IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10608 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH sd/-

and
HONOURABLE MR. JUSTICE BIREN VAISHNAV sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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PINAKIN PLASTOFORMING LIMITED & 1 other(s)
Versus
THE UNION OF INDIA & 7 other(s)

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Appearance:
MR.MATHEW NEDUMPARA, ADVOCATE with HARSHIT R PUROHIT(8385) for the Petitioner(s) No. 1,2
HIRAK P GANGULY(8002) for the Petitioner(s) No. 1,2
JAYESH B CHAUDHARY(8908) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 1,2,3,5,6,7,8
MR CZ SANKHLA(3243) for the Respondent(s) No. 4

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH**
and
HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 19/08/2021

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)

1. This petition at the hands of the petitioner M/s. Pinakin Plastoforming Ltd. is a classic case of a litigant indulging into forum shopping. That will be evident after the facts are briefly set out hereunder.

   1.1 The petitioner no.1 is a company incorporated under the Companies Act, 1956 and is engaged in the manufacture and sale of Polypropylene (PP) cups and glasses. The Union Bank of India sanctioned and granted cash credit facility of Rs.8 crores to the petitioner company. Having failed to repay the dues of the bank, the bank declared the account of the petitioner as a Non Performing Asset on 31.10.2019. A demand notice dated 01.11.2019 under Section 13(2) read with Section 13(3) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short) was issued. Aggrieved by the proceedings under the SARFAESI Act and the measures taken thereunder, the petitioner has approached the DRT by filing S.A. No.140 of 2020 praying for quashing the demand notice dated 01.11.2019 as well as the notice for taking over symbolic possession dated 23.02.2020.

2. It appears that the proceedings under the SARFAESI Act culminated into passing of an order under Section 14 thereof on 27.01.2021. This order of the Collector, Vadodara, is under challenge in this petition under Article 226 of the Constitution of India. The prayers in this

petition, need reproduction essentially so as to examine the conduct of the petitioner of indulging in forum shopping. The prayers read as under:

> *"A. Declare that the order of the District Magistrate (Annexure I) is one rendered null and void, being one issued in gross contempt of the order of this Court directing the Respondent no.7 District Magistrate to afford the Petitioners a due opportunity to be heard, so too, being one without jurisdiction, the SARFAESI Act not being applicable, and being non est as well, being violation of audi alteram partem, and to issue a consequential writ in the nature of certification or certiorarified mandamus or any other writ or order quashing and setting aside the same;*
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> *B. declare that the Petitioners unit being an MSME is covered by the MSME Act of and in particular the Annexure B notification of 2015, which provides for a mechanism for nursing and care of MSMEs in stress, nay, its rehabilitation and restructure, and that the Petitioners being covered by the MSME Act which is a later as well as special law, the provisions of the SARFAESI Act has no application.*
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> *C. Declare that in so far as, the MSME Act, while providing for rights and protection for the MSME units, did not provide for special forums for the enforcement of the Rights and redressal of grievances, the civil Courts are empowered for the same and the jurisdiction of the Civil Court is not ousted;*
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> *D. to declare that the entire proceedings at the hands of Respondents U/s 13(2), 13(4) and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Security Interest Enforcement Rules are void ab initio in so far as the very Act itself is not applicable, and issue a consequential writ in the nature of certiorari quashing and setting aside the same;*
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> *E. Declare that Section 14 of the Securitisation and Recosntruction of Financial Assets and Enforcement of Securities Interest Act, 2002 is unconstitutional and void inasmuch as the Chief Metropolitan Magistrate/District Magistrate invoking the said jurisdiction passes orders to dispossess a person, a borrower/tenant*

or third party, whatsoever be his right, on a mere application at the hands of a Bank or Financial Institution, often a simple mortgage, without notice and without hearing him, in violation of Articles 14, 19 and 21 of the Constitution of India or, in the alternative, to read into the said section an obligation to hear the affected persons;"

3. Bereft of lengthy factual pleadings in the petition, the case of the petitioner in support of his challenge to the order of the Collector is that the order is passed in gross contempt of the order passed by this Court in Special Civil Application No.418 of 2021. We however had made it clear to Mr.Methew Nedumpara at the hearing that we have heard him only on the aspect of the challenge to the vires of Section 14 of the SARFAESI Act, 2002.

