

Jurisdiction of Chief Judicial Magistrate to Entertain Application Under Section 14 of The SARFAESI Act

written by Gaurav Singh Gaur | July 17, 2019

The Hon'ble

Kerala High Court at Ernakulam, in its recent judgment dated 27-06-2019 in *K.O.Anto*

and *Anr. v. State of Kerala and Anr.* [1]

held that a Chief Judicial Magistrate has jurisdiction to entertain an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. [2]

FACTS:

The Petitioners challenged the order dated 04-06-2019 passed by the learned Additional Chief Judicial Magistrate wherein the learned Chief Judicial Magistrate rejected the challenge raised by the petitioners with regard to the maintainability of the application filed by Respondent No.2 under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as "SARFAESI Act" for brevity). Petitioners also challenged the consequential order of the learned Magistrate, appointing an Advocate Commissioner to take delivery of the Secured Assets.

In the year 2015, the Respondent No.2, South Indian Bank Ltd. extended Over Drafts Against Property (ODAP) facility in the account of M/s. Kallarakal Jewellers, a partnership firm of which the Petitioner No.1 is a partner. Loan Against Property (LAP) was also extended to the said concern in the year 2017. The borrowers committed default and a notice under Section 13(2) of the Act was issued. After complying with the procedure, since the borrowers failed to discharge their liability within the period stipulated, the secured creditor took recourse to Section 14 of the SARFAESI Act and filed an application before the ACJM seeking assistance in taking possession of the secured asset. The Petitioners herein contended that the application under Section 14 was not maintainable since application was not signed by the competent person authorized under the Act and that the affidavit filed in support of the application did not contain the requisite details as mandated under the proviso to Section 14(1) of the SARFAESI Act. It was also asserted by the Petitioners that the notice to the respondents under Section 13(2) of the Act had not been served on all the parties and that there is a failure to comply with Rule 3 of the Security Interest (Enforcement) Rules, 2002.

Furthermore, the authorized officer filed an additional affidavit reiterating that the requirements have been fulfilled in letter and spirit. The learned Magistrate then considered the affidavit and objections raised and came to the conclusion that the contentions raised by the Petitioners were meritless. Holding that alternative remedies are available to the petitioners under Section 17(1) of the Act, the challenge raised as to maintainability was repelled. As a consequence, separate orders were passed on the same day itself appointing a Commissioner Advocate to take delivery of the secured asset. Being aggrieved by the orders of the learned Magistrate, the Petitioners challenged the same before the Hon'ble High Court of Kerala.

ISSUES:

The Hon'ble

High Court considered following Question of Law and fact:

– *Whether a Chief Judicial Magistrate has*

jurisdiction to entertain an application under Section 14 of the SARFAESI Act?

SUBMISSIONS:

The learned counsel appearing for the Petitioners/borrowers in the said case strenuously argued that the Learned CJM has committed jurisdictional error in entertaining the application in as much as the statute clearly says that only the Chief Metropolitan or District Magistrate is entitled to Act under Section 14 of the Act. It was also urged that the affidavit sworn to by the authorized officer of the secured creditor would not satisfy the mandate under Section 14(1) of the SARFAESI Act. The learned counsel profusely referred to the decisions of the Apex Court in *Standard Chartered Bank v. Noble Kumar*[3] in support of his argument that the satisfaction of the Magistrate contemplated under the 2nd proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit. It was further contended that only after recording the satisfaction, the learned Magistrate can pass appropriate orders regarding taking of the possession of the secured asset.

On the contrary, the learned Senior Counsel for the Respondents/secured creditors contended that the SARFAESI Act is a complete code by itself, which was enacted for expeditious recovery of dues arising out of loans granted by financial institutions. The learned Senior Counsel for the Respondents also relied on *Authorised Officer, SBT v. Mathew K.C*[4], *United Bank of India v. Satyawati Tandon*[5], and *General Manager, Sri. Siddeshwara Cooperative Bank Limited v. Ikbali*[6], wherein the Supreme Court had categorically laid down that the High Courts in exercise of powers under Article 226 or 227 should not entertain a petition in the ordinary course and in view of the adequate alternate statutory remedies available to the borrower. The learned Senior counsel for the Respondents further contended that the process under Section 14 of the Act is non-adjudicatory and administrative in nature and all that the Magistrate is expected to do is to ascertain whether the nine aspects referred to in the first proviso of Section 14 (1) of the Act are covered by the declaration furnished in the affidavit filed by the authorized officer of the secured creditor.

