Jawahar Singh and Others Vs The United Bank of India and Others

Writ Petition Nos. 11828(W), 12210(W), 11993(W), 11787(W), 5651(W) and 10048(W) of 2015

Court: Calcutta High Court

Date of Decision: Aug. 6, 2015

Acts Referred:
Constitution of India, 1950 - Article 136, 136(1), 141, 226, 227#Criminal Procedure Code, 1973 (CrPC) - Section 340#Limitation Act, 1963 - Section 14#Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 5(2)#Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13, 13(2), 13(3A), 13(4), 13(4)(a)#Transfer of Property Act, 1882 - Section 111, 65-A#West Bengal Government Premises (Tenancy Regulation) Act, 1976 - Section 4#West Bengal Public Lands (Eviction of Unauthorised Occupants) Act, 1962 - Section 5

Citation: AIR 2015 Cal 306 : (2016) 1 BC 3

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Debajyoti Basu and Suvadip Bhattacharjee, for the Appellant; Maloy Kumar Ghosh and Basudeb Mukherjee, Advocates for the Respondent

Judgement

Dipankar Datta, J
Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

(hereafter the SARFAESI Act) is at the centre of controversy in all but one of these writ petitions, which have been presented by borrowers/a

secured creditor seeking to challenge orders passed thereunder by the Chief Metropolitan Magistrate, Calcutta/the District Magistrates of various

districts in the state (hereafter the CMM/DM, wherever referred to jointly). The writ petition that stands out from this group, without challenging

the section 14 order operating in the field, challenges the action of dispossession following such an order. Since interpretation of section 14 would

arise as a matter of necessity, these writ petitions shall be governed by this common judgment and order.

2. Making a departure from the usual course of ascertaining the factual matrix of each writ petition first, I propose to record the submissions

advanced in regard to the scope, effect and import of section 14 of the SARFAESI Act, the issues that would emerge for decision based thereon

and my understanding of the law, and then I shall apply the law to each case separately.

3. While arguing W.P. 11828(W) of 2015, Mr. Basu, learned advocate for the petitioner was heard submitting that law had undergone a sea

change in view of the decision of the Supreme Court reported in Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company

Ltd. and Others, (2014) 5 JT 75 : (2014) 3 RCR(Civil) 501 : (2014) 4 SCALE 484 : (2014) 6 SCC 1 and an application under section 14 of the

SARFAESI Act cannot be disposed of by the CMM/DM granting the prayer for assistance without putting the borrower on notice. Considering

such broad submission, Mr. Joy Saha, learned advocate was requested to assist the Bench as amicus curiae. Elaborate submissions have been

advanced by Mr. Saha and I record my appreciation for the efforts put in by him.

4. According to Mr. Saha, prior to amendment of section 14, law was fairly well-settled that the CMM/DM was under no obligation to give any

notice either to a borrower or to any third party and that an order passed thereunder followed a non-adjudicatory process, which was purely

executionary in nature. Reference was made by him to the decisions reported in Indian Overseas Bank Vs. Sree Aravindh Steels Ltd., Sri S.B.

Shankar and The Inspector of Police, AIR 2009 Mad 10 : (2008) 2 LW(Cri) 1294 , Puran Maharashtra Automobiles and Satyam Automobiles

Vs. The Sub Divisional Magistrate, The Naib-Tahasildar (Revenue-1) and The Janata Sahakari Bank Ltd., AIR 2010 Bom 53 : (2009) 3 BomCR

39 : (2009) 4 BOMLR 1412 : (2009) 6 MhLj 977 , and Ramdas Agrawal Vs. Collector (District Magistrate) and Another, AIR 2010 Chh 83 :

(2011) 1 MPJR 37 .

5. It was, however, contended by Mr. Saha that with the advent of the amendments in section 14 and the decision in Harshad Govardhan

Sondagar (supra), there has been a radical change in law. He urged that the Supreme Court in such decision while holding that the district

magistrate is to give an opportunity of hearing to the lessees and to pass orders in conformity with the principles of natural justice has not indicated

that such right of hearing is available only to the lessees/tenants and it would be to the exclusion of all other categories of aggrieved persons. To put

it differently, Harshad Govardhan Sondagar (supra) does not make any classification between a pre-mortgage lessee and the borrower. The main

plank on which the decision in Harshad Govardhan Sondagar (supra) is based is sub-section (3) of section 14 and the judgment cannot be read as

confined only to a particular class; it should be read in a manner applicable to everyone against whom an order under section 14(1) would operate.

He further urged that there could be no other example of different categories of persons affected by the same order being entitled to challenge such

order before different fora and that, if it is held that only lessees/tenants would be entitled to approach the High Court either under Articles 226 or

227 while other categories of aggrieved persons must challenge the order of the CMM/DM before the tribunal under section 17, it would create an

anomalous situation : one category of persons aggrieved by the same order would have to challenge the same under section 17 and if unsuccessful,

by preferring an appeal under section 18, and if further aggrieved, by challenging the appellate order under Article 226 or Article 227, while the

lessees would be deprived of the tiers referred to in sections 17 and 18 and would only be entitled to challenge the order of the CMM/DM before

the High Court under Articles 226 or 227. According to him, although the intention of the legislature was to bring in force a piece of legislation that

would ensure speedy recovery of secured debts, the principles of natural justice cannot be disregarded. In the changed circumstances, section 14

can be read to include hearing of a borrower, particularly when power is conferred on the CMM/DM to decide whether taking over possession of

the secured asset, on the basis of the affidavit filed by the secured creditor, ought to be ordered or not.

6. Referring to the point that a hearing ought to be granted by the CMM/DM before passing an order under section 14 of the SARFAESI Act,

Mr. Saha adverted to the well-settled principle of law that unless a statute expressly or by necessary implication excludes the application of natural

justice, the requirement to follow natural justice must be read in the statute and that an administrative order, visiting a person with civil

consequences, ought to be made in conformity with principles of natural justice. Reliance was placed on the decisions reported in Dr Rash Lal

Yadav Vs. State of Bihar and Others, (1994) 7 JT 62 : (1994) 3 SCALE 18 : (1994) 5 SCC 267 : (1994) 1 SCR 231 Supp : (1994) 3 SLJ 170

, Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another, (2008) 216 CTR 303 : (2008) 226 ELT 22 : (2008)

300 ITR 403 : (2008) 6 JT 83 : (2008) 6 SCALE 733 : (2008) 14 SCC 151 : (2008) 169 TAXMAN 328 , State of Maharashtra Vs. Public

Concern for Governance Trust and Others, (2007) 1 SCALE 72 : (2007) 3 SCC 587 : (2007) 2 SCR 87 : (2007) AIRSCW 474 : (2007) 1

Supreme 8 and State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, AIR 1967 SC 1269 : (1967) 15 FLR 209 : (1967) 2 LLJ 266 : (1967) 2

SCR 625 .

7. The decision reported in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, AIR 1978 SC 597 : (1978) 1 SCC 248 : (1978) 2

SCR 621 was further referred to by Mr. Saha for the proposition that if the duty to give reasonable opportunity could be implied from the nature

of functions being performed by the authority, fairness would demand that an opportunity to show cause ought to be extended.

8. The decisions reported in Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, AIR 1966 SC 81 : (1965) 57

ITR 349 : (1965) 3 SCR 536 , Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, AIR 1990 SC 1402 : (1990) 2 JT 103 : (1990) 2

SCC 746 : (1990) 2 UJ 90 and State of Gujarat and Another Vs. Gujarat Revenue Tribunal Bar Association and Another, AIR 2013 SC 107 :

(2013) 288 ELT 3 : (2012) 10 JT 422 : (2012) 10 SCALE 285 : (2012) 10 SCC 353 : (2013) 1 SCC(L&S) 56 were also relied on in support

of the argument that while discharging the duty enjoined on the CMM/DM by the second proviso to section 14 to satisfy himself of the contents of

the affidavit filed by the secured creditor and to pass suitable orders for taking possession, the duty to act judicially is implicit in the exercise of

such power.

9. Inviting attention to the decision reported in N. Padmamma and Others Vs. S. Ramakrishna Reddy and Others, AIR 2008 SC 2834 : (2008)

10 JT 598 : (2008) 8 SCALE 394 : (2008) 15 SCC 517 : (2008) AIRSCW 4689 , Mr. Saha argued that the procedures laid down for

deprivation of a person''s right to property must be scrupulously followed.

10. It was also argued relying on Harshad Govardhan Sondagar (supra), where Sub-section (3) of section 14 had been considered in extenso, that

an order passed by the CMM/DM under sub-section (1) of section 14 cannot be challenged before the tribunal under section 17 and the only

remedy available to a person aggrieved by such order is to invoke the writ jurisdiction of the High Court under Article 226 or its power of

superintendence under Article 227.

11. Mr. Saha submitted that a hearing at the pre-possession stage would result in filtering of frivolous applications made by authorised officers of

secured creditors, without causing undue delay and disadvantage to those secured creditors having genuine claims and the same would ultimately

advance the cause of justice.

12. Next, it was contended by Mr. Saha referring to Appendix IV appended to the Security Interest (Enforcement) Rules, 2002 (hereafter the

2002 Rules) that even before the amendments were effected in section 14, a person aggrieved had the right of approaching the relevant tribunal

under section 17 before physical possession of the secured asset was taken. Measures under section 13(4) (excluding proceedings under section

14), according to him, commence with the issuance of a notice under Rule 8(1) of the 2002 Rules. Appendix IV suggests that the notice under

Rule 8(1) is a post possession notice or a notice issued simultaneously with the taking of possession. The question that therefore arises is whether

under the general scheme of the SARFAESI Act, any right or representation is available to a person aggrieved before possession of the secured

asset is taken. He contended that this issue had been dealt with in the decisions reported in United Bank of India Vs. Satyawati Tondon and

Others, AIR 2010 SC 3413 : (2010) 3 BC 495 : (2010) 3 CompLJ 585 : (2010) 7 SCALE 696 : (2010) 8 SCC 110 : (2010) 9 SCR 1 : (2010)

9 UJ 4395 : (2010) AIRSCW 7049 : (2010) AIRSCW 5267 and Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and

Others, (2010) 1 BC 698 : (2011) 101 CLA 146 : (2011) 162 CompCas 337 : (2011) 2 CompLJ 1 : (2011) 3 JT 159 : (2011) 2 RCR(Civil)

676 : (2011) 2 SCALE 233 : (2011) 2 SCC 782 : (2011) 106 SCL 1 : (2011) 2 SCR 602 : (2011) AIRSCW 1194 : (2011) AIRSCW 5913 :

(2011) 1 Supreme 655 . In both the cases, orders of the concerned district magistrates were challenged before possession was actually taken and

the Supreme Court held that the person aggrieved has a right to approach the tribunal under section 17 of the Act. Thus, the observation in the

decision reported in Standard Chartered Bank Vs. V. Noble Kumar and Others, (2013) 117 CLA 18 : (2013) 180 CompCas 137 : (2013) 4

CompLJ 417 : (2013) 6 CTC 683 : (2013) 10 SCALE 540 : (2013) 9 SCC 620 that an application could be made under section 17 only after

physical possession had been lost, is contrary to the decisions in Satyawati Tondon (supra) and Kanaiyalal Lalchand Sachdev (supra).

