IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 18TH DAY OF MARCH 2025 / 27TH PHALGUNA, 1946

OP (DRT) NO. 336 OF 2024

AGAINST THE ORDER DATED 01.08.2024 IN SA NO.286 OF 2024 OF DEBTS RECOVERY TRIBUNAL-I, ERNAKULAM

PETITIONERS/DEFENDANTS:

1 THE SOUTH INDIAN BANK LTD.,
REGISTERED OFFICE, SIB HOUSE, T.B. ROAD, MISSION QUARTERS, THRISSUR, REPRESENTED BY ITS AUTHORIZED OFFICER, PIN - 680001

2 THE AUTHORISED OFFICER, SOUTH INDIAN BANK LTD.,
REGIONAL OFFICE, FIRST FLOOR, HAPPY TOWER, VAIKAM MUHAMMED BASHEER ROAD, MANNANCHIRA, KOZHIKODE, PIN - 673001

BY ADV. K.K. CHANDRAN PILLAI (SR.)
BY ADV P.A.AUGUSTINE(AREEKATTEL)

RESPONDENTS/APPLICANT:

JAHFER M.,PROPRIETOR OF M/S. CITY ALUMINIUM, RKP 2/634, AIRPORT ROAD, RAMANATTUKARA, KOZHIKODE-673633. RESIDING AT CHELAPPURAM HOUSE, PALLICKAL P.O., MALAPPURAM, PIN - 673634

BY ADVS.
V.PHILIP MATHEWS
ATHULYA SEBASTIAN

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING COME UP FOR ADMISSION ON 11.11.2024 AND HAVING BEEN FINAALY HEARD ON 10.02.2025, THE COURT ON 18.03.2025 DELIVERED THE FOLLOWING:

'C.R'

JUDGMENT

The first petitioner in this Original Petition (DRT) is a banking Company registered under the Companies Act, of 1913 and the 2nd petitioner is one of the Authorized Officers of the first petitioner under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act). The petitioners are before this Court challenging Ext.P6 order of the Debts Recovery Tribunal-I, Ernakulam (hereinafter referred to as the Tribunal) in S.A.No.286/2024. Through the said order the Tribunal set aside an order of the Chief Judicial Magistrate, Manjeri in M.C.No.929/2023 on the file of that Court, on the ground that the said order was passed without due application of mind and in a printed format. The contention that the properties in question are agricultural lands was rejected by the Tribunal.

2. Sri. K.K. Chandran Pillai, the learned senior counsel appearing for the petitioners on the instructions of Adv. P. A. Augustine would contend that the Chief Judicial Magistrate is not an Adjudicating Authority under the provisions of the SARFAESI Act. It is submitted that,

while exercising powers under Section 14 of the SARFAESI Act, the Chief Judicial Magistrate only exercises an administrative power as it is clear from a reading of the provisions of Section 14 of the SARFAESI Act that the duty of the learned Magistrate is only to assist the secured creditor in taking possession of the secured asset. The learned senior counsel referred to the judgments of the Supreme Court in ***Indian Bank v. D. Visalakshi; (2019) 20 SCC 47, R.D. Jain & Co. v. Capital First Ltd., (2023) 1 SCC 675 and Balkrishna Rama Tarle v. Phoenix ARC (P) Ltd.; (2023) 1 SCC 662*** and also to the judgment of this Court in ***Canara Bank Ltd. v. Stephen John and others; 2018 (3) KHC 670*** in support of his contention that the Chief Judicial Magistrate exercising powers under Section 14 of the SARFAESI Act is only exercising a ministerial power and is not exercising a judicial power. It is submitted that, in such circumstances, the act of the Tribunal in interfering with the order of the learned Chief Judicial Magistrate, Manjeri in M.C.No.929/2023 is clearly unsustainable as the order was set aside only on the ground that it was issued in a printed format.