Furthermore, to counter the submission of the learned counsel appearing for the petitioners that the CJM or ACJM has no jurisdiction, the learned Senior counsel further referred to the decisions in *Shiyas v. Union of India*[7], and *Pouly @ Thressia v. Union of India*[8] and argued that the very same contentions were raised therein and the same were repelled. It was further contended that there is no violation of Rule 3 of the Security Interest (Enforcement) Rules since the notices were issued to the firm as well as the proprietary concern and those notices were returned as the establishment was closed by the petitioners.

JUDGMENT:

The Hon'ble High Court observed that a division bench of the Hon'ble Court in *Muhammed Ashraf and another v. Union of India and Ors.*[9], had emphatically decided on the subject-matter and opined that the powers of the Chief Judicial Magistrate in non-metropolitan areas and the Chief Metropolitan Magistrate in metropolitan areas are one and the same. The same view was also taken in *Radhakrishnan v. N.V.State of Kerala*[10] as well.

Furthermore, placing reliance on *Authorised Officer, SBT and Anr. v. Mathew K.C.*[11] which in turn referred an earlier decision in *Punjab National Bank*

v. O.C.Krishnan and Ors.[12], it was held that the DRT Act has been enacted with an object to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. It was further held therein that the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.

Having considered the entire facts on the touchstone of the provisions of the statute and the binding precedents, the Hon'ble High Court was of the considered view that the orders passed by the learned ACJM do not suffer from any perversity or jurisdictional error warranting interference by High Court in exercise of its supervisory powers under Article 227 of the Constitution of India. Consequently, the petitions were dismissed by the Hon'ble Court.

CONCLUSION:

The Hon'ble High Court rightly placed its reliance on the earlier decisions of the Division Bench in *Muhammed Ashraf*[13] and *Radhakrishnan*[14], as mandated by the Doctrine of *Stare Decisis*. The interpretation of the Learned Single Judge is absolutely correct in so far as it relates to non-interference by the High Court when an alternative remedy already exists.

With regard to the jurisdiction and powers of the Chief Judicial Magistrate to entertain applications under Section 14 of the SARFAESI Act, there are several conflicting views by different High Courts. Recently in a similar appeal challenging the order passed by ACJM, Ernakulam, the Supreme Court's Vacation Bench has noted that the Calcutta[15], Bombay[16] and Madras[17] High Courts have taken view that the Chief Judicial Magistrate has no powers to entertain applications under Section 14 of SARFAESI Act; whereas Kerala[18], Andhra Pradesh[19] and Allahabad[20] High Courts have leaned towards a diametrically opposed viewpoint that the Chief Judicial Magistrate indeed has jurisdiction to entertain application under Section 14 of SARFAESI Act. All such similar cases before the Supreme Court, arising out of the same subject-matter are clubbed and are expected to be heard and resolved soon by the Hon'ble Supreme Court of India.

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[1] K.O.Anto and anr. v. State of Kerala and anr.; 2019 SCC OnLine Ker 2018.

[2] Ashok Kini, *Additional Chief Judicial Magistrate Can Entertain Application U/s 14 SARFAESI Act: Kerala HC*, LIVE LAW.IN (June 27, 2019, 10:02 PM)

[3] (2013) 9 SCC 620.

[4] 2018 (1) KLT 784.

[5] (2010) 8 SCC 110.

[6] (2013) 10 SCC 83.

[7] 2019 (1) KLT 967.

[8] 2019 (1) KHC 75.
[9] 2008 (3) KHC 935.
[10] 2008 (4) KHC 989.
[11] Supra note 3.
[12] (2001) 6 SCC 569.
[13] Supra note 8.
[14] Supra note 9.
[15] Dinesh Kumar Agarwal & Ors. v.
State of West Bengal & Ors.; 2013 SCC OnLine Cal 1785.
[16] Indus Bank Ltd. v. State of
Maharashtra; 2008 (110) Bom LR 2880; AIR 2008 (NOC) 2474 (BOM).
[17] K.Arockiyaraj v. Chief Judicial
Magistrate and Anr. ; (2013) 4 LW 485 (Mad) (FB).
[18] Muhammed Ashraf and Anr. v. Union
of India and Ors.; 2008 (3) KHC 935.
[19] M/s.T.R.Jewellery & Anr. v.
M/s. State Bank of India & Anr.; 2015 SCC OnLine Hyd 449.
[20] Abhishek Mishra v. State of U.P. & Ors.; 2016 Indlaw ALL 853; 2016 (9)
ADJ 374.
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