13. Finally, relying on the decision reported in Manager, ICICI Bank Ltd. Vs. Prakash Kaur and Others, AIR 2007 SC 1349 : (2007) 2 BC 226

: (2007) 1 CompLJ 561 : (2007) 2 CTC 334 : (2007) 4 JT 39 : (2007) 3 SCALE 507 : (2007) 2 SCC 711 : (2007) 75 SCL 433 : (2007) 3

SCR 253 : (2007) AIRSCW 1667 : (2007) 2 Supreme 422 , Mr. Saha urged the Court to lay down the law that a borrower cannot be

dispossessed by the secured creditor by force and that if the secured creditor is resisted by the borrower while taking possession, he can be

dispossessed only in accordance with law, meaning thereby taking recourse to section 14.

14. Mr. Basu, learned advocate for the petitioner in W.P. No. 11828(W) of 2015, Mr. Ray, learned advocate for the petitioner in W.P. No.

12210(W) of 2015, Mr. Kali, learned advocate for the petitioner in W.P. No. 11993(W) of 2015 and Mr. Bardhan, learned advocate for the

petitioner in W.P. No. 11787(W) of 2015 have echoed the submissions of Mr. Saha without raising any substantial additional point.

15. Mr. Mantha, learned senior advocate for Andhra Bank in W.P. No. 11787 (W) of 2015 argued that on a plain reading of section 14, it would

appear to be fairly clear that the CMM/DM, as the case may be, does not decide the rights of parties; considering the declaration given in the

affidavit, the CMM/DM has to satisfy himself regarding the contents of such affidavit and then to pass an appropriate order as the facts and

circumstances would warrant. According to him, while embarking on an exercise to amend certain provisions of an enactment the legislature

necessarily has to keep in mind the objects thereof. It was further argued by him that the amendments introduced in section 14 are clarificatory in

nature and without any clear contra intention being expressed, neither the amendments change the nature and purpose of the parent statute nor can

the same be read in a manner to cut down the rigours envisaged in the SARFAESI Act.

16. Citing the Constitution Bench decision reported in Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat, (2005) CriLJ 929 : (2005) 11 JT

209 : (2005) 2 SCC 409 : (2005) 1 SCR 408 : (2005) 1 UJ 446 and reading paragraph 14 thereof, Mr. Mantha assiduously contended that

special statutes call for a different manner of reading. He laid emphasis on the passage therein that more stringent the law, the less is the discretion

of the Court and that stringent laws are made for the purpose of achieving its objectives, and it would be the duty of the Court to see that such

intention of the legislature is not frustrated. If there is any doubt or ambiguity in the statute, the rule of purposive construction should be taken

recourse to, to achieve the objectives.

17. The decision reported in Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, (2007) 135 CompCas 163 : (2007) 1

CompLJ 108 : (2007) 5 CTC 642 : (2007) 1 JT 542 : (2006) 13 SCALE 511 : (2007) 2 SCC 230 : (2006) 10 SCR 287 Supp was relied on for

the proposition that should there be a conflict between law and equity, it is the law which must prevail in accordance with the Latin maxim "dura lex

sed lex".

18. Citing the decision reported in Union of India and Another Vs. Delhi High Court Bar Association and Others, AIR 2002 SC 1479 : (2002) 2

BC 194 : (2002) 110 CompCas 141 : (2002) 2 CompLJ 231 : (2002) 3 JT 131 : (2002) 2 SCALE 668 : (2002) 4 SCC 275 : (2002) 37 SCL

451 : (2002) 2 SCR 450 : (2002) AIRSCW 1347 : (2002) 2 Supreme 435 , wherein the Recovery of Debts due to Banks and Financial

Institutions Act, 1993 was held to be a valid piece of legislation, Mr. Mantha referred to the caution sounded by the Supreme Court to the effect

that the High Court could be approached under Articles 226 or 227 only after the merits of the cases are decided by the authority constituted

under such Act. Taking a clue from such decision, it was submitted that the SARFAESI Act being a complete code laying down the procedure to

be followed by the secured creditors as well as creating fora where the borrowers aggrieved by the actions of the secured creditors could apply

for redress of their grievance, the High Court in exercise of 226 jurisdiction ought not to interfere unless of course grave miscarriage of justice

committed in course of the secured creditor proceeding against the borrower under section 13 and/or section 14 is manifest.

19. Mr. Mantha also relied on a Division Bench decision of the Bombay High Court in W.P. No. 11459 of 2014 (Kamal Jajoo v. Oriental Bank

of Commerce) dated February 23, 2015 and a Full Bench decision of the Madurai Bench of the Madras High Court in W.P. (MD) No. 11078 of

2011 (K. Arockiyaraj v. The Chief Judicial Magistrate) dated August 27, 2013. In Kamal Jajoo (supra), the Bench repelled the contention raised

on behalf of the petitioners that the amendments under section 14 required the concerned magistrate to adjudicate and decide the correctness or

otherwise of the information which is given in the application and that the principal borrower gets right of taking part in the proceedings for the

purpose of assisting the magistrate. In the latter decision, it was observed in paragraph 18 that no adjudication of rights is involved while the

CMM/DM considers a request for assistance under section 14 of the SARFAESI Act.

20. The decision reported in Arasmeta Captive Power Company Private Limited and Another Vs. Lafarge India Private Limited, AIR 2014 SC

525 : (2013) 4 ARBLR 439 : (2014) 118 CLA 328 : (2014) 182 CompCas 115 : (2014) 1 CompLJ 209 : (2014) 1 CTC 415 : (2014) 1 JT 1 :

(2013) 15 SCALE 209 : (2014) 2 SCJ 633 was cited by Mr. Mantha to remind the Court as to what constitutes the ratio decidendi of a decision

and the ratio decidendi is not to be discerned from any stray word or phrase read in isolation.

21. Responding to Mr. Saha''s submission, it was submitted that the scheme of the SARFAESI Act is clear : natural justice in a limited sense is

available at the stage of consideration of the borrower''s objection/representation to the demand notice under section 13(2) but is excluded

thereafter till possession of the secured asset is taken, and is again available before the tribunal under section 17. He urged that even though an

administrative order under section 14 would have the potential of visiting a borrower with civil consequences, the law takes sufficient care of the

situation by providing a remedy before the tribunal under section 17 where such order could be challenged in accordance with law.

22. However, Mr. Mantha agreed that possession of a secured asset cannot be taken by the secured creditor by employing force, when faced

with resistance from the borrower/occupant of the secured asset, either under the SARFAESI Act or under the general laws of the country.

According to him, should surrender of possession of the secured asset in favour of the authorised officer by the borrower/occupant be not the

result of his volition, the remedy under section 14 has to be pursued for securing possession in the manner mandated by law.

23. Mr. Om Narayan Rai, learned advocate representing the State Bank of India in W.P. No. 11993(W) of 2015 referred to the decision

reported in Transcore Vs. Union of India (UOI) and Another, AIR 2007 SC 712 : (2007) 1 BC 33 : (2007) 135 CompCas 1 : (2007) 1 CompLJ

1 : (2006) 5 CTC 753 : (2006) 12 SCALE 585 : (2008) 1 SCC 125 : (2007) 73 SCL 11 : (2006) 10 SCR 785 Supp , where recovery of

possession without an adjudicatory process has been highlighted. According to him, despite the amendments in section 14, there has been no

fundamental change in the scheme of the SARFAESI Act and the contention of Mr. Saha that section 14 contemplates a hearing, may not be

correct. Referring to the decision in V. Noble Kumar (supra), wherein the amendments in section 14 were noticed, it was contended that the

Supreme Court did not consider hearing to be given to a borrower to be a part of the process contemplated in section 14. Relying on the decision

reported in Union of India (UOI) and Another Vs. Major Bahadur Singh, (2006) 108 FLR 146 : (2005) 10 JT 127 : (2005) 9 SCALE 459 :

(2006) 1 SCC 368 : (2006) SCC(L&S) 959 , he argued that a judgment should not be read as a statute and the decision in Harshad Govardhan

Sondagar (supra), which has read natural justice in section 14, has to be understood only in the context of a lessee in occupation of a secured asset

by virtue of a registered lease executed before creation of the subject mortgage.

24. Regarding the aspect of applicability of force by the authorised officer to take over possession of a secured asset when faced with resistance,

Mr. Rai enlightened me that even the Reserve Bank of India (hereafter the RBI) had issued guidelines after the decision in Prakash Kaur (supra)

vide circular dated April 24, 2008 expressing concern about the number of litigations filed against the banks in the recent past for engaging

recovery agents who have purportedly violated the law. The banks were warned that if the RBI received complaints regarding violation of the

guidelines provided in the circular and of adoption of abusive practices followed by the recovery agents of the banks, the same would be viewed

seriously, including consideration of imposition of a ban on a bank from engaging recovery agents in a particular area for a limited period. The

banks were also warned that in case of persistent breach of the guidelines, the RBI would consider extending the period of ban or the area of ban.

25. Mr. Rai further brought to my notice a master circular issued by the RBI on July 1, 2014. A paragraph therefrom was referred to by him to

emphasise that possession of a secured asset can only be taken over in accordance with the rule of law and not by brute force. The paragraph

reads as follows:

Taking possession of property mortgaged/hypothecated to banks

(xii) In a recent case which came up before the Honourable Supreme Court, the Honourable Court observed that we are governed by rule of law

in the country and the recovery of loans or seizure of vehicles could be done only through legal means. In this connection it may be mentioned that

the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the Security

Interest (Enforcement) Rules, 2002 framed thereunder have laid down well defined procedures not only for enforcing security interest but also for

auctioning the movable and immovable property after enforcing the security interest. It is therefore desirable that banks rely only on legal remedies

available under the relevant statutes while enforcing security interest without intervention of the Courts.

26. My attention was further drawn by Mr. Rai to the decisions of the Supreme Court reported in ICICI Bank Vs. Shanti Devi Sharma and

Others, (2008) 3 BC 453 : (2008) CLT 1071 : (2009) CriLJ 327 : (2008) 3 CTC 522 : (2008) 7 JT 390 : (2008) 151 PLR 634 : (2008) 8

SCALE 626 : (2008) 7 SCC 532 and Citicorp. Maruti Finance Ltd. Vs. S. Vijayalaxmi, (2011) 4 RCR(Civil) 876 : (2011) 12 SCALE 537 :

(2011) 6 UJ 3894 : (2012) AIRSCW 251 . In the former decision, the Court considered it appropriate to remind the financial institutions that we

live in a civilised country governed by the rule of law and that they are bound by law and that the recovery of loans or seizure of vehicles can only

be done through legal means. In the latter decision, it was held that the bank/financier is not entitled on the strength of the agreement to take back

possession of the vehicle by use of force and should any action be taken for recovery in violation of the guidelines of the RBI, such an action

cannot but be struck down.

