



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 5412 of 2021

1. Aditya Birla Housing Finance Limited Registered Office, Indian Rayon Compound, Veraval, Junagarh, Gujrat-362266, Branch Office-IV Floor, Skypark, Near G. E. Road, Opposite Rani Sati Temple, Ravi Nagar, Raipur-492001 Represented By Its Authorized Officer-Pallab Kumar Chatterjee, Legal Manager. **---- Petitioner**

Versus

1. District Magistrate, Raipur District Raipur Chhattisgarh
2. Mahendra Kochar Jainam, Malviya Road, Raipur Chhattisgarh 492001 Near Mandi Road, Raipur Chhattisgarh H. No. 373, Opposite Jalaram Kiraya Bhandar, Budhapara Raipur 44/139, H. No. 373, Gopal Mandir, Opposite Jalaram Kiraya Bhandar, Budhapara Raipur Chhattisgarh Kh. No. 668/2(Part) PC # 106 A/47/62/, Maulana Abdul Rauf Ward # 41, Near Jainam Stores, Malviya Road, Baijnathpara Raipur Chhattisgarh
3. Abhay Kumar Jain Jainam, Malviya Road, Raipur Chhattisgarh 492001 Near Mandi Road, Raipur Chhattisgarh H. No. 373, Opposite Jalaram Kiraya Bhandar, Budhapara Raipur 44/139, H. No. 373, Gopal Mandir, Opposite Jalaram Kiraya Bhandar, Budhapara Raipur Chhattisgarh Kh. No. 668/2(Part) PC # 106 A/47/62/, Maulana Abdul Rauf Ward # 41, Near Jainam Stores, Malviya Road, Baijnathpara Raipur Chhattisgarh
4. M/s Jainam Clothing Private Ltd. Raipur Jainam, Malviya Road, Raipur Chhattisgarh 492001 Near Mandi Road, Raipur Chhattisgarh H. No. 373, Opposite Jalaram Kiraya Bhandar, Budhapara Raipur 44/139, H. No. 373, Gopal Mandir, Opposite Jalaram Kiraya Bhandar, Budhapara Raipur Chhattisgarh Kh. No. 668/2(Part) PC # 106 A/47/62/, Maulana Abdul Rauf Ward # 41, Near Jainam Stores, Malviya Road, Baijnathpara Raipur Chhattisgarh

----Respondents

For Petitioner : Mr. Raja Sharma, Advocate.
For State : Ms. Shriya Mishra, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

03.01.2022

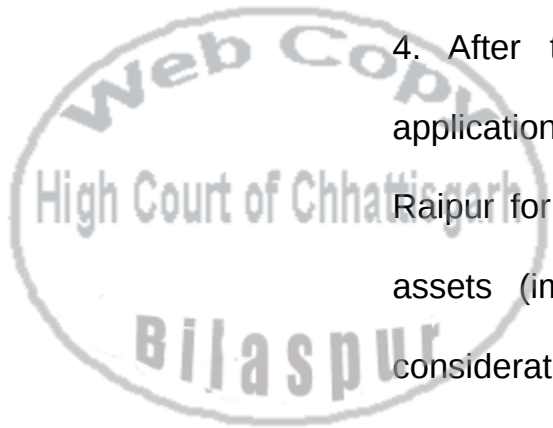
1. The present writ petition has been filed seeking for the following reliefs:-



10.1 Issue a suitable writ, order or direction to the District Magistrate, Raipur Chhattisgarh to decide and dispose of the Revenue Case # 53 / B - 121 / Year 2020-21 pending before it, expeditiously, within a prescribed time frame; and

10.2 Pass such other consequential Writ(s), Order(s) or Direction(s) as may be deemed fit by this Hon'ble Court in the circumstances of this case in the interest of Justice, Equity and Fairplay.

2. According to the learned counsel for the petitioner, respondents No. 2 to 4 had taken loan from the petitioner-establishment and there has been a default on the part of the respondents No. 2 to 4 in making the repayment. An appropriate proceeding under the SARFAESI Act has been initiated against the respondents No. 2 to 4. After the culmination of the Section 13 proceedings, an application under Section 14 was filed before the District Magistrate Raipur for appropriate order for taking possession of the secured assets (immovable property). The said application is pending consideration before the District Magistrate Raipur since 22.12.2020.
3. Learned counsel for the petitioner-establishment referring to the provisions of the SARFAESI Act submits that a proceeding under Section 14 being only of administrative nature, first of all, notices to the respondents No. 2 to 4 were not at all required and secondly, he has contended that under the Statute, Section 14 proceedings by the District Magistrate have to be concluded as far as possible within a period of 30 days. In the instant case, it is well passed over a year that the proceedings are pending before the District Magistrate. Therefore, the petitioner has approached this Court for





an appropriate direction for an early conclusion of the said proceedings.