4. A part of the pleadings in this petition would indicate that the petitioner has approached the Bombay High Court by filing a writ petition being Writ Petition (Lodging) No.3683 of 2019. The memo of the petition together with the order passed by the High Court of Bombay dated 20.01.2020 is annexed to the petition.

5. A Civil Suit has also been filed in the City Civil Court of Bombay. The case of the petitioner in para 45 of the petition is that since the High Court could not have adjudicated the claims of the petitioner against the bank, based on gross breach of contract, culpable negligence and customer unfriendly actions, the petitioner was constrained to file a suit.

The case of the petitioner is that the suit has been dismissed for default due to COVID-19 pandemic. That order is a subject matter of challenge in a First Appeal filed before High Court of Bombay being First Appeal (Stamp) No.5297 of 2021.

6. The Union Bank of India had approached this Court by filing Special Civil Application No.418 of 2021 praying that the District Magistrate, Vadodara, be directed to pass an appropriate order on an application dated 17.02.2020, filed by the bank under Section 14 of the SARFAESI Act 2002. This Court by an order dated 13.01.2021, since the issue was only with respect to directing the respondent-Collector to expedite the hearing of the application, disposed of the petition with a direction that the Collector, Vadodara, shall decide the application within a stipulated time limit.

7. Aggrieved by the order passed, in absence of the present petitioner, MCA for recall of the order was filed by the company. This Court by an order dated 23.03.2021, after hearing Mr.Nedumpara the learned advocate who appears in the present proceedings too, passed an order that the application was misconceived. However, the Court clarified that the Collector, Vadodara, shall give a reasonable opportunity of hearing to the present petitioner before passing any order under Section 14 of the SARFAESI Act. The order under challenge therefore has been

passed in the aforesaid background.

8. Mr.Nedumpara learned advocate for Mr.Hirak Ganguli learned advocate has appeared for the petitioners. In accordance with our oral order dated 29.07.2021, Mr.Nedumpara has also tendered written arguments. He would, through his written arguments submit that the order under Section 14 of the SARFAESI Act which empowers the District Magistrate to take forceful possession of the property of the borrower, is unconstitutional. The power conferred under the authority has to be exercised by observing principles of natural justice. However, Magistrates across the width and breadth of the country order taking forceful possession of the borrowers' property.

9. He would submit that the Roman lawyers considered the failure to observe the principles of natural justice as a grave error. The observance of principles of natural justice therefore was no obeisance to a useless formality, but an acknowledgment of the limitations of judges, as fallible human beings, to do justice that no judge can assuredly ascertain the fact, nay, truth and apply the law.

10. Essentially even if the written submissions are considered which do not address the core issue which is sought to be canvassed by the learned counsel for the petitioner, essentially what is under challenge is the

exercise of powers by the Collector, Vadodara, under Section 14 of the SARFAESI Act. According to the written arguments, Mr.Nedumpara has submitted that the genesis of large number of judgments of the High Courts which hold that the borrower has no right to be heard, is an erroneous observation of the Supreme Court in case of ***M/s Transcore vs Union Of India*** reported in ***(2008) 1 SCC 125***. The errors made by the Supreme Court in ***M/s Transcore*** (supra) would not have caused the damage it did had the High Court did not mistake the decision in ***M/s Transcore*** (supra) as a binding precedent. The order under Section 14 involves determination of a lis and therefore the Magistrate/Collector is duty bound to observe the principles of natural justice.

11. The advocate for the respondent nos.4 and 5 bank on 28.07.2021 has also filed a list of documents together with various judgments of the Supreme Court on the subject under the SARFAESI Act.

12. Having considered the written arguments tendered by Mr.Nedampara and having gone through a voluminous record filed before this Court, that the petitioner has indulged in multifarious proceedings with regard to the same cause of action is evident.

13. As far as the challenge to the vires to the Section 14 of the SARFAESI Act so prayed for in this petition is concerned, the Court has compared

the pleadings of the petition filed before the Bombay High Court, at Annexure:C to this petition. The pleadings indicate a complete mirror image of the petition before this Court, including the prayers. We have reproduced the prayers of the petition filed before this Court in the earlier part of this judgment. In juxtaposition, when compared with the prayers of the matter (Writ Petition pending before the High Court of Bombay) the prayers are identically worded. This petition, but for its challenge to the vires of its Section, would have been placed before a learned Single Judge. A similar relief is bodily lifted from the pending petition before the Bombay High Court.