27. Before concluding, Mr. Rai also cited the decision of a learned judge of the Kerala High Court reported in M/s. Sundaram BNP Paribas

Home Finance Ltd. Vs. State of Kerala and Others, AIR 2009 Ker 85 : (2009) 1 ILR (Ker) 31 : (2009) 1 KLJ 125 : (2009) 1 KLT 50 and

relied on the following passage therefrom:

4. Section, 14 of the Act contains the provisions, by which, a secured creditor may invoke the police power of the State, to lawfully evict persons

who continue in possession in spite of measure taken under Section 13(4), following notice under Section 13(2). This is because, the employment

of any physical power to dispossess, even in terms of a statute or enforceable order could be only had in exercise of the police power of the State.

Even a court does not have the power to dispossess by force, through its officer; but has the power to secure it only through the police machinery

of the State. That power cannot be conceded to any individual or institution empowered to take possession, except in cases where the power to

physically dispossess is also expressly conferred. That such a power has not been conferred by the Parliament on a secured creditor under the Act

and that it is never so intended, are explicit from the very making of Section 14.

28. Mr. Samrat Sen, learned senior advocate for the State in W.P. No. 10048(W) of 2015 referred to paragraph 20 of the decision in V. Noble

Kumar (supra) where it has been observed that ""visualising the possibility of resistance for such action, Parliament under Section 14 also provided

for seeking the assistance of the judicial power of the State for obtaining possession of the secured asset, in those cases where the secured creditor

seeks it"". Relying thereon, Mr. Sen submitted that the CMM/DM while exercising power under section 14 cannot wear different hats but must

necessarily wear the hat of an adjudicator since he is called upon to exercise the judicial power of the State.

29. Referring to V. Noble Kumar (supra) once again and in particular to paragraph 21 thereof where the Court observed that the language of

section 14 ""originally enacted purportedly obliged the Magistrate receiving a request under Section 14 to take possession of the secured asset and

documents, if any, related thereto in terms of such request without any further scrutiny of the matter"", Mr. Sen stressed on the word "purportedly"

and while citing Black"s Law Dictionary for tracing its meaning, submitted that the amendments in section 14 definitely conveys a different intention.

30. The Division Bench decision of the Gujarat High Court reported in Mansa Synthetic Pvt. Ltd. and Others Vs. Union of India and Another,

AIR 2012 Guj 90 : (2012) 3 BC 857 : (2012) 111 CLA 84 : (2012) 2 GLH 752 was next relied on by Mr. Sen, wherein section 14 was

analysed in great detail, and it was contended that even while upholding the constitutionality of such provision it was held that an order thereunder

is not open to an appeal in terms of the other sections of the SARFAESI Act.

31. My decision reported in Vision Comptech Integrators Ltd. Vs. State Bank of India, AIR 2014 Cal 161 : (2014) 3 CALLT 161 was also cited

by Mr. Sen to contend that that section 14 proceedings were held to have partaken the character of quasi-judicial proceedings in view of Harshad

Govardhan Sondagar (supra).

32. Based on the aforesaid, Mr. Sen expressed the view that a hearing before the CMM/DM would only be fair, proper and just.

33. Next, Mr. Sen sounded in agreement with Mr. Saha, Mr. Mantha and Mr. Rai with regard to the impermissibility of user of force by an

authorised officer through himself or through recovery agents while taking measures under section 13(4) of the SARFAESI Act. He referred to

section 5 of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962, section 4 of the West Bengal Government Premises

(Tenancy Regulation) Act, 1976 and section 5(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to emphasise that the

statute itself ordained the use of force for evicting people in unauthorised occupation of lands/premises, if the conditions therefor were satisfied. He

also referred to the decisions of the Supreme Court reported in State of West Bengal and Others Vs. Vishnunarayan and Associates (P) Ltd. and

Another, AIR 2002 SC 1493 : (2002) 3 JT 166 : (2002) 3 SCALE 40 : (2002) 4 SCC 134 : (2002) 2 SCR 557 : (2002) 1 UJ 629 : (2002)

AIRSCW 1366 : (2002) 2 Supreme 476 , State of U.P. Vs. Hari Ram, (2013) 6 AD 266 : AIR 2013 SC 1793 : (2013) 4 JT 275 : (2013) 2

RCR(Civil) 499 : (2013) 3 SCALE 348 : (2013) 4 SCC 280 : (2013) AIRSCW 1683 and S.D. Bandi Vs. Divisional Traffic Officer, KSRTC

and Others, (2013) 7 AD 650 : AIR 2013 SC 2507 : (2014) 117 CLT 736 : (2013) 4 CTC 273 : (2013) 10 JT 348 : (2013) 4 RCR(Civil) 212 :

(2013) 2 RCR(Rent) 344 : (2013) 8 SCALE 88 : (2013) 12 SCC 631 : (2013) AIRSCW 3907 for the proposition of law that a person may be

evicted by force by the State or its executive officers should there be a specific conferment of power in that behalf by a statutory provision and not

otherwise.

34. According to Mr. Sen, section 14(2) of the SARFAESI Act while authorising the CMM/DM to use such force as may in his opinion be

necessary speaks of reasonable force to secure possession of a secured asset and for delivering such possession to the authorised officer but such

authorised officer in exercising the power conferred on him by section 13(4)(a) thereof has no power to evict a borrower/occupant from the

secured asset by employing recovery agents and/or by using force.

35. Mr. Bhattacharya, learned advocate for the petitioner in W.P. No. 10048(W) of 2015 adopted the submissions of Mr. Mantha and Mr. Rai

that section 14 of the SARFAESI Act does not envisage hearing to a defaulting borrower who resists the attempt of the secured creditor to take

peaceful possession of the secured asset and drives him to seek assistance of the CMM/DM. He placed the statement of reasons and objects of

the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Bill, 2011 and submitted that no clear reason is discernible

therefrom as to why the legislature felt it necessary to amend section 14; nonetheless, the amendments that have been introduced do not in any

manner change the process from a non-adjudicatory to an adjudicatory one.

36. In support of his submission that hearing is not required to be extended by the CMM/DM, Mr. Bhattacharya relied on the Division Bench

decision of the Gujarat High Court, reported in IDBI Bank Ltd. Vs. District Magistrate and Another, AIR 2011 Guj 147 : (2011) 4 BC 655 :

(2011) 2 GLH 12 . It was also submitted relying thereon that measures taken under section 14 though amount to measures taken under section

13(4) of the Act, in view of sub-section (3) of section 14 such measures cannot be called in question before any court or tribunal and hence, an

order under section 14 can only be challenged before the High Court under Article 226 or under Article 32 before the Supreme Court.

37. The Division Bench decision of the Kerala High Court reported in Aseena Vs. Sub-Divisional Magistrate and Others, AIR 2009 Ker 1 :

(2008) 3 ILR (Ker) 813 was cited for the proposition that the CMM/DM exercising power conferred by section 14 is not authorised to delegate

the function and cannot make over the matter to the sub-divisional magistrate for passing orders.

38. Another Division Bench decision of the Kerala High Court reported in Muhammed Ashraf and Smt. C. Arifa Vs. Union of India (UOI),

(2008) 4 ILR (Ker) 404 was cited by him, where the scope of jurisdiction of the magistrate exercising power under section 14 of the SARFAESI

Act had been clearly explained.

39. The decision reported in Afcons Infrastructure Ltd. and Another Vs. Cherian Varkey Construction Co. (P) Ltd. and Others, (2010) 7 JT 616

: (2010) 7 SCALE 293 : (2010) 8 SCC 24 : (2010) 8 SCR 1053 : (2010) 8 UJ 3773 : (2010) AIRSCW 4983 was relied on by Mr.

Bhattacharya to contend that interpretative tools could be used to set right the situation by adding or omitting or substituting the words in the statute

when the plain and grammatical construction would lead to confusion, absurdity and repugnancy.

40. According to Mr. Bhattacharya, an order passed by the CMM/DM, as the case may be, refusing to grant assistance to the secured creditor to

take possession of a secured asset can only be challenged in writ proceedings, since no remedy under section 17 is available to such creditor,

while the borrower can always challenge such order before the relevant tribunal.

41. In his reply, Mr. Saha while reacting to the decision in Kamal Jajoo (supra) submitted that the same ought not to be relied upon for diverse

reasons. First, it is based entirely on two earlier decisions of the Supreme Court reported in Mardia Chemicals Ltd. Vs. Union of India (UOI) and

Others Etc. Etc., AIR 2004 SC 2371 : (2004) 2 BC 397 : (2004) 120 CompCas 373 : (2004) 2 CompLJ 209 : (2004) 2 CTC 759 : (2004) 4

JT 308 : (2004) 138 PLR 271 : (2004) 4 SCALE 338 : (2004) 4 SCC 311 : (2004) 51 SCL 513 : (2004) 3 SCR 982 : (2004) 2 UJ 980 :

(2004) AIRSCW 2541 : (2004) 3 Supreme 243 and Transcore (supra). Both were rendered prior to the amendments in section 14 of the

SARFAESI Act and thus cannot be relied upon to decide the effect of such amendments or whether section 14 was amended to afford an

opportunity of hearing to a person aggrieved. Secondly, the decision does not contain any discussion as to why the necessity to amend section 14

was felt or required. Thirdly, the decision is silent with regard to the nature of the "satisfaction" required to be arrived at by the CMM/DM on the

basis of the affidavit to be filed before him. Finally, the decision fails to consider the effect of the decisions reported in Satyawati Tondon (supra)

and Kanaiyalal Lalchand Sachdev (supra), laying down the law that the borrower has a right of hearing under section 17 of the SARFAESI Act

even before physical possession of the secured asset is taken.

42. Insofar as K. Arockiyaraj (supra) is concerned, it was submitted by Mr. Saha that the issue involved there was entirely different. The matter

was referred to the Full Bench to decide whether reference to chief metropolitan magistrate in section 14 of the SARFAESI Act would include a

chief judicial magistrate or not. The observations made in paragraphs 15, 16 and 18 of the decision are merely by way of declaration, but largely

unsupported by any reason, discussion or justification. The only justification for the conclusions voiced in paragraph 18 may be found in paragraph

16 to the effect that since section 14 permits the delegation of authority by the CMM/DM, the order must be deemed to be administrative and not

judicial inasmuch as judicial authorities have no power to delegate their functions in terms of the principle delegata potestas non potest deligari.

