IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.O. 3787 of 2024
Priyabrata Ghosh & Anr.
Vs.
Indian Bank & Ors.

For the Petitioner	:	Mr. Suddhasatwa Banerjee Mr. Shashwat Nayak Mr. Sagnik Roy Chowdhury Mr. Mitul Chakraborty Ms. Payel Nath Mr. Trijit Mitra
For the Respondent Bank	:	Mr. Shiv Mangal Singh
Heard on	:	03.08.2026
Judgment on	:	16.11.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The instant Revisional Application has been directed against order dated 30th August, 2024 passed by the Hon'ble Chairperson Debt Recovery appellate Tribunal (in short, DRAT), Kolkata in connection with Misc. Appeal No. 24 of 2024 whereby he was pleased to allow the appeal filed by the Opposite parties (in short OP) and thereby has set aside the order dated 1st

February, 2024 passed by the Learned Presiding Officer, Debt Recovery Tribunal (in short DRT)-III, Kolkata in SA 707 of 2021.

2. Brief background of the case is that on 21.06.2021 the OP/bank issued a notice under section 13(2) of the SARFAESI Act, 2002 demanding Rs.1,54,54,555/-. Thereafter, the Bank took measure under section 13(4) of the SARFAESI Act. on 12.12.2021. The petitioners filed SA No. 707 of 2021 before the learned DRT-III , Kolkata challenging the measures taken by the OP/Bank. The OP/ Bank thereafter filed an application under section 14(1) before the District Magistrate South 24 PGS. on 21.09.2022. The District Magistrate passed an order under section 14(1) authorising Shri Bimalendu Nath, WBCS (Executive) to take physical possession of two secured assets. The petitioner challenged the said order passed under section 14(1) by filling IA no. 226 of 2023 before the Learned DRAT. In the meantime one of the two secured assets was sold by the respondent bank through e-auction held on 05.4.2023. On 10.05.2023 the learned DRAT passed an interim order in IA No. 226 of 2023 but subsequently modified the same by directing that any action of the respondent bank would remain subject to the result of the said application. On 23.05.2023 the respondent bank issued a sale certificate recording receipt of Rs.33,50,000/- towards the sale of one of the secured assets. On 30.10.2023 the Respondent/Bank submitted a further representation before the District Magistrate seeking assistance in taking physical possession. The District Magistrate however passed an order on 28.11.2023 authorizing Shri Prasun Kumar Dhara, WBCS (Executive) under section 14(1). The aforesaid second order continued to describe both secured assets including the asset already sold by the respondent bank and

it also repeated the same outstanding amount of Rs. 1,54,54,555/-, recorded in the first order, without disclosing or adjusting the sum of Rs.33,50,000/- already realised. The petitioner challenged the second order by filing IA no. 170 of 2024 by an order dated 01.02.2024. The learned DRAT restrained the respondent bank from taking further coercive steps pursuant to the second order. The respondent bank preferred an appeal before the learned DRAT and by the impugned judgment dated 30.08.2024, the learned DRAT allowed the appeal and set aside the order dated 01.02.2024 and dismissed IA No. 170 of 2024.

3. Being aggrieved by the impugned order Learned Counsel for the Petitioner submits that the OP no.4 herein i.e. District Magistrate South 24 Pgs, committed grave illegality and procedural irregularity by modifying its earlier order dated 21.09.2022. He passed the impugned modification order dated 28.11.2023, despite the fact that learned presiding Officer DRT-III Kolkata was in seisin of the matter and had already applied his Judicial mind and had passed an order dated 10.05.2023 restraining the respondent no. 1 to 3 till the order is pronounced and further reserve the order in respect of IA no. 226 of 2023.

4. The petitioners' moot contention is that after passing the order dated 21.09.2022 the concerned District Magistrate has become *functus officio* in view of the fact that the said order has been challenged before the competent court below i.e. learned Presiding Officer DRT-III, who after exchange of affidavits between the parties applied his mind and passed order dated 10.05.2023, reserving the IA 26 of 2023 for passing order and further has restrained the OP from taking physical possession of the

secured asset which was pronounced in open court. The OP no. 1 i.e. Indian Bank has transgressed his authority and exceeded his jurisdiction while passing the order dated 28.11.2023, despite being aware of the fact that the earlier order dated 21.09.2022 was under challenge before the competent court below and the hearing of the IA 226 of 2023 has been concluded and the matter has been reserved for passing order.