14. In the aforesaid petition, the Bombay High Court has passed an order on 20.01.2020 which reads as under:

> *"1. We have heard Mr.Nedumpara in support of this petition.*
>
> *2. The petitioners seek the following reliefs:*
>
> *"a) Declare that the Notification dated 23.03.2018 issued by the Government of Maharashtra is unconstitutional and void inasmuch as while it excludes from its purview the multi-national Companies and domestic giants who use multi layer plastic, which is not recyclable at all, for packaging, it bans the manufacture and sale of plastic of one time use, which is recyclable;*
>
> *b) declare that the Respondent Bank being an instrumentality of the State, the Petitioner is entitled to seek remedies not merely in the realm of private law, but in the realm of public law, nay, constitutional law, that even a State is accountable to a citizen and liable to compensate him where he has acted upon its assurances and promises and has suffered huge losses, nay, the very threat to his own existence, that; the Petitioners are*

entitled to be compensated for the loss and injury which it has suffered on account of the change of policy without any rhyme or reason and against all cannons of equity, justice and fair play, arbitrary ex-facie;

c) Declare that the Petitioner is entitled to the benefits under the Micro, Small & Medium Enterprises Development Act, 2006 as announced by the Government of India and the Reserve Bank of India;

d) Declare that in so far as, the MSME Act, while providing for rights and protection for the MSME units, did not provide for special forums for the enforcement of the Rights and redressal of grievances, the Civil Courts are empowered for the same and the jurisdiction of the Civil Court is not ousted;

e) Declare that "The Micro, Small and Medium Enterprises Development Act, 2006" of 16.06.2006 Chapter IV, Article 10, empowers the guidelines and or instructions issued by the Reserve Bank of India time to time and progressively be applied with the Force of Law. Therefore Notifications and Guidelines issued by the Reserve Bank of India specifically for MSMEs have the Force of Law by their inclusion in the MSME Act, 2006. Hence all guidelines and or instructions issued by Reserve Bank of India specifically for MSMEs from time to time are legally binding on all Banks and ARCs;

f) declare that the Petitioner's account was not liable to be declared as NPA except by authority of a circular or guideline which has the force of law, namely, one which is framed/issued by the Reserve Bank of India in exercise of the powers conferred on it by an Act of Parliament;

g) declare that declaration of the Petitioner's as a wilful defaulter, being one involving adverse civil consequences, nay, one which meant its literal civil death, could never have been done by the Reserve Bank of India except by exercise of a power expressly invested in it by an Act of Parliament or by virtue of a rule framed and laid before the Parliament, duly published and is thus an instrument which has the force of law;

h) declare that Guidelines/Circular titled "Master Circular-Income Recognition, Asset Classification, Provisioning and Other Related matters-UCBs" by recourse to which the Petitioner's account has been classified as NPA has no force of law; that it is not framed in exercise of any power invested in the Reserve Bank of India, and, as a corollary thereof, to

declare that the classification of the Petitioner's account as NPA based on the said guideline is void ab initio;

i) declare that the purported Copy of the said Circular bearing No. RBI/2011-12/73 DBOD No.CID.BC.1/20.16.003/2011-12 dated 01.07.11 by recourse to which the Petitioner's is sought to be declared as a wilful defaulter is an instrument which has no force of law and is without the authority of law;

j) declare that the Respondent Bank is not entitled to any of the remedies which it seeks to enforce in terms of the notice under Sections 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 so also Section 14 of the said Act inasmuch as it is not the Plaintiffs who are guilty of any breach of contract and who are under obligation in terms of the contract between them and the Respondent Bank, but the latter and its officers who are guilty of gross breach of contract, culpable negligence, customer unfriendly attitude and malicious and tortious actions, and thereby have caused damage and loss to the Petitioner far in excess of the very claim of the Respondent Bank, and, to put in succinctly, to grant in favour of the Petitioners a negative declaration that no amount is due from the Petitioners to the Respondent Bank;

k) to declare that the entire proceedings at the hands of Respondent Bank purportedly Under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and The Security Interest Enforcement rules are void ab initio and a consequential, executory Judgment/order quashing and setting aside the same;

l) Declare that Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 is unconstitutional and void inasmuch as it permits the learned Chief Metropolitan Magistrate/District Magistrate to order dispossession of the property of a borrower/tenant or third party, whatsoever be his right, on a mere application at the hands of a Bank of Financial Institution, often a simple mortgage, without notice and without hearing him, and thus in violation of Articles 14, 19 and 21 of the Constitution of India or, in the alternative, and may be more appropriately, to read into the said Section an obligation to

issue a notice and afford a hearing to the borrower/tenant or third party;

m) Grant ad-interim injunction in favour of the Petitioners and against the Respondents, staying all further proceedings in furtherance of the proceeding further under section 13 of the SARFAESI Act, so too from proceeding under Section 14 of the SARFAESI Act pending the hearing and final disposal of the instant Writ Petition;

n) pass such further and other orders as the nature and circumstances of the case may warrant."