According to him, this reasoning is erroneous. Section 14(1-A) does not permit any delegation of the order to be passed by the CMM/DM in

terms of section 14(1), and what is permitted to be delegated is only the execution of the order and/or decision arrived at by the CMM/DM; thus,

in terms of section 14(1-A), there is no delegation of the decision making process or the order to be passed and the only delegation is in respect of

execution of the order passed or decision arrived at by the CMM/DM.

43. On the rival contentions advanced in course of hearing of these writ petitions, the following substantial questions of law emerge for decision:

a. With the amendments introduced in section 14 of the SARFAESI Act and the decision in Harshad Govardhan Sondagar (supra), does the

process leading to orders passed by the CMM/DM for taking possession of the secured assets involve an adjudicatory process, meaning thereby

putting the borrower/guarantor/occupier of the secured asset on notice, as distinguished from a non-adjudicatory process prevalent earlier?

b. Is an order passed under section 14(1) of the SARFAESI Act not amenable to challenge in an application under section 17 in view of section

14(3) and the decision in Harshad Govardhan Sondagar (supra)?

44. One other question that would engage my consideration is, does section 13(4)(a) or any other provision of the SARFAESI Act confer power

on the authorised officer/secured creditor to take possession of a secured asset by dispossessing the borrower or any person in occupation thereof

by force, should the borrower or occupant refuse to surrender possession or resist such attempt? Assuming the answer to be in the negative, who

would be entitled to dispossess a borrower/an occupant from the secured asset and how?

45. It would not be inapt, at this stage, to read section 14 of the SARFAESI Act in its new avatar. Section 14, with the amendments in italics, for

facility of reference and decision is reproduced hereunder:

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.--(1) Where the

possession of any secured assets 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 assets, 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, and the Chief Metropolitan Magistrate or, as the case may

be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset 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-

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting

security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of Section 13, demanding payment of the

defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for

non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore,

entitled to take possession of the secured assets under the provisions of sub-section (4) of Section 13 read with Section 14 of the principal Act;

(ix) that the provisions of this 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:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate

or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,-

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate

may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary. (3) No act of the Chief

Metropolitan Magistrate or the District Magistrate (sic or) any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done

in pursuance of this section shall be called in question in any court or before any authority.

46. Earlier to the amendments effected in section 14, what was required of the CMM/DM upon receiving an application from a secured creditor

has been laid down in several decisions of the high courts of the country; I need not refer to all but two of them.

47. The first is the one reported in Trade Well, a Proprietorship firm and Mr. Suniel K. Mehta, Proprietor of Trade Well Vs. Indian Bank and The

State of Maharashtra, (2007) CriLJ 2544 : (2008) 81 SCL 173 . There, the High Court of Bombay was concerned with the question whether the

CMM/DM while dealing with the written request made by a secured creditor under section 14 of the SARFAESI Act is required to give notice to

the borrower or any other person, who may be in possession of the secured assets, and give him a hearing. After referring to Transcore (supra),

the Court answered the question in the negative and gave the following directions:

1. The bank or financial institution shall, before making an application under Section 14 of the NPA Act, verify and confirm that notice under

Section 13(2) of the NPA Act is given and that the secured asset falls within the jurisdiction of CMM/DM before whom application under Section

14 is made. The bank and financial institution shall also consider before approaching CMM/DM for an order under Section 14 of the NPA Act,

whether Section 31 of the NPA Act excludes the application of Sections 13 and 14 thereof to the case on hand.

2. CMM/DM acting under Section 14 of the NPA Act is not required to give notice either to the borrower or to the 3rd party.

3. He has to only verify from the bank or financial institution whether notice under Section 13(2) of the NPA Act is given or not and whether the

secured assets fall within his jurisdiction. There is no adjudication of any kind at that stage.

4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under Section 14 of the NPA Act by recording

that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under Section 14.

5. Remedy provided under Section 17 of the NPA Act is available to the borrower as well as the third party.

6. Remedy provided under Section 17 is an efficacious alternative remedy available to the third party as well as to the borrower where all

grievances can be raised.

7. In view of the fact that efficacious alternative remedy is available to the borrower as well as to the third party, ordinarily, writ petition under

Articles 226 and 227 of the Constitution of India should not be entertained.

8. In exceptional cases of gravest injustice, a writ petition could be entertained by this Court.

9. Great care and caution must be exercised while entertaining a writ petition because in a given case it may result in frustrating the object of the

NPA Act.

10. Even if a writ petition is entertained, as far as possible, the parties should be relegated to the remedy provided under Section 17 of the NPA

Act before the DRT by passing an interim order which will protect the secured assets. Adjudication and final order should be left to the DRT as far

as possible.

48. The other one is Mansa Synthetic Pvt. Ltd. (supra), cited by Mr. Sen, where the constitutional validity of section 14 was in question before the

Division Bench of the Gujarat High Court. While declaring section 14 intra vires, the Court had the occasion to observe as follows:

15.2. ***** 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.

15.3. ***** under the guise of acting under Section 14 of the Securitisation Act the Authority cannot be permitted to usurp statutory powers

vested in the Tribunal.

* * *

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.

* * *

15.10. Therefore, under section 14 of the Securitisation Act, Chief Metropolitan Magistrate or District Magistrate, as the case may be, is only

rendering assistance to the secured creditor in exercising the right given to the creditor under section 13(4) and remedy of the aggrieved party is to

file an appeal before the Debts Recovery Tribunal under section 17. It is clear that under Sub-sections (2), (3) and (4) of section 17 of the

Securitisation Act, the statute has provided a complete code, including the powers to the Tribunal to declare any of the measures taken by the

secured creditor under section 13(4) of the Securitisation Act invalid and consequential restoration of possession to the person from whom the

possession was taken. In the absence of any adjudicatory power vested in the Magistrate under section 14, the above authority cannot exercise

statutory powers vested in the Tribunal. *****

15.11. A reading of the statutory provisions would show that under Section 14 of the Act, the Magistrate is only rendering assistance to the

secured creditor in taking possession of the secured assets as provided under Section 13(4) of the Act. After 60 days'' notice as prescribed under

Section 13(2), secured creditor can approach the Magistrate for taking possession of the land. Reading Section 13(4) and Section 14 of the Act in

conjunction with each other makes it clear that the source of power to take possession of the secured assets of the borrower can be traced in

Section 13(4) of the Act and not under Section 14 of the Act, which has been indicated as an aid for execution of the decision taken by the

secured creditor to take possession of the secured assets or documents. In other words, the substantive provision entitling the secured creditor to

take possession of the secured assets is contained in Section 13(4) of the Act and Section 14 of the Act merely contains a provision to facilitate

the secured creditor for taking over possession without any impediment. *****

49. I agree with the views extracted above.

50. Right from the decision of the Supreme Court in Mardia Chemicals (supra), where the constitutionality of various provisions of the SARFAESI

Act were under challenge till the decision in V. Noble Kumar (supra), the law has clearly been laid down that the enactment in question envisages

enforcement of security interest created in favour of a secured creditor without the intervention of courts and tribunals and an adjudicatory process

qua the points raised by the borrower against the secured creditor taking possession of the secured asset could commence only after possession

were taken by the latter. Section 14 essentially being a method for taking possession, no adjudication of rival claims could be involved at that

stage. The parties have not disputed this position.

51. However, has the situation changed with the introduction of the amendments in section 14 or because of Harshad Govardhan Sondagar

(supra)? It would be my endeavour to find an answer by analysing section 14 at the outset.

52. If one reads the marginal note of section 14 first, it would appear that the same is relatable to assistance to be rendered by the CMM/DM to a

secured creditor in taking possession of a secured asset. The marginal note as in the original text of section 14 exists even after the amendment

thereof. I shall refer to some decisions of the Supreme Court at a later part of this judgment as to whether the "marginal note" of a section can be

referred to as an aid for interpreting the section, should any difficulty arise because of ambiguity.

53. An effort was made to find out what led to section 14 being amended but the statement of reasons and objects of the Enforcement of Security

Interest and Recovery of Debts Laws (Amendment) Bill, 2011, placed by Mr. Bhattacharya, shed no light insofar as the necessity to amend it is

concerned. Let me now venture to make an attempt to discern what led to such amendment. Protection to borrowers, as held in V. Noble Kumar

(supra), is definitely one of the reasons for introduction of the proviso requiring the authorised officer of a secured creditor to file an affidavit. That

the affidavit must touch upon the 9 (nine) points indicated in clauses (i) to (ix) of the first proviso and the satisfaction of the CMM/DM in regard to

the contents of such affidavit is condition precedent before passing suitable order, as ordained by the second proviso, is clearly intended to prevent

unscrupulous secured creditors wreaking havoc by applying under section 14 for taking possession of a particular property identifying it as a

secured asset, although there could be no warrant for so applying. V. Noble Kumar (supra), therefore, stresses on the need for examining the

factual correctness of the assertions made in the affidavit by the CMM/DM and not the legal niceties of the transaction. One other reason, to my

mind, is to promote accountability by insisting on an affidavit being filed by the authorised officer of the secured creditor in support of the prayer for

taking possession. If at any subsequent stage after passing of an order under section 14 the authorised officer is found to have filed a false affidavit,

he may be exposed to prosecution under section 340, Criminal Procedure Code. Permitting the CMM/DM to delegate the power of taking

possession of the secured asset seems to me to be the other reason for incorporating an additional sub-section, i.e. (1-A). Going by the language

of un-amended section 14, it would appear that the CMM/DM had to do the desk work and the field work as well for taking possession.

However, in these days of hectic activity in every sphere, it is indeed difficult for a public functionary to himself perform all the duties he is

privileged to perform and, therefore, has to take the aid of agents and delegates. Introduction of sub-section (1-A) allows the CMM/DM to

delegate the field work of taking possession in execution of the order passed under sub-section (1) of section 14 to a subordinate officer,

presumably to relieve the CMM/DM of the heavy pressure of judicial work/administrative work thereby leading to likely inconvenience in faithfully

carrying out the specified duty. Judicial interference in respect of pre-amended section 14 orders passed by the CMM/DM authorising the

authorised officers of secured creditors to take possession of the secured assets with the assistance of the local police, instead of the CMM/DM

himself taking possession in terms of the statutory mandate, is not uncommon. The last proviso to sub-section (1) is conceived to save applications

already filed before the CMM/DM before the introduction of the amendments from failing for want of an affidavit, although the language employed

therein bears clear reflection of the draftsman being inattentive. Sub-section (2) has been left untouched. Lastly, an amendment in sub-section (3)

has been effected, which is intended to save the officer authorised by the CMM/DM (to execute the order for taking possession) from being

proceeded against before any court or authority in respect of any act done by him in pursuance thereof. These being the nature of amendments, I

am inclined to the view that the entire sub-stratum of section 14 remains unchanged even after the amendments made therein.