5. He re-agitated that upon hearing all concerned the concerned Presiding Officer DRT-III, Kolkata has been pleased to stay operation of the Impugned order dated 28.11.2023 passed by the District Magistrate and further restrained the OP No.1 to 3 from taking any coercive step in respect of the secured property in furtherance of the order dated 28.11.2023 passed by the District Magistrate, without leave of the said Tribunal till the next date of hearing.

6. Being aggrieved by and dissatisfied with the aforesaid order dated 01.02.2024 passed by learned Presiding Officer DRT-III, Kolkata the OP No. 1 to 3 herein, preferred an appeal under section 18 of the Act of 2002 being Miscellaneous Appeal No. 24 of 2024 before Hon'ble DRAT, Kolkata. The said appeal has been disposed of by the impugned order, whereby the DRAT has set aside the aforesaid order DRT-III dated 01.02.2024 and further granted liberty to the secured creditor to proceed in accordance with law.

7. Learned counsel appearing on behalf of the petitioner strenuously argued that in view of the order dated 10.05.2023 passed by the Presiding Officer DRT –III at Kolkata the District Magistrate committed a grave error of law by modifying his earlier order dated 21.09.2022 by way of corrigendum dated 28.11.2023 thereby acting against judicial discipline propriety and

fairness. The DRAT while passing the order dated 30th August, 2024 has not made any reference or deal with issue of miscarriage of justice and lack of judicial discipline which resulted in passing the said order. The DRAT has completely misdirected himself while setting aside the order dated 02.01.2024 passed by the learned Presiding Officer DRT-III, Kolkata Which is well reasoned and speaking order without assigning any cogent and justifiable reason in support of his decision.

8. Learned Counsel appearing on behalf of the opposite parties bank submits that under section 14 of the SARFAESI Act 2002 learned District Magistrate has nothing to do with the quantum of debts. Filing of an affidavits in terms of first Proviso to sub-section (1) of section 14 of the Act of 2002 is an *ab initio* statutory requirement for the purpose of filing of statutory application under section 14 of the Act of 2002 before the learned District Magistrate. There is no statutory mandate/requirement embodied in section 14(1) for filing subsequent affidavit. The legislature in their own wisdom under section 14 used the phrase "Secured Asset" not the *"Secured Debt"* and that is why the captioned of section 14 of the Act reads *interalia "Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of the Secured Assets"*. Hence, section 14 of the Act is nothing to do with the quantum of debts and as such the question of filing subsequent affidavit does not and cannot arise at all.

9. Under section 14 of the Act, the concerned Magistrate is under statutory obligation to take physical possession of the Secured Assets and delivered the same to the secured creditor and until and unless the entire Secured Assets have not been delivered to the secured creditor the

concerned CMM or DM cannot become *functus officio*. He further argued that second 14(2) of the SARFAESI Act 2002 is enabling provision which empowered the learned CMM or DM to pass incidental orders for implementation of the order passed in terms of the provisions under section 14(1) of the Act. Language of section 14 of the Act of 2002 is unambiguous, so the question of any interpretation does not arise at all. Under section 14(1) of the Act of 2002 the act of learned CMM or District Magistrate are ministerial and no element of judicial or quasi judicial functions being performed. Even under the said provision application of judicial mind by learned CMM or DM is not required in as much as section 14(1) of the Act does not involve any adjudicatory power regarding quantum of debt. Section 14(1) is only concerned with taking physical possession of the secured assets and section 14(1) is to be read with section 14(2). Authority under section 14(1) is purely executionery in nature.

10. Therefore, he argued that it would be evident from the order dated 21.09.2022, passed by learned District Magistrate that at the time of passing order in terms of section 14(1), the District Magistrate has duly recorded his satisfaction, so far as the point of filing statutory affidavit in concerned. The bank/ OP has duly filed an application under section 14 of the Act of 2002 in due compliance of the statutory provision of the Act of 2002 and the same has not been denied and rebutted. Therefore, the impugned order dated 01.02.2024 passed by learned Presiding Officer DRT-III Kolkata, in SA No. 707 of 2021 is not sustainable in the eye of law and the impugned order passed by DRAT does not call for interference by this court.

