



September 2022

District Magistrate is not empowered to hear the borrower or third parties while deciding a Section 14 application filed by a secured creditor.

On August 3, 2022, a division bench of the Hon'ble Bombay High Court ("**High Court**") comprising of Justice K.R. Shriram, and Justice A.S. Doctor in the case of *Phoenix ARC Pvt. Ltd. & Anr. v. State of Maharashtra & Ors.*¹ has observed that the jurisdiction of the District Magistrate ("**DM**") is limited only to assisting the secured creditors in taking possession of secured assets under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**Act**").

Brief Facts & Procedural History

Religare Finvest Limited ("**Religare**") sanctioned a loan of INR 6,00,00,000 (Indian Rupees six crores), the terms whereof were recorded in a loan agreement dated September 28, 2018 ("**Loan**") to the Borrower² on September 30, 2014. The Borrower's account was declared as a non-performing asset on March 31, 2018, by Religare due to default in payments committed by them. Pursuant to the declaration of the Borrower's accounts as a non-performing asset, notice under Section 13 (2) of the Act was issued to the Borrower.

Thereafter, Phoenix ARC Pvt. Ltd. ("**Secured Creditor**") was assigned all the rights, title and interest in relation to the Loan by Religare. The Secured Creditor issued a fresh notice to the Borrower under Section 13(2) of the Act on May 21, 2019.

The Borrower failed to discharge the loan within the 60 (sixty) day period stipulated under Section 13(2) of the Act. As a result, the Secured Creditor proceeded to obtain constructive / symbolic possession of the secured asset under Section 13(4) of the Act on September 21, 2019.

Subsequently, the Secured Creditor filed an application under Section 14 of the Act before the DM in Nashik, seeking assistance in obtaining physical possession of the secured assets. One, Mr. Balkrishna Rama Tarle (arrayed as respondent No. 2), on November 10, 2020 intervened these proceedings claiming to be a tenant in respect of the ground floor plus first floor showroom along with a service station, on a part of the secured assets.

Pertinently, no proceedings had been initiated by any aggrieved party before the Debt Recovery Tribunal ("**DRT**") under Section 17 of the Act.

The DM in its order ("**Impugned Order**") declined to assist the Secured Creditor in taking physical possession of the secured assets and held that the grounds for intervention by Mr. Tarle were legal and valid.

¹ W.P. No. 9749 OF 2021.

² The Court was dealing with a collective group of Borrowers who had a stake in the secured assets, for the sake of ease of reading, the word Borrower is being used in the prism to refer to this collective group.

Aggrieved by the Impugned Order, the Secured Creditor by way of an appeal approached the High Court.

Issues

1. Whether the DM's order was within the jurisdiction prescribed by Section 14 of the Act.
2. Whether the DM is empowered to hear Borrowers or other third parties in proceedings under Section 14 of the Act.

Analysis and Findings of the High Court

The High Court after appreciating the submissions advanced by the parties and having regard to settled law, held as follows:

1. The jurisdiction of the "designated authorities" ("DA"), in this instance, the DM, under Section 14 of the Act is purely ministerial and limited only to assisting secured creditors in taking possession of secured assets and nothing more.
2. The DA while considering an application filed by a secured creditor under Section 14 is only required to ascertain as follows: -
 - (a) Whether the immoveable property falls within its jurisdiction;
 - (b) Whether the notice of demand under Section 13(2) has been served on the Borrower; and
 - (c) Whether a duly affirmed affidavit accompanying said application filed by the authorised officer of the secured creditor contains the declaration as required in Clauses (I) to (IX) of Section 14 of the Act.

Once the DA is satisfied that these requirements have been met, it must proceed to take possession of the secured asset.

3. The very objective of Chapter III of the Act is to enable secured creditors to enforce their security interest without the intervention of the court or tribunal. The practice of DAs disposing applications under Section 14 of the Act favouring the Borrowers or other third parties is a worrying trend.
4. The order made by the DM was patently illegal and contrary to Section 14 of the Act. The Respondents did not contest the steps taken by the Secured Creditor under Section 13 by preferring an application under Section 17 of the Act.
5. Reliance was placed on paragraph 5 of the *Asset Recovery Corporation India Ltd vs. State of Maharashtra & Ors.*³ wherein the strict parameters, as seen above, that must be adhered to by a DA while adjudicating a Section 14 application were upheld.
6. Section 14 of the Act does not contemplate the following: -
 - a) any notice to be given to either borrower or a third party,
 - b) borrower or a third party to file any reply to the application,
 - c) borrower/third party to be heard,
 - d) adjudication as to the legality or validity of the mortgage,
 - e) adjudication as to the quantum of the debt claimed by the secured creditor, and
 - f) adjudication of any issues such as limitation, etc.
7. The Impugned Order was held to be a transgression of jurisdiction vested in the DM under Section 14 of the Act and was consequently set aside. The matter was remanded back to the DM, directing that it be heard within a period of 6 (six) weeks, from the date of the judgment, in accordance with the provisions of Section 14 of the Act.

³ Writ Petition No.8561 of 2010 dated August 30, 2011 (unreported).

JSA Comment

This judgment passed by the Hon'ble High Court was the need of the hour as there was a growing tendency of chief metropolitan magistrates / district magistrates to immerse themselves into objections raised by aggrieved parties (including but not limited to borrowers and mortgagors). By way of this judgment, the chief metropolitan magistrates / district magistrates shall restrict themselves to only assess whether the requirements under Section 14 of the Act have been complied with by the secured creditor, as they do not have any adjudicatory powers to rule on any grievance raised by an aggrieved party. In the event a grievance is raised by an aggrieved party, such party must be directed by the chief metropolitan magistrates / district magistrates to urge such grievances in accordance with Section 17 of the Act.

This judgment is in line with the rulings of the Supreme Court of India which have held that the legislative intent of the Act is to ensure swift and timely enforcement of security interest.

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