54. It has been argued by Mr. Saha that the requirement to comply with natural justice has neither been expressly excluded nor excluded by

implication and, therefore, natural justice has to be read into section 14. It has also been contended that since the order of the CMM/DM under

section 14 for taking possession would visit a borrower with civil consequence, no such order can be made without complying with natural justice.

I am afraid, the contentions do not impress me at all. The scheme of the SARFAESI Act, as explained in Mardia Chemicals (supra), Transcore

(supra), V. Noble Kumar (supra) and other decisions, is that it is intended to facilitate quick recovery of secured debts without extending any

opportunity of hearing to a borrower and without judicial/quasi-judicial intervention till such time possession of the secured asset is taken by the

secured creditor after serving the requisite notices and responding to the objection/representation that may be lodged/preferred by the borrower

under section 13(3A). That Mardia Chemicals (supra) and Transcore (supra) are pre-section 14 amendment decisions, make no difference. There

is no fundamental change in the object and purposes of the SARFAESI Act even after the amendments. Since the need for a borrower to draw

legal assistance arises only after a demand notice under sub-section (2) is issued, it has been experienced in very many cases that sub-section (1)

of section 13, which is the harbinger of misfortune of recalcitrant borrowers, is completely overlooked by those representing them. The present

cases are not too different. Decision by a quasi-judicial authority (see section 17) upon compliance with natural justice stands deferred till such time

possession is taken. The SARFAESI Act does not remotely suggest compliance with natural justice at the stage when section 13(4) or 14

operates. Paragraph 36 of V. Noble Kumar (supra) explains that there are 3 (three) methods for taking possession of a secured asset. In view

thereof, section 14 cannot stand independent of sub-section 13(4). If a borrower has no right of hearing when the secured creditor takes

possession under section 13(4), a fortiori, no hearing can be demanded by a borrower when he succeeds in resisting possession being gained over

by the authorised officer of the secured creditor or does not on his own surrender possession, and thus compels him to work out his remedy by

seeking an order under section 14 from the CMM/DM. Only a post-possession right to approach the tribunal is conferred on a borrower in terms

of section 17, nothing more and nothing less.

55. One cannot lose sight of the fact that constitutionality of section 14 in its original form had been upheld in Mansa Synthetics Pvt. Ltd. (supra).

The legislature, however, felt the need to amend section 14, may be for reasons indicated by me in paragraph 53 supra. If it were the intention of

the legislature to extend opportunity of hearing to a borrower before the CMM/DM, it was free to do so. Advisedly, the legislature did not do so,

for, it would have militated against the scheme of the SARFAESI Act and more particularly section 13 thereof. It is implicit in the scheme of the

SARFAESI Act that natural justice only to a limited extent is available and not beyond what is expressly provided. There seems to be little merit in

the argument advanced by Mr. Saha and I hold that the language of section 14 is too clear and unambiguous, which does not admit of any

requirement of complying with natural justice by putting the borrower on notice while an application thereunder is under consideration.

56. Assuming that section 14 is not too clear and is ambiguous on the aspect of not excluding natural justice by implication, the marginal note may

be taken into consideration for the purpose of proper construction of section 14. That the CMM/DM does not discharge a quasi-judicial duty can

well be inferred because he is not supposed to decide any contentious point but is mandated to assist secured creditor in taking possession of

secured asset (emphasis supplied). Referring to the decision reported in Commissioner of Income Tax/excess Profits Tax, Bombay City Vs.

Bhogilal Laherchand, AIR 1954 SC 155 : (1954) 25 ITR 50 : (1954) 1 SCR 444 , it has been argued by Mr. Saha that marginal notes in an

Indian statute cannot be referred to for the purpose of construing the statute. However, reference was also made by him to the decisions reported

in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, AIR 1980 SC 2181 : (1980) LabIC 1218 : (1981) 1 LLJ 1 : (1981) 1 SCC

315 : (1981) 1 SCR 1083 and Tata Power Company Ltd. and Another Vs. Reliance Energy Ltd. and Others, (2009) 16 SCC 659 : (2009) 10

SCR 625 for the proposition that a marginal note is relevant only if the language of the statute is ambiguous.

57. The decision in Bhogilal Laherchand (supra) in paragraph 14 quoted a passage from the decision reported in 1950 SCR (CIT v. Ahmedbhai

Umerbhai & Co.). The Supreme Court noticed that the marginal note was changed so as not to confine applicability of the relevant section to non-

residents but also to residents. The decisions in Ahmedbhai Umerbhai (supra) and Bhogilal Laherchand (supra) do not lay down the law that a

marginal note can never be looked into, even in case of doubt or ambiguity.

58. That a marginal note can be considered as an aid for interpreting the section of an enactment has been repeatedly held by the Supreme Court

at least from the seventies of the last century. I shall now notice some other decisions of the Supreme Court that say with clarity that a marginal

note is relevant for interpreting a statute.

59. In the decision reported in Union of India (UOI) Vs. Shri Harbhajan Singh Dhillon, AIR 1972 SC 1061 : (1972) 83 ITR 582 : (1971) 2 SCC

779 : (1972) 2 SCR 33 , it has been held that a marginal note can serve as a guidance where there is ambiguity or doubt about the true meaning of

the provision.

60. The Supreme Court in the decision reported in Indian Aluminium Company Vs. Kerala State Electricity Board, AIR 1975 SC 1967 : (1975) 2

SCC 414 : (1976) 1 SCR 70 noted:

18. ***** It is true that the marginal note cannot afford any legitimate aid to a construction of a section, but it can certainly be relied upon as

indicating the drift of the section, or, to use the words of Collins M. R. in Bushell v. Hammond, (1904) 2 KB 563 ''to show what the section was

dealing with''.

61. Yet again, Hon''ble E.S. Venkataramaih, J. (as His Lordship then was) in the decision reported in S.P. Gupta Vs. President of India and

Others, AIR 1982 SC 149 : (1981) 1 SCC 87 Supp : (1982) 2 SCR 365 observed as follows:

1111. A reading of the passages and decisions referred to above leads to the view that the Court while construing a statute has to read both the

marginal notes and the body of its provisions. Whether the marginal notes would be useful to interpret the provisions and if so to what extent

depends upon the circumstances of each case. No settled principles applicable to all cases can be laid down in this fluctuating state of the law as to

the degree of importance to be attached to a marginal note in a statute. If the relevant provisions in the body of the statute firmly point towards a

construction which would conflict with the marginal note, the marginal note has to yield. If there is any ambiguity in the meaning of the provisions in

the body of the statute, the marginal note may be looked into as an aid to construction.

62. The same view has been reiterated in several subsequent decisions of the Supreme Court delivered in this century, viz. N.C. Dhoundial Vs.

Union of India (UOI) and Others, AIR 2004 SC 1272 : (2004) 97 CLT 790 : (2003) 10 SCALE 60 : (2004) 2 SCC 579 : (2003) 6 SCR 674

Supp : (2004) 1 UJ 746 : (2004) AIRSCW 126 : (2003) 8 Supreme 738 , Eastern Coalfields Ltd. Vs. Sanjay Transport Agency and Another,

(2009) 14 JT 79 : (2009) 8 SCALE 720 : (2009) 7 SCC 345 : (2009) 9 SCR 690 and Union of India (UOI) and Another Vs. National

Federation of the Blind and Others, (2013) 10 AD 613 : (2013) 139 FLR 811 : (2013) 13 JT 364 : (2013) LabIC 4447 : (2014) 2 LLN 19 :

(2013) 12 SCALE 588 : (2013) 10 SCC 772 : (2013) 4 SCT 807 : (2014) 1 SLJ 88 .

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.

64. I am inclined to the view that whichever way one sees section 14, either with or without the marginal note, there is no reason whatsoever for

not giving to the plain words of the section the meaning that on the face of it they bear.

65. Before concluding my discussion on the point, the observation made in paragraph 20 of V. Noble Kumar (supra) that the ""Parliament under

Section 14 also provided for seeking the assistance of the judicial power of the State for obtaining possession of the secured asset"" ought to be

considered.

66. At the dawn of the Constitution, the Supreme Court was considering what is meant by a ""court"". The Constitution Bench in its decision

reported in The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees'' Union, Delhi, AIR 1950

SC 188 : (1950) 1 LLJ 921 : (1950) 1 SCR 459 ruled that before a person or persons can be said to constitute a ""court"", it must be held that they

derive their powers from the State and are exercising the judicial powers of the State.

67. First, what constitutes the ''judicial power of the State needs to be understood. I can do no better but refer to two other Constitution Bench

decisions of the Supreme Court.

68. In the decision reported in Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, AIR 1965 SC 1595 : (1965) 11 FLR 77 :

(1965) 1 LLJ 433 : (1965) 2 SCR 366 , the principal point of law which arose in the civil appeal by special leave was whether the State of

Punjab, respondent No. 2, exercising its appellate jurisdiction under Rule 6(6) of the Punjab Welfare Officers Recruitment and Conditions of

Service Rules, 1952 was a tribunal within the meaning of Article 136(1) of the Constitution. It was held as follows:

8. In every State there are administrative bodies or authorities which are required to deal with matters within their jurisdiction in an administrative

manner and their decisions are described as administrative decisions. In reaching their administrative decisions, administrative bodies can and often

do take into consideration questions of policy. It is not unlikely that even in this process of reaching administrative decisions, the administrative

bodies of authorities are required to act fairly and objectively and would in many cases have to follow the principles of natural justice; but the

authority to reach decisions conferred on such administrative bodies is clearly distinct and separate from the judicial power conferred on Courts,

and the decisions pronounced by administrative bodies are similarly distinct and separate in character from judicial decisions pronounced by

Courts.

9. *** As in the case of Courts, so in the case of tribunals, it is the State''s inherent judicial power which has been transferred and by virtue of the

said power, it is the State''s inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes

of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the Courts established by the

Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions

to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even

expedient to attempt to describe exhaustively the features which are common to the tribunals and the Courts, and features which are distinct and

separate. The basis and the fundamental feature which is common to both the Courts and the tribunals is that they discharge judicial functions and

exercise judicial powers which inherently vest in a sovereign State.

69. The other decision is reported in Kihoto Hollohan Vs. Zachillhu and Others, (1992) 2 SCC 651 Supp , wherein it was observed :

99. Where there is a lis - an affirmation by one party and denial by another - and the dispute necessarily involves a decision on the rights and

obligations of the parties to it and the authority is called upon to decide it, there is an exercise of judicial power. ***

70. Reference in this connection may also be made to the decision reported in Management Committee of Montfort Senior Secondary School Vs.