11. From the arguments made on behalf of the petitioner it is clear that petitioners mainly assailed the impugned order *interalia* on the following grounds.

(a) The first Application under Section 14(1) application culminated in the final order dated 21.09.2022

(b) The District Magistrate could thereafter take incidental implementation steps under Section 14(2), but could not again exercise the substantive power under Section 14(1)

(c) The Second order dated 28.11.2023 was not confined to substitution of an officer.

(d) It again considered the petition, affidavit, nine statutory declarations, debt and secured assets and recorded satisfaction under section 14(1)

(e) Before the second order, one of the secured assets had been sold and the OP/bank had received 33,50,000/-

(f) The second order nevertheless continued to include the sold property and repeated the original outstanding amount.

(g) The statutory satisfaction was therefore, recorded on incomplete, incorrect and obsolete facts.

(h) The finding of the learned DRAT that subsequent developments *"need not and should not be considered"* is contrary to the proviso to section 14(1). The learned DRAT mischaracterised the second order as a mere implementation measure under section 14(2) and failed to consider its express contents.

(i) The impugned judgment dated 30.08.2024 suffers from jurisdictional error, patent inconsistency and material non-consideration of admitted facts.

12. In this context ld. Counsel appearing on behalf of the Opposite Party argued that petitioners have suppressed material facts. He submits that it would be evident from the materials on record that during pendency of the SARFAESI Application being SA No. 707 of 2021 the petitioners filed interlocutory application being IA No. 226 of 2023 challenging the order dated 21.09.2022 passed by learned DM for taking physical possession of secured assets in question in terms of the provision of subsection (1) of section 14 of the Act of 2002. But despite filing aforesaid interlocutory applications, the petitioners did not make any endeavour to get the same heard on merits but had chosen to keep their vigil eye over the actions taken under the SARFAESI Act by the Bank. Therefore, since there was no such interim order against the actions to be taken by the bank, learned DM was pleased to fix 12.05.2023 for taking physical possession of the secured assets in question for which the appellant bank had also deposited the requisite police cost.

13. He further submits that after coming to know about the date of taking physical possession of the secured assets in question by the District Magistrate on 12.05.2023, the petitioners herein on 10.05.2023 when the said SARFAESI application was taken up for hearing by the Tribunal, they did not apprise the learned Tribunal about the aforesaid fact and taking advantage of the absence of learned advocate appearing for the bank (who allegedly stuck in High Court area due to fire accident on 10.05.2023)

surreptitiously submitted before the Tribunal that the petitioners herein want to make settlement with the bank and after hearing such submission learned Tribunal was pleased to pass necessary order holding *interalia 'learned counsel for the appellant want to make settlement with the bank. The applicant can approach the bank for settlement which the bank may consider, as per law. Till the order is pronounced in the open court, The respondent is restrained to take possession of the secured properties'.*

14. It is further submitted on behalf of the Bank that since learned Advocate for the bank was stuck in High Court area due to heavy traffic congestion as above, he made an enquiry over phone to the learned arguing counsel of the petitioners herein who informed learned counsel for the bank about the passing of the aforesaid interim order dated 10.05.2023. After getting such information from the learned advocate of the petitioners, the learned advocate for the bank immediately sent an email dated 10.05.2023 to learned advocate for the petitioners and also informed that due to fire incident, which took place in the High Court, area he stuck in traffic and could not reach the Tribunal on time in the first half session and as such he shall mention the matter before the Tribunal at the first seating at post lunch session on the same date i.e. 10.05.2023. Accordingly, learned advocate for the appellant bank duly mentioned the matter before the Tribunal and informed about the cause of non-appearance and he also brought to the notice of the Tribunal that the advocate of the respondent taking advantage of the absence of learned advocate for the appellant suppressed series of material facts to the Tribunal at the time of hearing in the first half on 10.05.2023

15. After hearing aforesaid submissions made on behalf of the bank learned tribunal was pleased to modify its order of injunction dated 10.05.2023 with the following observations;

