Magistrate” as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act. Thus, the powers under Section 14 of the SARFAESI Act can be exercised by the concerned Additional Chief Metropolitan Magistrates of the area having jurisdiction and also by the Additional District Magistrates, who otherwise are exercising the powers at par with the concerned District Magistrates either by delegation and/or special order.

9. In *Indian Bank v. D. Visalakshi* reported in (2019) 20 SCC 47 Supreme Court held that Section 14 of the SARFAESI Act, 2002 is not a provision dealing with the jurisdiction of the Court as such. It is a remedial measure available to the secured creditor, who intends to take assistance of the authorized officer for taking possession of the secured asset in furtherance of enforcement of security furnished by the borrower. The authorized officer essentially exercises administrative or executive functions, to provide assistance to the secured creditor in terms of State’s coercive power to effectuate the underlying legislative intent of speeding the recovery of the outstanding dues receivable by the secured creditor. At best, the exercise of power by the authorized officer may take the colour of quasi-judicial function, which can be discharged even by the Executive Magistrate. The authorized officer is not expected to adjudicate the contentious issues raised by the concerned parties but only verify the compliances referred to in the first proviso of Section 14; and being satisfied in that behalf proceed to pass an order to facilitate taking over possession of the secured assets.

10. 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. 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. This is the spirit of the special enactment. 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 or through any officer subordinate to him. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets which can be discharged even by the Executive Magistrate as is done in this case.

9. Therefore, no case is made out to interfere in the order of the Learned Single Judge and for the foregoing reasons, the appeal is found to be devoid of any merit and is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

13.09.2022
PA(BS)