4. A similar issue came up before this Court for consideration in the case of WP(C) No. 766 of 2020 and this Court while deciding the said writ petition had in paragraph 4 & 5 made the following observations:-

“4. It would be relevant at this juncture to refer to a recent decision passed by this Court in WPC No. 245/2020 in the case of DCB Bank Limited Vs. State of Chhattisgarh and others decided on 05.02.2020. This Court while deciding the said writ petition in paragraphs 4, 5 & 6 has held as under:

“ So far as the proceedings drawn by respondent No.2 under Section 14 of the Sarfaesi Act is concerned, particularly on the issue whether notice has to be issued under Section 14 or not, it would be relevant at this juncture to refer to a recent Division Bench Judgment of the Madhya Pradesh High Court in the case of Aditya Birla Finance Limited Vs. Shri Carnet Elias Fernandes Vermalayam decided on 13.07.2018 wherein the Division Bench in very categorical terms in paragraph 27 to 29 have held as under :-

“27. We do not find any merit in the said argument as well. The issue raised was a question of fact as to whether the petitioner is in possession of the W A No. 784/2018 property in question on the basis of lease agreement. The said judgment refers to the Supreme Court judgment reported as (2014) 6 SCC 1 (Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Limited and others) to hold that such question is required to be decided while considering an application under [Section 14](#) of the Act. But, present is not a case where any such question is required to be decided. The property in question is mortgaged in favour of the appellant; therefore, it is a secured asset. In respect of secured assets, the District Magistrate is duty bound to hand over physical possession to the secured creditor in terms of [Section 14](#) of the Act. Therefore, such judgment provides no assistance to the argument raised.

28. Coming to the argument that opportunity of hearing was not granted to the writ-petitioners and that the order passed by the District Magistrate violates the principles of natural justice is again not tenable. The Bombay High Court in a judgment reported as 2007 Cri LJ 2544 (Bom.) ([Trade Well vs. Indian Bank](#)) has held that the District Magistrate is not required to give notice either to the borrower or to the third party. He is only to verify from the Bank whether notice under [Section 13\(2\)](#) of the Act has been issued or not. The said judgment has been quoted with approval by the Supreme Court in a judgment reported as (2013) 9 SCC 620 (Standard Chartered Bank, etc. vs. V. Noble Kumar and others, etc), wherein it was held as under:-





"22. However, the Bombay High Court in [Trade Well v. Indian Bank](#) [2007 Cri.L.J. 2544 (Bom.)] opined;

"2 ...CMM/DM acting under [Section 14](#) of the NPA Act is not required to give notice either to the borrower or to the third party.

3. He has to only verify from the bank or financial institution whether notice under [Section 13\(2\)](#) of the NPA Act is given or not and whether the secured assets fall within his jurisdiction. There is no adjudication W A No. 784/2018 of any kind at this stage.

4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under [Section 14](#) of the NPA Act by recording that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under [Section 14](#)." (emphasis supplied)

The said judgment was followed by the Madras High Court in [Indian Overseas Bank v. Sree Aravindh Steels Ltd.](#) [AIR 2009 Mad. 10]. Subsequently, Parliament inserted a proviso to [section 14\(1\)](#) and also sub-section (1-A) by Act 1 of 2013.

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

29. Thus, the proceedings under [Section 14](#) of the Act are not proceedings to adjudicate the rights of the parties. Therefore, no notice is contemplated to be served upon the debtor, as such proceedings are taken only after serving notice under [Section 13](#) of the Act."

5. The said view of the Division Bench was further reiterated by the Division Bench of the Madhya Pradesh High Court again in the case of DCB Bank Limited Vs. State of M.P. & Other, WPC 22260/18 decided on 10.10.2018 wherein the judgment of the Supreme Court in the case of Standard Chartered Bank, etc. Vs. V. Noble Kumar & Others etc), (2013) 9 SCC 62 and also in the case of Aditya Birla Finance Limited (Supra) was relied upon and held as under :-

"We find that the order passed by the District Magistrate is unsustainable, for the reason that no notice to the borrower is contemplated. The petitioner has filed an application under [Section 14](#) on 16.10.2017 and many opportunities were granted to the parties before passing the impugned order on 2nd August, 2018. The allegation of payment of Rs.10 Lakhs seems to be an effort made by the borrower without any proof or supportive document thereof. Therefore, we find that the District Magistrate was not justified in rejecting the claim of the petitioner for providing assistance to take possession of the secured assets in terms of [Section 14](#) of the Act."

6. In view of the aforesaid decision and also considering the provisions of [Section 14](#), this Court has no hesitation to hold that





the need to notice the borrowers was not necessary or justified. However, since notice have been issued that present writ petition therefore can be disposed of directing the respondent No.2 to decide the application of the petitioner at the earliest preferably within a period of 60 days from the date of receipt of copy of this order.”

5. Given the aforesaid finding, this Court is of the opinion that the present writ petition also can be disposed of in similar terms directing the respondent no.1 to pass an appropriate order on the application of the petitioner filed under Section 14 of the SARFAESI Act, at the earliest preferably within a period of 45 days from the date of receipt of copy of this order”

5. The legal position remains the same even as on date.

6. Given the aforesaid legal position as has been laid down by the Hon'ble Supreme Court as also by the various High Courts, the present writ petition also deserves to be and is accordingly allowed and disposed of in similar terms directing the respondent No. 1 to take an appropriate decision on the application of the petitioner filed under Section 14 in accordance with law at the earliest preferably within a period of 30 days from the date the petitioner furnishes the order of this Court before the respondent No. 1 or atleast within 30 days from the date the matter is next fixed for hearing before the District Magistrate Raipur.

7. The present writ petition accordingly stands allowed and disposed of.

Sd/-

P. Sam Koshy
Judge