3. Mr.Nedumpara has submitted that prayer clauses (a) to (e) of the petition have direct bearing on the declaration sought in terms of prayer clauses (f) to (l) of the petition.

4. The petitioners are aggrieved by the notification of 23.3.2018 issued by the Government of Maharashtra.

5. It is stated that the petitioners manufacture the Polypropylene cups, which are known as PP cups. The cups and glasses have a thickness of above 50 microns. They are used for serving hot and cold beverages. According to the petitioners, they are recyclable and environmental friendly. There is no substitute for them. The non-plastic glasses are breakable. The petitioners say that the cups and glasses manufactured by them are fit for one time use but the same are not comparable to the glassware in which hot and cold beverages are supplied. The petitioners say that the copy of the notification at exhibit A to the petition, in categorical terms, says that the plastic products are used worldwide. There was no occasion for the Government of Maharashtra through its Environment Department to issue the notification by which there is a ban imposed on plastic bags of less than 50 microns. The notification now says that there would be regulation for manufacture, usage, sale, transport, handling and storage of the products made from plastic and thermocol, which generate bio-degradable waste. This notification has definitions and the notification which notifies Maharashtra Plastic and Thermocol Products (Manufacture, Usage, Sale, Transport, Handling and Storage) Notification, 2018 regulates the activities, which are set out in extenso in paragraph 3 of this notification. The petitioners are manufacturing these products and it is claimed

that these products were manufactured by the petitioners from its factory at Vadodara in the State of Gujarat. The petitioners are stating that now there is a ban imposed on manufacture and sale of PP cups and glasses having thickness of even above 50 microns in the name of preventing pollution. The petitioners have challenged this notification on several grounds.

6. The petitioners inter alia contend that their Directors have borrowed loans from Respondent No.7 Bank. The Government of Gujarat encourages investment in plastic industry. However, the Government of Maharashtra feels otherwise. The petitioners, having borrowed this money, were obliged to repay the loans but came this notification, which has upset their repayment schedule. The petitioners submit that the problems faced by the small enterprises are to be addressed by the concerned Ministry and there has to be encouragement to the small scale industries.

Mr.Nedumpara has placed reliance upon the exhibits to this petition, which include the Reserve Bank of India Circulars. The petitioners say that there are many schemes operated and made functional through Small Industries Development Bank of India to assist the medium, small and micro enterprises. The petitioners, therefore, relied upon all these policies and sought restructuring of the loan with Respondent No.7. That was not agreed to and now, the petitioners face recovery proceedings. Respondent No.7 Bank has invoked the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act, for short) on the premise that the petitioners have failed to service its account. It is, therefore, classified as a non- performing asset in terms of the guidelines of the Reserve Bank of India. Now, applying the stringent measures, the bank is seeking to recover the outstanding loan. It is in these circumstances that this Writ Petition claims the aforenoted reliefs.

7. However, it is apparent that the petitioners are aware that until their account was being serviced regularly and smoothly, the ban imposed by the Government of Maharashtra posed no difficulty. However, they are now relying upon this notification to claim protection against the recovery measures proposed by respondent No.7. The petitioners are apprehending that respondent No.7 will go ahead and enforce its notice under section 13(2) of the SARFAESI Act by further steps and measures in accordance therewith. There is a likelihood of the

assets and properties being taken over. Thus, the mortgaged properties would be taken over and later on, auctioned or sold so as to recover the outstanding amounts. This would mean complete closure of all business activities.

8. We are aware of the fact that this Court has admitted several petitions challenging the notification issued by the Government of Maharashtra. There were extensive arguments canvassed in support of the prayers for interim relief. However, the interim reliefs in that behalf have been rejected. The matters are pending.