3. Sri. V. Philip Mathews, the learned counsel appearing for the respondent (applicant in S.A.No.286/2024 before the Tribunal) vehemently contends that the order of the Tribunal is correct in law and

ought to be sustained by this Court. It is submitted that there is no jurisdictional error or other defect in Ext.P6 order warranting interference at the hands of this Court in an Original Petition under Art.227 of the Constitution of India. It is submitted that, if the petitioners are in any manner aggrieved by Ext.P6 order, they have to challenge it before the Debts Recovery Appellate Tribunal instead of approaching this Court in an Original Petition under Art.227 of the Constitution of India. The learned counsel places reliance on the judgment of the Supreme Court in ***Visalakshi*** *(supra)* and contends that the enquiry by a Magistrate under Section 14 is a quasi-judicial enquiry through a non-judicial process. It is submitted that this Court in the judgment in ***Sama Rubbers v. South Indian Bank Ltd.; 2023 KLT OnLine 1955*** has held that the Chief Judicial Magistrate must display a judicial approach in considering the relevant facts asserted by the parties. It is submitted that, when faced with an application under Section 14 of the SARFAESI Act, the learned Magistrate is not expected to adjudicate any *lis*, the learned Magistrate ought to satisfy himself that all the conditions for the exercise of the power under Section 14 of the SARFAESI Act have been satisfied in the particular case before him. It is submitted that this Court in the judgment in ***Jimmy Thomas v. Indian Bank***; ***2023 (3) KLT 630***

has deprecated the practice of the Tribunal adopting a 'cut, copy, paste' method in passing interim orders on Securitisation Applications. It is submitted that on the same principle, the order of the Chief Judicial Magistrate which was set aside by the Tribunal in S.A.No.286/2024 cannot be justified in law. It is submitted that the exercise of power under Section 14 of the SARFAESI Act results in drastic circumstances and therefore, a casual approach to the passing of orders on applications filed under Section 14 of the SARFAESI Act cannot be justified in any manner. It is therefore submitted that the order of the Tribunal is to be upheld.

4. Having heard the learned senior counsel appearing for the petitioners and the learned counsel appearing for the respondent, I am of the view that Ext.P6 order of the Tribunal in S.A.No.286/2024 is only to be sustained. While it is no longer *res integra* that no adjudication is contemplated in a proceeding under Section 14 of the SARFAESI Act, the proceedings must reflect application of mind. In ***Visalakshi*** *(supra)* it was held:-

> *"36. Suffice it to observe that an inquiry conducted by the stated authority under Section 14 of the 2002 Act, is a sui generis inquiry. In that, majorly it is an administrative or executive function regarding verification of the affidavit and the relied*

upon documents filed by the parties. That inquiry is required to be concluded within the stipulated time-frame. While undertaking such an inquiry, as is observed by this Court, the authority must display judicious approach, in considering the relevant factual position asserted by the parties. That presupposes that it is a quasi-judicial inquiry though, a non-judicial process. The inquiry does not result in adjudication of inter se rights of the parties in respect of the subject property or of the fact that the transaction is a fraudulent one or otherwise."

37-38.....

39. Now we may turn to the decision in Standard Chartered Bank. The Court was called upon to consider the argument that secured creditor before invoking the remedy under Section 14 of the 2002 Act, must necessarily make an attempt to take possession of the secured assets and can take recourse thereto only if he fails in that effort and encounters resistance to such an attempt. While considering that argument, the Court analysed Sections 13, 14 and 15 of the 2002 Act and opined that Section 14 of the 2002 Act enables the secured creditor who desires to seek the assistance of "State's coercive power" for obtaining possession of the secured assets to make a request in writing to the authority designated therein, within whose jurisdiction the secured asset is located. It also noted that the authority after receiving such request under Section 14 of the 2002 Act, was not expected to do any further scrutiny of the matter except to verify from the secured creditor whether notice under Section 13(2) of the Act has already been given or not and whether the secured asset is located within his jurisdiction. There is no adjudication of any kind at this stage. The Court also noticed in para 23 of

the reported judgment that after amendment of Section 14 of the 2002 Act, by inserting first proviso therein, the designated authority has to satisfy itself only with regard to the matters mentioned in clauses (i) to (ix). In para 25 of this decision, the Court noted as follows :