Shri Vijay Kumar and Others, AIR 2005 SC 3549 : (2005) 3 ARBLR 243 : (2006) 108 FLR 222 : (2005) 8 JT 279 : (2005) 7 SCC 472 :

(2005) SCC(L&S) 966 : (2005) 3 SCR 137 Supp : (2006) 1 SLJ 153 : (2005) AIRSCW 4724 : (2005) 6 Supreme 507 where meaning

assigned to the words "judicial", "judicial power" and "judicial authority" in certain foreign decisions and legal dictionaries were noticed. The

relevant passage is quoted below :

14. In Regina John M''Evoy v. Dublin Corporation (1878) 2 LR Ir 371 (D) it was observed as under :

The term ''judicial'' does not necessarily mean acts of a judge or legal tribunal sitting for the determination of matters of law, but for the purpose of

this question a judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances and imposing liability or

affecting the rights of others.

15. In Huddart Parker and Co. v. Moorehead (1909) 8 CLR 330 (E) judicial powers were defined as under :--

The words ''judicial power'' as used in section 71 of the Constitution mean the power which every sovereign authority must of necessity have to

decide controversies between its subjects or between itself and its subjects whether the rights relate to life, liberty or property. The exercise of this

power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called

upon to take action.

In Rex v. London County Council (1931) 2 KB 215 (F) judicial authority was defined as under :--

It is not necessary that it should be a Court in the sense in which this Court is a court; it is enough if it is exercising, after hearing evidence, judicial

functions in the sense that it has to decide on evidence between a proposal and an opposition and it is not necessary to be strictly a Court.

In Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson (1892 (1) QB 431) dealing with the meaning of the word "judicial"

it was observed as under :

The word ''judicial'' has two meanings. It may refer to the discharge of duties exercisable by a Judge or by Justices in Court or to administrative

duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind, that is, a mind to determine

what is fair and just in respect of the matters under consideration.

16. Reference to expressions ''judicial'', and ''judicial power'' as detailed in Advanced Law Lexicon by P. Ramanath Aiyar, 3rd Edition, 2005 (at

pages 2512 and 2518) would be appropriate :

Judicial : Belonging to a cause, trial or judgment; belonging to or emanating from a judge as such; the authority vested in a judge. (Bouvier L.

Dict.); of, or belonging to a Court of justice; of or pertaining to a judge; pertaining to the administration of justice, proper to a Court of law.

The word ''judicial'' is used in two senses. The first to designate such bodies or officers ''as have the power of adjudication upon the rights of

persons and property. In the other class of cases it is used to express an act of the mind or judgment upon a proposed course of official action as

to an object of corporate power, for the consequences of which the official will not be liable, although his act was not well judged. (See Royal

Aquarium v. Parkinson, (1892) 1 QB 431).

Judicial Power : The power to decide cases and controversies (Craig R. Ducat - Constitutional Interpretation).

In ""Words and Phrases - Legally Defined"" by John B. Saunders, Volume 3, at page 113, ''Judicial Power'' has been defined :

''If a body which has power to give a binding and authoritative decision is able to take action so as to enforce that decision, then but only by then,

according to the definition quoted, all the attributes of judicial power are plainly present."

''Judicial power'' as defined by Chief Justice Griffith in Huddart Parker and Co. v. Moorehead (1909) 8 CLR 330 at 357 approved by the Privy

Council in Shell Company of Australia v. Federal Commr. of Taxation, (1931) AC 275 at p. 283 means the power which every sovereign

authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life,

liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision

(whether subject to appeal or not) is called upon to take action.

The authority to determine the rights of persons or property by arbitrating between adversaries in specific controversies at the instance of a party

thereto; the authority vested in some Court, officer, or person to hear and determine when the rights of persons or property or the propriety of

doing an act is the subject-matter of adjudication. (Grider v. Tally 54, Am Rep 65).

A judge exercises "judicial powers'' not only when he is deciding suits between parties, but also when he exercises disciplinary powers which are

properly appurtenant to the office of a judge. (A.G. of Gambia v. N'' Jie, 1961 AC 617).

71. My understanding of the law is that the judicial power of the State for administration of justice to its subjects can exclusively be vested in courts

or tribunals, which necessarily have to decide disputes between parties that are brought before it according to accepted norms of judicial

procedure. That a true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites: (1) The

presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the

ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of

the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision

which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including

where required a ruling upon any disputed question of law, seems to have been accepted by the Supreme Court itself in Bharat Bank (supra).

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.

73. In view of the above conclusions, I regret my inability to be ad idem with Mr. Saha, Mr. Sen and the other learned advocates to read natural

justice in section 14.

74. Harshad Govardhan Sondagar (supra) being the sheet anchor of the arguments in support of the necessity of reading natural justice in section

14 would fall for consideration next.

75. The principal questions of law that arose for consideration in Harshad Govardhan Sondagar (supra) are required to be noted. They are:

(i) whether the provisions of the SARFAESI Act have in any way affected the right of a lessee to remain in possession of the secured asset during

the period of a lease ? (paragraph 15).

(ii) whether the provisions of the SARFAESI Act have the effect of terminating these valid leases made by the borrower or the mortgagor made in

accordance with the provisions of the Transfer of Property Act? (paragraph 18).

(iii) what is the nature of the right of the lessee and as to when the lease under the Transfer of Property Act gets determined? (paragraph 22).

(iv) whether section 14 of the SARFAESI Act confers any power on the CMM/DM to assist the secured creditor in taking possession of the

secured asset which is in lawful possession of the lessee under a valid lease? (paragraph 23).

(v) what are the remedies available to the lessee where he is threatened to be dispossessed by any action taken by the secured creditor under

Section 13 of the SARFAESI Act? (paragraph 27).

(vi) whether a lessee has any remedy by way of an appeal under Section 17 of the SARFAESI Act when the secured creditor attempts to take

over possession of the secured asset which is in possession of the lessee? (paragraph 30).

(vii) whether the tenants have remedies under the tenancy law concerned? (paragraph 35).

76. Proceeding to answer the first four questions of law and the last one set out above, the Supreme Court held that where the lawful possession of

the secured asset is not with the borrower, but with the lessee under a valid lease, such lessee has a right to enjoy the property and this right is a

right to property which cannot be taken away without the authority of law as provided in Article 300-A of the Constitution. It was further held that

since there is no mention in sub-section (4) of section 13 of the SARFAESI Act that a lease made by the borrower in favour of a lessee will stand

determined on the secured creditor deciding to take any of the measures mentioned in section 13 thereof, so long as a lease of an immovable

property does not get determined, the possession of the lessee is lawful and such lawful possession of a lessee has to be protected by all courts

and tribunals. The Court further held that possession of the secured asset from a lessee in lawful possession under a valid lease is not required to

be taken under the provisions of the SARFAESI Act and the CMM/DM does not have any power under section 14 of the SARFAESI Act to

take possession of the secured asset from such a lessee and hand over the same to the secured creditor, and that when a secured creditor moves

the CMM/DM for assistance to take possession of the secured asset, he must state in the affidavit accompanying the application that the secured

asset is not in possession of a lessee under the valid lease made prior to creation of the mortgage by the borrower or made in accordance with

section 65-A of the Transfer of Property Act (hereafter the TP Act) prior to receipt of a notice under sub-section (2) of section 13 of the

SARFAESI Act by the borrower. It was also held that in view of section 34 of the SARFAESI Act, recourse to civil courts would not be

available.

77. Question (v) was answered by the Court by holding as follows:

28. A reading of sub-rules (1) and (2) of Rule 8 of the Security Interest (Enforcement) Rules, 2002 would show that the possession notice will

have to be affixed on the outer door or at the conspicuous place of the property and also published, as soon as possible but in any case not later

than seven days from the date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that

locality, by the authorised officer. At this stage, the lessee of an immovable property will have notice of the secured creditor making efforts to take

possession of the secured assets of the borrower. When, therefore, a lessee becomes aware of the possession being taken by the secured creditor,

in respect of the secured asset in respect of which he is the lessee, from the possession notice which is delivered, affixed or published in sub-rule

(1) and sub-rule (2) of Rule 8 of the Security Interest (Enforcement) Rules, 2002, he may either surrender possession or resist the attempt of the

secured creditor to take the possession of the secured asset by producing before the authorised officer proof that he was inducted as a lessee prior

to the creation of the mortgage or that he was a lessee under the mortgagor in accordance with the provisions of Section 65-A of the Transfer of

Property Act and that the lease does not stand determined in accordance with Section 111 of the Transfer of Property Act. If the lessee

surrenders possession, the lease, even if valid, gets determined in accordance with clause (f) of Section 111 of the Transfer of Property Act, but if

he resists the attempt of the secured creditor to take possession, the authorised officer cannot evict the lessee by force but has to file an application

before the Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the SARFAESI Act and state in the affidavit

accompanying the application, the name and address of the person claiming to be the lessee. When such an application is filed, the Chief

Metropolitan Magistrate or the District Magistrate will have to give a notice and give an opportunity of hearing to the person claiming to be the

lessee as well as to the secured creditor, consistent with the principles of natural justice, and then take a decision. If the Chief Metropolitan

Magistrate or the District Magistrate is satisfied that there is a valid lease created before the mortgage or there is a valid lease created after the

mortgage in accordance with the requirements of Section 65-A of the Transfer of Property Act and that the lease has not been determined in

accordance with the provisions of Section 111 of the Transfer of Property Act, he cannot pass an order for delivering possession of the secured

asset to the secured creditor. But in case he comes to the conclusion that there is in fact no valid lease made either before creation of the mortgage

or after creation of the mortgage satisfying the requirements of Section 65-A of the Transfer of Property Act or that even though there was a valid

lease, the lease stands determined in accordance with Section 111 of the Transfer of Property Act, he can pass an order for delivering possession

of the secured asset to the secured creditor.

29. Sub-section (3) of Section 14 of the SARFAESI Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate or

any officer authorised by the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of Section 14 shall be called in question in

any court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the Chief Metropolitan Magistrate or the

District Magistrate and this decision cannot be challenged before any court or any authority. But this Court has repeatedly held that statutory

provisions attaching finality to the decision of an authority excluding the power of any other authority or court to examine such a decision will not be

a bar for the High Court or this Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away a power

vested by the Constitution. .....

In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under

Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the

Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled principles of law.