9. Once there is an order passed by this Court of the aforesaid nature, there is a presumption of constitutionality of the notification and not otherwise. Therefore, we proceed to admit this petition. However, as far as the steps taken by the Bank under section 13 of the SARFAESI Act are concerned, Mr.Nedumpara, on instructions, says that the petitioners are in receipt of a notice under sub-section (2) of section 13 but they have not replied to it and, therefore, the petitioners will not press for any interim reliefs for the time being until they reply to such notice."

[Emphasis Supplied]

15. The Court in para 9 has observed that the petition is admitted. It has observed that as far as the steps taken by the Bank under Section 13 of the SARFAESI Act are concerned, Mr.Nedumpara, on instructions, says that the petitioners are in receipt of a notice under sub-section (2) of section 13 but they have not replied to it and, therefore, the petitioners will not press for any interim relief for the time being until they reply to such notice. In other words, in a challenge to the vires of Section 14 of the SARFAESI Act pending before the Bombay High Court, wherein, Mr.Nedumpara has appeared, interim relief is not pressed for the time being. Despite the pendency of the petition before Bombay High Court,

he has approached by filing the identically worded petition with prayers before this Court challenging the subsequent orders under Section 14 of the SARFAESI Act passed on 27.04.2021.

15.1 A Civil Suit wherein the prayer is also to declare Section 14 as bad was filed and was dismissed for default but the Bombay High Court on 08.03.2021, in the First Appeal challenging the order of dismissal for default has passed the following order:

> "*1. Heard Mr.Mathews Nedumpara, the learned Counsel for the appellants for some time.*
>
> *2. Learned City Civil Court, by impugned order dated 9th February 2021 has passed the following order.*
>
> > *"None for plaintiff.*
> >
> > *The plaintiff has lodged the suit on 16/01/2020. It is still on stamp number. The plaintiff has not removed the office objection. The suit is filed without obtaining leave under section 80(2) of CPC. It seems that in view of bar under section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and section 80 of CPC, the plaint is rejected. Stamp No.710/2020 is accordingly disposed of. The suit be registered for statistical purpose only. As the plaint is rejected, N/M no.674/2020 and N/M No.1182/2020 taken out by the plaintiff does not survive. Accordingly, N/M No.674/2020 and N/M no.1182/2020 stand disposed of.*
>
> *3. After hearing the learned Counsel for the appellants for some time, leave is granted to serve respondent no.2 by private notice, returnable on 5th April 2021.*"

15.2 As is evident from the narration of facts hereinabove, the order of 27.04.2021 which is a subject matter of challenge in this petition, was

passed pursuant to the directions issued by this Court initially on 13.01.2021 in Special Civil Application No.418 of 2021 and thereafter an order dated 23.03.2021 on an application of recall made by the present petitioner who wanted an opportunity of being heard before the Magistrate. Perusal of the order under challenge of the Magistrate would indicate that objections were filed by the petitioner.

15.3 After the order passed by the Collector, the petitioner has also invoked the jurisdiction of this Court under the provisions of the Contempt of Courts Act by filing Misc. Civil Application No.360 of 2021 and on 15.06.2021, the Court passed the following order;

> *"Mr.Nigumpara, learned advocate with Mr.Ganguly, learned advocate for the applicants states that orally they have been informed by the respondent that the District Collector has passed the necessary order.*
>
> *NOTICE returnable on 27.07.2021. Direct service is permitted.*
>
> *The respondent – authority is hereby directed either to serve the copy of the order, if any, passed by authority or may comply with the order passed in the present proceedings and shall file affidavit-in-reply on or before the returnable date."*

15.4 The present petition was filed on the same date. The memo of the contempt petition would indicate that he has not disclosed before the Contempt Bench that the order of which he alleges non-compliance of by the Collector is also challenged by this petition.