> *"Later, The Learned Counsel for the Respondent appears and mentions the matter and appeals before the Tribunal for hearing the matter today but the Learned Council for applicant is not present. Heard the I.A. No, 220 of 2023 from the Learned Counsel for the Respondent Bank. Order is reserved. The earlier order regarding retaining the respondent Bank from taking any action is withdrawn on the peculiar circumstances created by first by the Learned Counsel for the Applicant and next by the Learned Counsel for the Respondent bank. But any action of the respondent is subject to the order in I.A. No. 226 of 2023."*

16. He further submits that after the modification of the aforesaid order dated 10.05.2023 learned Counsel for the petitioners made an attempt to mention the matter before the Tribunal at the fag end of the day of 10.05.2023, but the Tribunal below declined such mentioning. Therefore, it appears that aforesaid modification of the order dated 10.05.2023 passed by learned Tribunal in SA no. 707 of 2021 was never challenged by the petitioners before any higher forum and as such the same is binding upon them but despite being aware about the aforesaid modification of the interim order dated 10.05.2023, learned advocate for the petitioners with intent to frustrate the entire process of taking physical possession of the mortgaged properties in question as fixed by DM on 12.05.2023, made a false representation to the DM with an intimation that the presiding officer of DRT Kolkata is pleased to pass an ad interim order of stay till the pronouncement of the order in I.A. On the basis of such false representation dated 10.05.2023, the entire process of taking physical possession of the immovable properties in question got frustrated in as much as the DM declined to take physical possession on the basis of aforesaid representation made by learned advocate for the petitioner and under such compelling

circumstances the bank was forced to file the appropriate interlocutory application being IA no. 1216 of 2023 before the Tribunal, *interalia* praying for passing necessary consequential order against the petitioners and their counsel for circulating false representation dated 10.05.2023 before the concerned authorities, despite being aware about modification of the order dated 10.05.2023 coupled with the other prayers as prayed for in the prayer portion of the said application, which is pending for adjudication.

17. He further contended that due to aforesaid false representation made by the petitioners the entire process of taking physical possession of the secured assets in question got frustrated and due to influx of time, the learned execute magistrate who has been directed by learned DM vide order dated 21.09.2022 to take physical possession of the secured asset in question got transferred and under such compelling circumstances, the bank had made representation on 30.10.2023 before learned DM with the requisition for appointment of new Executive Magistrate, due to administrative transfer of the earlier executive magistrate for implementation of the order dated 21.09.2022 passed by learned DM South 24 parganas interms of subsection (1) of section 14 of the SARFASI Act, 2002. The said representation made by the bank was duly considered by DM, who in furtherance of the order issued in reference to office memo number/2075/SARFAESI/dated 21.11.2022 only changed the name of the Executive Magistrate in order to implement the order dated 21.09.2022 passed by the Learned DM. Since, the petitioner kept their vigil eyes over the progress of the aforesaid proceeding they immediately filed interlocutory application being IA 170 of 2024 *interalia* praying for quashing the order

dated 28.11.2023 passed by learned DM, South 24 pgs and after hearing the parties the Tribunal by an order dated 01.02.2024 restrained the appellant bank from taking any further coercive steps in furtherance of the order dated 28.11.2023 passed by learned DM. Being aggrieved respondent/OP herein preferred appeal before appellate court and learned DRAT by the impugned order allowed the appeal after setting aside aforesaid order dated 01.02.2024 and thereby dismissed IA no. 170 of 2024

18. Before going further let me recollect the nature and extent of power vested with the magistrate under section 14(1) and 14(2) of the Act of 2002. Under the said provision no power, jurisdiction, competence or exercise is intended or vested with the Magistrate to deal with any claim as to the nature of the property in question or as to the merits or demerits with regard to the other aspects involved in connection with the loan application but he is to consider the fact whether the property in question in respect of which the assistance of the magistrate is sought for under section 14 is a *'secured assets'* or not. Obviously for this reason if the property is not a secured asset interference can be declined and if it is secured assets, nothing further remains to be adjudicated by the Magistrate. In the instant case there is no case for the petitioners that the property in question is not a secured asset. Once the property has been ascertained as secured asset, the DM is duty bound to assist the secured creditor in taking possession of secured asset and documents relating thereto and forward it to secured creditor. No element of quasi judicial function are to be performed by DM or CMM while exercising power under section 14 of the Act but he is only require to perform act of executionery in nature in taking possession and

delivering it to secured creditor. Section 14(2) of the Act permits DM or CMM to take steps for giving effect to provision of section 14(1) of the Act. Therefore, section 14 does not empower CMM or DM to adjudicate dispute nor empower it to decide question whether claim of secured creditor was genuine or not.