78. Insofar as question (vi) is concerned, the Court held that:

32. When we read sub-section (1) of Section 17 of the SARFAESI Act, we find that under the said sub-section "any person (including

borrower)", aggrieved by any of the measures referred to in Sub-section (4) of Section 13 taken by the secured creditor or his authorised officer

under the chapter, may apply to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which such

measures had been taken. We agree with Mr. Vikas Singh that the words "any person" are wide enough to include a lessee also. It is also possible

to take a view that within 45 days from the date on which a possession notice is delivered or affixed or published under sub-rules (1) and (2) of

Rule 8 of the Security Interest (Enforcement) Rules, 2002, a lessee may file an application before the Debts Recovery Tribunal having jurisdiction

in the matter for restoration of possession in case he is dispossessed of the secured asset. But when we read sub-section (3) of Section 17 of the

SARFAESI Act, we find that the Debts Recovery Tribunal has powers to restore possession of the secured asset to the borrower only and not to

any person such as a lessee. Hence, even if the Debts Recovery Tribunal comes to the conclusion that any of the measures referred to in sub-

section (4) of Section 13 taken by the secured creditor are not in accordance with the provisions of the Act, it cannot restore possession of the

secured asset to the lessee. Where, therefore, the Debts Recovery Tribunal considers the application of the lessee and comes to the conclusion

that the lease in favour of the lessee was made prior to the creation of mortgage or the lease though made after the creation of mortgage is in

accordance with the requirements of Section 65-A of the Transfer of Property Act and the lease was valid and binding on the mortgagee and the

lease is yet to be determined, the Debts Recovery Tribunal will not have the power to restore possession of the secured asset to the lessee. In our

considered opinion, therefore, there is no remedy available under Section 17 of the SARFAESI Act to the lessee to protect his lawful possession

under a valid lease.

79. Before proceeding further, section 34 of the SARFAESI Act may be considered. It ordains that :

34. Civil court not to have jurisdiction.-No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a

Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court

or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of

Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

80. What the Supreme Court in Mardia Chemicals (supra) held on the limited extent of the civil courts jurisdiction for receiving suits, may now be

noticed. Paragraph 51 thereof reads as follows :

51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is

alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent

the scope is permissible to bring an action in the civil court in the cases of English mortgages.***

81. One must remember that Harshad Govardhan Sondagar (supra) found that there is no remedy available under section 17 of the SARFAESI

Act to the lessee to protect his lawful possession under a valid lease. The remedy available under section 17 of the SARFAESI Act, thus, has to

be regarded illusory for pre-mortgage lessees for the reason that even though sufficient ground may have been made out for the tribunal to direct

restoration of possession of the secured asset, such restoration could only be in favour of the borrower and not anyone else.

82. If the grievance that such a pre-mortgage lessee brings before the tribunal under section 17 is not capable of being determined by it, is the

remedy by way of a suit barred insofar as the lessee is concerned? Considering the language of section 34 read with sub-section (3) of section 17

together with paragraph 51 of Mardia Chemicals (supra), I am inclined to the opinion that a suit instituted by such a lessee against a secured

creditor seeking to dispossess the former may not be totally barred.

83. The decision in Harshad Govardhan Sondagar (supra) no doubt bears reflection of a new line of judicial thought while dealing with the

SARFAESI Act, hitherto obscure and unexplored. Reading natural justice in section 14 of the SARFAESI Act and requiring the CMM/DM to

decide rights of parties is indeed a significant development of law, which has to be taken note of by all Courts in view of Article 141 of the

Constitution. However, the decision does throw up certain questions (which need not be dilated here) that I perceive may require answers sooner

or later by the Supreme Court itself.

84. Be that as it may, it has been laid down in umpteen number of Supreme Court decisions that a decision is an authority for what it decides and

not what can logically be deduced therefrom, and also that an additional or different fact may make a world of difference between conclusions in

two cases even when the same principles are applied in each to similar facts.

85. I had the occasion to consider Harshad Govardhan Sondagar (supra) in M/s. Vision Comptech Integrators Ltd. (supra) and was of the opinion

that:

15. To protect a bona fide lessee or tenant from being drowned in a situation of no remedy being available under the Act, the Supreme Court in

Harshad Govardhan Sondagar (supra) has even read the requirement of complying with natural justice in Section 14 of the Act before an order is

made by the relevant magistrate. The effect is that what was otherwise a non-adjudicatory process would now partake the character of a quasi-

judicial proceeding.

This observation does not, in fact, aid the borrowers. The question that arose for decision there was whether a section 17 application at the

instance of a borrower would lie before he lost possession of the secured asset. Paragraph 15 is not the ratio of the decision but in the nature of a

passing observation considering Harshad Govardhan Sondagar (supra) which, as observed above, read natural justice in section 14. However,

there can be no doubt that the decision in Harshad Govardhan Sondagar (supra) turns on its facts and has no application when the person

aggrieved is someone who is either not a pre-mortgage lessee or a lessee to whom section 65-A of the TP Act applies.

86. Here, I am not concerned with any claim raised by a lessee who is in possession of a secured asset in pursuance of a lease of the nature that

fell for consideration in Harshad Govardhan Sondagar (supra). The law laid down therein while dealing with the case of a lessee can hardly apply

in case of a borrower in possession of the mortgaged property or a tenant/purchaser of a mortgaged property after creation of mortgage. Most

importantly, I have not found any declaration of law in such decision that in every case while the CMM/DM is in seisin of a section 14 application,

the borrower or the person in possession of a secured asset has to be put on notice.

87. Concurring with the relevant observations in Kamal Jajoo (supra) and K. Arockiyaraj (supra), the first question formulated above in paragraph

43 supra, accordingly, is answered in the negative.

88. Turning attention to the second question, one needs to read sub-section (3) of section 14 of the SARFAESI Act carefully. It says ""no act ...

done in pursuance of this section shall be called in question ...". The question that is to be addressed is, does ""act"" employed in sub-section (3) of

section 14 include (i) ""suitable orders for the purpose of taking possession of the secured assets"" passed under sub-section (1), or (ii) the

authorisation made by the CMM/DM under section (1-A), or (iii) the ""steps"" and/or ""force"" employed in sub-section (2), or (iv) any one/two or all

of them?

89. The word ""act"" taking within its fold all the three situations, would flow from a literal reading of section 14. If indeed that is the correct

approach, no order for taking possession passed by the CMM/DM could be challenged in an application under section 17 before the specified

forum. However, holding an order for taking possession under section 14 as not amenable to challenge under section 17 would run contrary to the

law laid down in the decisions in Kanaiyalal Lalchand Sachdev (supra) and V. Noble Kumar (supra).

90. In Kanaiyalal Lalchand Sachdev (supra), a contention was raised on behalf of the borrower that the High Court had erred in equating action

under section 13 with action under section 14 of the SARFAESI Act. Repelling such contention and agreeing with the enunciation of law in the

decision reported in Authorized Officer, Indian Overseas Bank and Another Vs. Ashok Saw Mill, AIR 2009 SC 2420 : (2011) 162 CompCas

324 : (2009) 4 CompLJ 433 : (2009) 9 JT 491 : (2009) 8 SCC 366 : (2009) 94 SCL 73 : (2009) 11 SCR 1599 : (2009) 7 UJ 3168 : (2009)

AIRSCW 4949 , it was held by the Court as follows:

22. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act

constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus,

the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by

providing for an appeal before the DRT.

91. In V. Noble Kumar (supra) too, similar view has been expressed. Paragraph 27 reads as follows:

27. The "appeal" under Section 17 is available to the borrower against any measure taken under Section 13(4). Taking possession of the secured

asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and

conditions of the security agreement, measures other than taking the possession of the secured asset are possible under Section 13(4). Alienating

the asset either by lease or sale, etc. and appointing a person to manage the secured asset are some of those possible measures. On the other

hand, Section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to

the borrower (sic the secured creditor). Therefore, the borrower is always entitled to prefer an "appeal" under Section 17 after the possession of

the secured asset is handed over to the secured creditor. Section 13(4)(a) declares that the secured creditor may take possession of the secured

assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under

Section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under

Section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under

Section 17 is available.

92. Kanaiyalal Lalchand Sachdev (supra) and V. Noble Kumar (supra) are authorities for the proposition that an order under section 14 of the

SARFAESI Act is open to challenge under section 17. There can be no warrant for an assumption that the Supreme Court in deciding the relevant

civil appeals did not notice sub-section (3) of section 14. It does, however, appear from Harshad Govardhan Sondagar (supra) that the parties did

not place either Kanaiyalal Lalchand Sachdev (supra) or V. Noble Kumar (supra) before the Court for its consideration.

93. My plain and literal reading of sub-section (3) i.e. an order passed under Sub-section (1) is also included in the verb ""act"", produces an absurd

result and looking to the object that the SARFAESI Act seeks to achieve, a contextual and purposive rather than a strict literal approach to

interpretation is necessary and ought to be adopted while reading section 14. After all, it is the context in which the words are used that is of

significance and relevance for deciding an issue. One cannot lose sight of the law authorising the CMM/DM to make a choice of the subordinate

officer to whom the power of taking possession may be delegated, as well as the choice of the CMM/DM or the officer authorised to take such

steps"" or to employ such ""force"" as may be considered necessary on facts and in the circumstances for taking possession. The phrase ""in

pursuance of"" in Sub-section (3) assumes significance here. The dictionary meaning of the word ""pursuance"", which follows from the verb ""pursue"",

is ''carrying out or following out'' (see Chambers Dictionary). To my mind, what it suggests is that any act aimed at taking possession [either in

terms of section 14(1-A) or section 14(2)] in pursuance of an order passed under section 14(1) would not be open to challenge except before the

High Court under Article 226 or before the Supreme Court under Article 32. The CMM/DM has been given absolute discretion to choose his

subordinate officer, who would execute the order and take possession of the secured asset. In terms of sub-section (2), the CMM/DM is also

authorised to take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be considered necessary. Take

an instance, where even after an order under section 14(1) is passed the resistance put up by the borrower turns the situation violent and user of

force to maintain orderliness and to take possession of the secured asset leads to some casualty. Can the steps/force taken/used by the officer

authorised by the CMM/DM be challenged before any ordinary court/tribunal? I am of the considered opinion that sub-section (3) of section 14

should be read as intending to provide protection to persons acting in good faith to give effect to an order passed under sub-section (1) without

their (reasonable) action being amenable to challenge before any court/tribunal, except the Supreme Court/High Court, and can never be read as

foreclosing a challenge to such order, on merits, before the specified forum under section 17.

94. The decisions in IDBI Bank Limited (supra) and in Mansa Synthetics Pvt. Ltd., proceeding to lay down the law that an order under section

14(1) of the SARFAESI Act is not amenable to a challenge under section 17 thereof by a borrower, are contrary to what have been laid down in

Kanaiyalal Lalchand Sachdev (supra) and V. Noble Kumar (supra) and I respectfully differ with the said decisions of the Gujarat High Court.

95. The second question in paragraph 43 is, accordingly, answered by holding that an order under sub-section (1) of section 14 granting assistance

to the secured creditor can be challenged before the relevant tribunal under section 17 of the SARFAESI Act in accordance with law.

96. A side question that emerges is, what is the remedy available to a secured creditor if its application under section 14 stands rejected? The plain

language of section 17 of the SARFAESI Act does not permit a secured creditor to approach the relevant tribunal thereunder. Such an order of

rejection, necessarily, is open to judicial review under Article 226 of the Constitution not because of sub-section (3) of section 14 but because of

the reason in the preceding sentence.