15.5 The conduct of the petitioner therefore indicates as under:

- That in December 2019, he approaches the Bombay High Court by lodging Writ Petition No.3683 of 2019, a mirror image of the present petition with the same reliefs.
- Before the Bombay high Court, Mr.Nedumpara records that he would not press for the interim relief for the time being as he is yet to reply to Section 13(2) notice.
- An appeal wherein under challenge is an order of dismissal for default of suit with the identical relief is pending before the Bombay High Court as is evident from its order dated 08.03.2021.
- An application for recall of the order is filed for recalling the order whereby the District Magistrate was directed to decide the application under Section 14 within a stipulated time. The Court brands the application as misconceived, however, observes that the petitioner be given an opportunity of hearing.
- When the Collector in compliance of the order of the High Court passes an order under Section 14 on 27.04.2021, the petitioner moves an application under the Contempt of Courts Act and also moves the present petition.
- This conduct eloquently speaks of forum shopping by the petitioner vis-a-vis his challenge to the vires of Section 14 of the SARFAESI Act. He approaches the Bombay High Court and, the

High Court passes an order. The counsel makes a statement before the Bombay High Court that he does not press for an interim relief for the time being, therefore, reserving his right consciously to approach the Court at Mumbai at an appropriate time when proceedings under Section 14 are initiated and completed.

- Conscious of the pendency of the challenge to the vires of Section before the Bombay High Court, when the order is passed by the Magistrate/Collector, Vadodara, he files an application under the Contempt of Courts Act alleging that the Collector has committed breach of the directions issued by this Court in the order passed in the Recall Application in Special Civil Application No. 418 of 2021. Apparently, this conduct, needs to be deprecated and the petition deserves to be dismissed only on this ground.

16. Conscious of the fact that when the vires of Section 14 is the subject matter of challenge and the petition is pending before the Bombay High Court, the vires of Section 14 have been upheld by various High Courts. A Division Bench of this Court in case of ***Parvin Cotgin Pvt. Ltd. v. Axis Bank Ltd.*** rendered in Letters Patent Appeal No.1025 of 2018 (Coram:Hon'ble the Chief Justice Mr.Vikram Nath and Hon'ble Mr.Justice A.J.Shashtri) vide an order dated 17.08.2020 has extensively

considered the case law on the constitutional validity of Section 14 of the SARFAESI Act. The relevant paragraphs of the said judgment read as under:

> *"65. This High Court while upholding the constitutional validity of Section 14 of the 2002 Act in the matter of Mansa Synthetic Pvt. Ltd. v. Union of India, AIR 2012 Gujarat 90 has held that in taking the possession of the secured assets, the District Magistrate/Chief Metropolitan Magistrate has a ministerial role to perform in form of rendering assistance to the secured creditor in taking possession and he is not vested with any adjudicatory powers and further not empowered to decide the question of legality and propriety of any actions taken by secured creditor under Section 13(4) of the 2002 Act. This Court observed thus;*
>
> *"15.2 On a plain reading it is apparent that the said provision is a procedural provision whereunder the Chief Metropolitan Magistrate or the District Magistrate, (the Authority) as the case may be, shall, on a request being made to him - (a) take possession of such asset and documents relating to the assets; AND (b) forward such assets and documents to the secured creditor. Under Sub-section (2) of Section 14 of the Securitisation Act the authority is empowered to take such steps and use such force as may be necessary for taking possession of the secured assets and the documents relatable thereto. Under sub-section (3) of Section 14 of the Securitisation Act, such act of the authority is protected and the action shall not be questioned in any Court or before any authority. Thus, it is apparent that the role envisaged by the legislature insofar as the Authority is concerned, is a ministerial role in the form of rendering assistance and exercising powers by virtue of the authority vested in the District Magistrate or the Chief Metropolitan Magistrate including use of force as may be necessary. The said Authority, namely, the Chief Metropolitan Magistrate or the District Magistrate is not vested with any adjudicatory powers. There is no other provision under the Securitisation Act in exercise of which the said Authority, who is approached by a secured creditor, can undertake adjudication of any dispute between the secured creditor and the debtor or the person whose property is the secured asset of which possession is to be taken. If such adjudicatory powers were to be vested in the Authority, the Securitisation Act would have made a specific*

provision in this regard.

> *15.5 Hence, the Authority who is called upon to act under Section 14 of the Securitisation Act can only assist, nay, is bound to assist the secured creditor in taking possession of the secured asset. Any dispute between the parties regarding the secured asset raised before the Authority cannot be gone into by the Authority. 21. Our final conclusions are summarised thus: (i) Section 14 of the Act is a valid piece of legislation and is declared intra vires. (ii) The District Magistrate or Chief Metropolitan Magistrate, as the case may be, is bound to assist the secured creditor in taking possession of the secured assets and is not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor under Section 13(4) of the Act. (iii) Though Section 14 of the Act provides that no act of the Chief Metropolitan Magistrate or District Magistrate done in pursuance of Section 14 shall be called in question in any Court or before any authority, the right of judicial review under Articles 226 and 227 of the Constitution of India cannot be taken away, but that power can be exercised only in cases where the concerned Magistrate or the Commissioner, as the case may be, exceeds his power or refuses to exercise his jurisdiction vested in him under the law. (iv) Absence of an appeal does not necessarily render the legislation unreasonable as only because no appeal is provided under the Act against the order passed under Section 14 of the Act will not render Section 14 ultra vires the provisions of the Constitution of India."*