> *"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."*
>
> *xxx xxx xxx"*

In ***R.D. Jain & Co.*** *(supra)* the Supreme Court held:-

> *"25. As observed and held by this Court in NKGSB Coop. Bank, the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the Advocate Commissioner who is considered as an officer of his/her court. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. Thus, we reiterate that the step to be taken by the CMM/DM under Section 14 of the Sarfaesi Act, is a ministerial step. While disposing of the application under Section 14 of the Sarfaesi Act, no element of quasi-judicial function or*

application of mind would require. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets."

In ***Balakrishna Rama Tarle*** *(supra)* it was held:-

"18. Thus, the powers exercisable by CMM/DM under Section 14 of the Sarfaesi Act are ministerial steps and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section 14 of the Sarfaesi Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the Sarfaesi Act, before the Debts Recovery Tribunal."

In ***Sama Rubbers*** *(supra)* this Court held:-

"23. The inquiry conducted by the Chief Judicial Magistrate under Section 14 of the SARFAESI Act does not result in an adjudication of

> *the parties' inter se rights regarding the subject matter. It is an administrative or executive function regarding the verification of the affidavit and documents relied on by the parties. The authority must display a judicial approach in considering the relevant facts asserted by the parties. It is a quasi-judicial inquiry through a non-judicial process.*"

Thus, it is clear that, though the exercise of jurisdiction by the Magistrate under Section 14 of the SARFAESI Act does not involve any adjudication, the act of the Magistrate in passing orders in printed form by filling in necessary details in blank spaces cannot be justified under any circumstances. It cannot be forgotten that the power under Section 14 of the SARFAESI Act involves drastic consequences and that is why the Parliament conferred the power to take action under Section 14 of the SARFAESI Act on high officials such as District Magistrate or the Chief Judicial Magistrate. While it may not be necessary to examine the correctness of the averments in the affidavit filed by a bank/financial institution in support of the application for orders under Section 14 of the SARFAESI Act, the Magistrate must clearly apply his mind to the averments in the application and determine as to whether procedure contemplated has been followed before passing an order under Section 14 of the SARFAESI Act. Therefore, I have no doubt in my mind that the

Tribunal was justified in setting aside the order of the Chief Judicial Magistrate Court, Manjeri in M.C. No.929/2023.

In the light of the aforesaid findings, the Original Petition fails and it is accordingly dismissed making it clear that this will not prevent the petitioners from applying for or obtaining fresh orders under Section 14 of the SARFAESI Act from the competent Court. The Registry shall communicate a copy of this judgment to the Chief Judicial Magistrate who issued the order on M.C.No.929/2023. The practice of passing orders in the manner noticed in this judgment is strongly deprecated.

Sd/-
GOPINATH P
JUDGE.

acd

APPENDIX OF OP (DRT) 336/2024

PETITIONER EXHIBITS

Exhibit P-1	**TRUE COPY OF THE ORDER DTD. 18-12-2023 IN MC NO. 929/2023 PASSED BY THE CHIEF JUDICIAL MAGISTRATE COURT, MANJERI .**
Exhibit P-2	**TRUE COPY OF S.A. NO. 286/2024 WITHOUT ANNEXURES**
Exhibit P-3	**TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE BANK WITHOUT ANNEXURES**
Exhibit P-4	**TRUE COPY OF ORDER DTD. 29-12-2023 IN MC NO. 1087/23 PASSED BY THE CHIEF JUDICIAL MAGISTRATE COURT, MANJERI**
Exhibit P-5	**TRUE COPY OF ORDER DTD. 16-01-2024 IN MC NO. 95/24 PASSED BY THE CHIEF JUDICIAL MAGISTRATE COURT, MANJERI**
Exhibit P-6	**TRUE COPY OF ORDER DTD. 01-08-2024 IN S.A. NO. 286/24 PASSED BY THE DEBTS RECOVERY TRIBUNAL-1, ERNAKULAM**