

(2018) 09 CHH CK 0037

Chhattisgarh High Court

Case No: Writ Petition (C) No. 889 Of 2018

Allahabad Bank

APPELLANT

Vs

Emarati Devi Sharma And Ors

RESPONDENT

Date of Decision: Sept. 4, 2018

Acts Referred:

- Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 - Section 14, 14(1), 14(2)

Hon'ble Judges: Prashant Kumar Mishra, J

Bench: Single Bench

Advocate: Malay Kumar Bhaduri, R. Tripathi, Meha Kumar

Final Decision: Allowed

Judgement

Prashant Kumar Mishra, J

1. Heard.
2. The petitioner -Bank is the secured creditor in relation to certain properties belonging to the borrowers i.e. respondents 1 to 4. Since some of the properties of the borrowers were situated within the District Janjgir-Champa, the petitioner moved an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short ""the Act, 2002"") before the District Magistrate, Janjgir-Champa and for some other secured assets situated within the District Raigarh, an application under the Act, 2002 was moved before the District Magistrate, Raigarh.
3. By the impugned order, the District Magistrate, Raigarh has refused to go into the merits of the case and has rejected the petitioner's application on

the ground of maintainability saying that two similar applications under Section 14(1) & (2) of the Act, 2002 cannot be allowed to continue in respect of the same borrowers.

4. Section 14(1) of the Act, 2002 provides 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 this 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 thereof.

5. A plain reading of Section 14(1) would make it apparent that the application can be preferred qua the secured asset and not qua the borrower or the secured creditor. It is at the discretion of the secured creditor to move before the particular District Magistrate within whose jurisdiction the secured asset is located so that recovery of the loan amount can be made.

6. The impugned order suffers from an error of jurisdiction, therefore, the same is set-aside.

7. Let the District Magistrate, Raigarh consider and decide the petitioner's application on merits. Both the parities would be at liberty to raise their respective submissions, both legal and factual, before the District Magistrate, who shall provide an opportunity of hearing to both the parties and decide the said application within a period of four months from the date of presentation of certified copy of this order.

8. The writ petition is allowed to the extent indicated above.