19. Now learned counsel for the petitioners strenuously argued that the order impugned is not sustainable since it failed to take into consideration that before passing the second order, one of the secured assets had been sold and the bank had received Rs 33,50,000/-. The second order continued to include the sold property and had repeated the original outstanding amount.

20. Needless to say that Magistrate under the Act could not be permitted to usurp statutory power vested in Tribunal. He is to perform ministerial role in the form of rendering assistance. Magistrate has not been vested with any adjudicatory power. Such Magistrate is called upon to act under section 14 to assist and such Authority is bound to assist secured creditor in taking possession of secured asset. Any dispute between the parties regarding secured assets could not be gone into by the Authority. Such Authority is not empowered to decide question of legality/ propriety of any action taken by secured creditor under section 13(4). Therefore, under section 14 of the Act of 2002, the learned Magistrate is nothing to do with the quantum of debts

21. Learned counsel for the petitioner argued that the second order dated 28.11.2023 was not confined to substitution of an officer only but such Magistrate again considered the petition, affidavit, nine statutory

declarations, debt and secured assets and also recorded satisfaction under section 14 (1) of the Act. However even if the second order recorded satisfaction on the above facts including nine statutory declarations, that does not *ipso facto* lead to a conclusion that he has re assessed or reviewed its first order.

22. Petitioners contention that with the passing of the first order magistrate has become *functus officio* and therefore he cannot pass the second order does not have any substance, in view of the fact that under section 14 of the Act of 2002 the CMM or DM are under statutory obligation to take physical possession of the secured assets and to deliver the same to the secured creditor. Until and unless the entire secured assets have not been delivered to the secured creditor, the learned CMM or DM cannot become *functus officio.*

23. This is also because section 21 of the General clauses act which provides as follows:-

> ***21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws***
>
> *.Where, by any [Central Act] [Substituted by A.O.1937, for " Acts of the Governor General-in-Council.] or Regulation, a power to [issue notifications] [Substituted by Act 1 of 1903, Section 3 and Sch.II, for " make" .], orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any [notifications] [Inserted by Act 1 of 1903, Section 3 and Sch.II.], orders, rules or bye-laws so [issued] [Substituted by Act 1 of 1903, Section 3 and Sch.II, for " made" .].*

24. Learned counsel for the petitioner argued section 21 cannot confer a power which is inconsistent with the express statutory procedure and in this context he referred that a judgment of this court was passed in ***CO no. 3813 of 2024 (Mrs. Only wheel and Ors. Vs. Bank of Baroda and Ors)*** which

involved appointment of another officer after the originally appointed officer became unavailable and this High Court treated such appointment as permissible under section 14(2). But said judgment was assailed before the Apex Court in Civil appeal no. 4485 of 2026 arising out of SLP(C) No. 34420 of 2025 and by an order dated 10.04.2026 the Apex Court set aside the judgment of Calcutta High Court and therefore, the judgement passed in CO No. 3813 of 2024 does not have any binding precedent and he also placed reliance upon ***Kunhayammed and Ors. Vs. State of Kerala*** reported in **(2000) 6 SCC 359.** However said case laws are factually distinguishable.

25. At the cost of repetition, I must say whether the Magistrate has recorded that he considered the statutory affidavit or not while passing second order, is irrelevant. The provision of section 14(1) read with 14(2) makes it clear that even the object of filing affidavit under the amended law is only to secure whether the property in question in respect of which the assistance of magistrate is sought for under section 14, is a secured asset or not. Since in the present context there is no dispute that the property in question is secured asset, the argument that he considered the affidavit for the second time does not have any merit. Therefore, even if magistrate recorded his satisfaction in the second order, such satisfaction must be confined with the satisfaction as to whether the property in question is a secured asset or not and beyond that it has got no jurisdiction to satisy himself with other aspect under section 14(1) read with 14(2) of the Act of 2002.

26. Therefore, I do not find any merit in the instant application which is liable to be dismissed.

27. In view of above **C.O. 3787 of 2024** stands dismissed

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)