66 A Division Bench of the Kerala High Court, in the matter of Rafeeque v. Union Of India I 2014 BC 414 DB Ker, while upholding the constitutional validity of Section 14 of the 2002 Act held that the process by means of which assistance is provided by the Chief Metropolitan Magistrate or the District Magistrate is non-adjudicatory. It was pertinently held as under:—

> *"However, the restriction provided by sub-section (3) to section 14, does not at all ensure to benefit the borrower to contend that the total absence of an appellate or revisional remedy makes the provision itself unconstitutional. As has been found by us, section 14 is an enabling provision in the nature of assistance extended to the secured creditor to bring to culmination the proceedings issued under section 13(4). Any action taken under section 13(4) is appealable under section 17 of the Act and in the*

event of such appeal being allowed, necessarily the order of the jurisdictional magistrate issued under section 14 will not survive thereafter."

67 The Madras High Court in the matter of Kanderi Fruitpack Pvt. Ltd. v. Bank of Baroda AIR 2015 Mad 50 succinctly held as under:—

"The learned Chief Metropolitan Magistrate, in fact does not adjudicate any dispute, but renders assistance to ensure that the powers of secured debtor to take over possession as one of measures to recover the debt under Section 13(4) of the Act of 2002."

68 In the matter of Nagarathna v. The Indian Bank, Koramangala Branch IV 2015 BC 179 Kar., the Karnataka High Court speaking through S. Abdul Nazeer, J (as His Lordship then was), considered the legislative mandate as contained in Section 14 of the 2002 Act and summarised the law as under:—

"10. Section 14 of the Act provides for granting assistance to the secured creditor to take possession of the secured asset. It states that where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of the Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, 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 therefore, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him forward such assets 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 the Provision of the 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. …"

69 A Division Bench of the Allahabad High Court in the matter of Lakshya Concosts Pvt. Ltd., Aligarh v. Bank of Baroda AIR 2017 All 172 while dealing with Section 14 of the 2002 Act has held that Section 14 of the 2002 Act does not empower the District Magistrate with any power to adjudicate regarding the dispute pertaining to the secured assets and held as under:—

> *"11. … In our considered opinion, Section 14 of the Act is procedural in nature and only empowers the authorities to assist the secured creditor in taking over possession of the secured assets as per the procedure contemplated therein. The Section does not empower the authorities specified therein with any power to adjudicate in respect of any dispute pertaining to the secured assets. Power exercised by the authorities specified in Section 14, since is only an administrative power, authorizing any authority to exercise the same, will not amount to delegation of power."*

70 In a decision rendered by the Bombay High Court in the matter of S.I.C.O.M Ltd., Nagpur v. District Magistrate/Collector, Nagpur AIR 2011 BOMBAY 32, the Bombay High Court has clearly held that the District Magistrate cannot enter into the question of validity of mortgage in respect of the secured asset and declare the mortgage to be invalid, as he cannot adjudicate on the validity of the instruments by which the asset is secured. The report of the Bombay High Court reads thus:—

> *"7. Having considered the matter, we are of the view that the District Magistrate to whom the petitioner had forwarded the request in writing for taking over possession of the mortgaged asset, had no power or authority in law to enter into the question of the validity of the mortgage in respect of secured asset and declare the mortgage to be invalid and thus refuse to perform the duty imposed upon him by the SARFAESI Act. Section 14 contains a clear mandate for the District Magistrate that he shall take possession of such asset and documents relating thereto and upon such request he shall forward such assets and documents to the secured creditor. The Act does not confer any power on the District Magistrate to transform himself into the Court of law with powers to adjudicate on the validity of the instrument by which the assets is secured. …"*

71 Similarly, in the matter of Jawahar Singh v. United Bank Of India, AIR 2015 Calcutta 306, similar proposition has been

explained by the Calcutta High Court and in paragraphs 63 and 72, it has been held as under:—

> *"63. The marginal note of section 14 shows what section 14 is all about. It provides an avenue for the secured creditor, when faced with resistance by the borrower or anyone else, or when the borrower simply refuses to surrender possession, to seek administrative assistance of the CMM/DM to facilitate taking of possession of a secured asset and/or documents in relation thereto to ultimately enable the secured creditor to put up the secured asset for sale and to recover its dues.*
>
> *72. In view of such understanding based on authoritative decisions of the supreme Court, I am sure the Supreme Court in V. Noble Kumar (supra) never intended to lay down as law declared under Article 136 read with Article 141 of the Constitution that the power exercised by the CMM/DM under section 14 of the SARFAESI Act granting assistance for obtaining possession of the secured asset is the exercise of the judicial power of the State. That this observation does not constitute the ratio of the decision is evident from observations made in paragraph 25 thereof, where it has been clearly held that the legal niceties of the transaction between the secured creditor and the borrower are not to be examined by the CMM/ DM. If indeed a lis were involved, it would not be open to the CMM/DM to say that it would examine factual aspects only and not the legal niceties. Since the CMM/DM does not decide any lis between parties upon receiving evidence from them, the judicial power of the State is not exercised by him."*

72 The Bombay High Court, in the matter of Bank of Maharashtra, Nagpur v. Additional District Magistrate, Nagpur AIR 2017 BOMBAY 92 while dealing with the provisions contained in Sections 14 and 31(i) of the 2002 Act in respect of taking possession of secured asset i.e agricultural land, held that the District Magistrate while assisting secured creditor in taking possession of secured asset is not empowered to determine the nature of such asset, he is only duty bound to verify the declarations and affidavit tendered by the creditor and pass order of taking actual possession.

73 The 2002 Act suffered amendment by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 with effect from 15-1-2013. The Act now requires an affidavit to be filed by the secured creditor, duly affirmed by its

authorized officer confirming therein the aggregate amount of financial assistance granted, total claim existing as on the date of filing application, details of properties of the borrower on which security interest has been created, and declaring that the borrower has made a default in repaying the financial assistance, that his account has been classified as an NPA, that notice has been served under section 13(2), that reply has been given under section 13(3A), that the secured creditor is entitled to take steps under section 13(4), and in general that all the provisions of the Act and the rules made thereunder have been complied with. Thus, the scope of the affidavit is pervasive.

74 Going further, by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 with effect from 1-9- 2016, which amends Section 14 of the Act as to provide timelines - a time period of 30 days has been provided for the disposal of applications filed by the banks or financial institutions. By amendment, after the second proviso, another proviso has been inserted which states that if no order is passed by the CMM or DM within the said period of 30 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 60 days.

75 The second proviso to Section 14(1) of the 2002 Act states as under:—

> *"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:"*

76 Thus, what is required to be done by the DM/CMM is to satisfy with the contents of the affidavit before passing order under Section 14 of the 2002 Act.
77 At this stage, it would be appropriate to notice para 25 of the decision of the Supreme Court in the matter of Standard Chartered Bank v. V. Noble Kumar 2013 9 SCC 620 which states as under:—

> *"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."*
>
> *78 In the Standard Chartered Bank (supra) and in the aforesaid cases, it has been clearly held that the District Magistrate has no power to adjudicate the legal niceties of the transaction between the secured creditor and the borrower.*
>
> *79 Thus, Section 14 of the 2002 Act is an enabling provision which is non-adjudicatory provision and executory in nature. The function of the District Magistrate under Section 14 of the Act is non-adjudicatory in nature subject to examination of factual correctness of the assertions made in the affidavit filed under the proviso to Section 14(1) of the Act as held in Standard Chartered Bank (supra)."*

17. Having considered the chequered history of the litigation and also in view of the decision of the Division Bench of this Court in case of ***Parvin Cotgin Pvt. Ltd.*** (supra) **,** the prayer of the petitioner in para 58E of the petition with regard to the challenge to the vires of Section 14 need not be entertained.

18. With regard to the other prayers, we deem it fit to send the matter back to the learned Single Judge for consideration afresh on merits which may be considered by the learned Single Judge in accordance with law without being influenced by the order of this Court.

19. The registry to accordingly place this matter before the appropriate Court.

(VIKRAM NATH, CJ)

(BIREN VAISHNAV, J)

ANKIT SHAH