97. Moving on to answer the other question noted in paragraph 44 supra, I have been shown Prakash Kaur (supra) by Mr. Saha. The said

decision, apart from not arising out of securitisation proceedings, does not lay down any law upon considering arguments from the parties having

the effect of a binding precedent. It would appear that the suggestion of the learned senior counsel for the appellant for a compromise was

considered and the civil appeal disposed of with certain directions in furtherance of such suggestion. The observation that banks cannot employ

goondas for taking possession by force was not made upon a finding that goondas had in fact been employed by the appellant. It is trite that a

decision on any point that has not been argued does not constitute a binding precedent. I would have certainly kept Prakash Kaur (supra) out of

my consideration but for the subsequent decisions of the Supreme Court and the guidelines issued by the RBI following the observations made

therein, which have been placed before me by Mr. Rai.

98. None has disputed that the RBI guidelines are binding on the banks. In terms of such guidelines, a borrower/occupant cannot be made to lose

possession by extra-legal means. That is the easy way of answering the question. However, I propose to answer the question bearing in mind the

provisions of the SARFAESI Act.

99. V. Noble Kumar (supra) in paragraph 36 has delineated how possession of a secured asset could be taken by a secured creditor. Apart from

the requirement of preparation of notice in Appendix IV, affixation thereof and publication in newspapers, the Rules provide no guidelines

regarding the procedure for taking possession. Therefore, section 13 and section 14 are the only relevant sections. It is noteworthy that while sub-

section (2) of section 14 permits the CMM/DM to take or cause to be taken such steps and use or cause to be used such force as may, in his

opinion, be necessary, sub-section (4) of section 13 or any other subsection thereof does not authorise a secured creditor to barge into the

secured asset for taking its possession by force. I am reminded of the maxim expressio unius est exclusio alterius, meaning whatever has not been

included has by implication been excluded. From this is derived the subsidiary rule that an expressly laid down mode of doing something

necessarily prohibits doing of that thing in any other manner. If any authority is required, one may readily refer to the decision reported in Smt.

Indira Nehru Gandhi Vs. Shri Raj Narain and Another, AIR 1975 SC 2299 : (1975) SCC 1 Supp : (1976) 2 SCR 347 . It is thus plain and clear

that a secured creditor is not authorised to exert force while taking possession and that is left only to the CMM/DM, as the case may be, in the

sound exercise of his discretion under sub-section (2) of section 14. Sundaram BNP Paribas Home Finance Ltd. (supra) expresses the same view.

If on a request made by the authorised officer to vacate the secured asset the borrower or any person in occupation thereof does not voluntarily

surrender possession, the secured creditor would have no other option but to seek the assistance of the CMM/DM under section 14 in the manner

prescribed.

100. The third question, thus, also stands answered.

101. Bearing in mind the conclusions that have been reached, I shall now proceed to deal with the individual writ petitions.

W.P. 11828(W) of 2015 and W.P. 12210(W) of 2015

102. These two writ petitions are considered together since both relate to the same secured asset, of which possession has been taken by the

authorised officer of the secured creditor (United Bank of India, Kolkata Branch).

103. In W.P. No. 11828(W) of 2015 dated June 9, 2015 (hereafter the former writ petition) filed by Jawahar Singh (hereafter Jawahar), an order

dated January 22, 2015 issued by the District Magistrate, 24 Parganas (South) is under challenge basically on the ground that the application under

section 14 of the SARFAESI Act having been filed sometime in 2014, the order of the district magistrate ought to have recorded his satisfaction in

respect of the contents of the affidavit filed by the secured creditor which is conspicuous by its absence; hence, there has been an error of

jurisdiction resulting in grave miscarriage of justice warranting correction in judicial review.

104. It is the admitted case of Jawahar that he has been dispossessed from the secured asset, which is a residential flat on the 1st floor of a multi-

storied building named ''Haripriya'', within P.S. Kasba, District 24 Parganas (South).

105. There is no indication in the former writ petition of the secured asset having been transferred in favour of any third party. The impression that

one derives on reading thereof is that possession of the flat (secured asset) was with Jawahar and that on the basis of the order impugned dated

January 22, 2015 passed by the District Magistrate, 24 Parganas (South), Jawahar was forcefully dispossessed and the flat put under lock and

key.

106. This writ petition cannot be considered in isolation without looking into W.P. 12210(W) of 2015 dated June 16, 2015 (hereafter the latter

writ petition) presented by Amar Nath Shaw (hereafter Amar).

107. Amar claims to have purchased from Jawahar by a registered deed of conveyance dated December 15, 2011 the flat, of which possession

was taken by the secured creditor in terms of the order dated January 22, 2015 passed by the District Magistrate, 24 Parganas (South) impugned

in the former writ petition. It is the further claim of Amar that after such purchase, his name has been mutated in the records of the Kolkata

Municipal Corporation and that he has also been paying property tax in respect of such flat. It has also been claimed in paragraph 7 of the latter

writ petition that while Amar was away from the flat on May 18, 2015, the secured creditor removed the padlock put by Amar on the main door

and replaced the same by another padlock and since then Amar has been forced to stay away from his flat.

108. Having contacted Jawahar, he advanced excuses regarding the loan taken by him from the bank and Amar was shocked and traumatised

because he had invested all his savings for purchase of the flat. Claiming himself to be a bona fide purchaser of the flat for valuable consideration

and contending that he was not a party to the transaction between his vendor and the United Bank of India, and that the order passed by the

district magistrate on the application under section 14 of the SARFAESI Act is not binding on him, a prayer has been made by Amar for

restoration of possession.

109. It is clear from the demand notice dated January 15, 2014 issued by the bank under section 13(2) of the SARFAESI Act to Jawahar that the

account had been classified as non-performing asset on June 30, 2011 whereas the deed of conveyance between the vendor (Jawahar) and the

purchaser (Amar) was executed on December 15, 2011. If at all, Amar is a purchaser of mortgaged property.

110. Jawahar, it appears, had approached this Court earlier by challenging the action of the bank to take recourse to section 13 on the ground that

no mortgage had been created in respect of the secured asset by deposit of title deed. His challenge before the trial judge proved unsuccessful. An

Hon''ble Division Bench of this Court by its order dated September 9, 2014 while refusing to interfere with the order passed by the learned trial

judge dated August 25, 2014, noted that the bank''s attempt to sell off the secured asset did not prove fruitful. While granting liberty to the bank to

proceed in accordance with law for selling the flat in question for recovering its dues by fresh auction, Jawahar was also granted the liberty to

approach the appropriate forum if he felt aggrieved by such auction to be conducted by the bank.

111. Jawahar has now filed the former writ petition challenging the order dated January 22, 2015, which is definitely a new cause of action.

However, having regard to the fact that the earlier challenge to the section 13 action at his instance had failed and the Hon''ble Division Bench

having granted him liberty to approach the appropriate forum after auction, no writ petition for any action taken at the intermediate stage before

auction would be maintainable. If a writ petition at this stage is entertained, that would in effect be contrary to the order of the Hon''ble Division

Bench. The remedy of Jawahar lies in approaching the appropriate forum, i.e. the tribunal under section 17 of the Act, against the order dated

January 22, 2015, in accordance with the order of the Hon''ble Division Bench as well as according to law. No case for interference has thus been

set up by Jawahar. W.P. No. 11828(W) of 2015 stands dismissed, without order for costs.

112. Insofar as the latter writ petition is concerned, Amar is not entitled to any relief for restoration of possession as claimed by him. Admittedly,

he is not a pre-mortgage lessee/tenant but is the purchaser of a property which was mortgaged by his vendor before the subject sale transaction. It

may be so that the vendor suppressed the fact of creation of mortgage but any purported defect in the order of the district magistrate cannot lead

to an order setting it aside on consideration of the latter writ petition. Surprisingly, although the order dated January 22, 2015 is part of the

annexures to the latter writ petition, no challenge thereto has been levelled by Amar. As and when the bank availing the liberty granted by the

Hon"ble Division Bench issues fresh sale notice, Amar shall be at liberty to pursue his remedy in accordance with law.

113. W.P. No. 12210(W) of 2015 stands disposed of, without order for costs.

W.P. 11993(W) of 2015

114. The order passed by the District Magistrate, 24 Parganas (North) dated March 20, 2015, on an application filed by the authorised officer of

State Bank of India, Nimpith Branch under section 14 of the SARFAESI Act is under challenge in this writ petition dated June 2, 2015, presented

on June 10 2015. Referring to the affidavit that was filed by the authorised officer and recording his satisfaction in regard to its contents, the district

magistrate proceeded to direct the Commissioner of Police, Barrackpore, North 24 Parganas to provide police assistance to the secured creditors

for taking possession of the secured asset.

115. It is pertinent to note that the borrower is one M/s. Aaron Sea Foods Pvt. Ltd. of which Purna Chandra Giri (since deceased) was one of the

directors. The three petitioners claim to be his son, widow and daughter. The secured asset appears to be an immovable property being land

measuring 3 cottahs 5 chittacks 19 sq. ft. within P.S. Khardah in the District of 24 Parganas (North).

116. The order impugned has been challenged basically on the ground that the same is cryptic and without reasons.

117. The order impugned refers to the affidavit that was filed by the authorised officer, Nimpith Branch and the requisite satisfaction of the district

magistrate in regard to its contents. The district magistrate cannot be assumed to have recorded such satisfaction mechanically; he was not required

to write a detailed order in respect of such satisfaction. Only the factual correctness of the affidavit was required to be examined, which to some

extent is reflected in the impugned order.

118. I do not see any reason to interfere at this stage. As and when possession is taken in terms of the order under section 14, the petitioners shall

be at liberty to approach the tribunal under section 17 of the SARFAESI Act in accordance with law. If approached, the tribunal shall be at liberty

to examine the matter in depth and to ascertain whether a case for exercise of power under sections 13 and 14 had indeed been set up or not and

further as to whether taking of possession by the authorised officer of the secured creditor has resulted in any grave miscarriage of justice or not.

119. W.P. 11993(W) of 2015 stands dismissed without costs. Interim order, if any, stands vacated.

120. Needless to observe, dismissal of this writ petition shall not influence the tribunal, if approached, in any manner whatsoever.

W.P. 11787(W) of 2015

121. Challenge in this writ petition dated June 8, 2015 is to an order dated February 2, 2015 passed by the Chief Metropolitan Magistrate,

Calcutta on an application under section 14 of the SARFAESI Act filed by Andhra Bank. The order impugned is not annexed to the writ petition;

however, the same has been produced by Mr. Mantha appearing for the bank and has been taken on record. It is revealed therefrom that the bank

was permitted to take physical possession of the secured asset i.e. a flat in the building ""Shyam Kunj"" at 12/C, Lord Sinha Road, P.S.

Shakespeare Sarani, Kolkata with police help, if necessary.

122. The point that has been raised on behalf of the petitioner is that there was no affidavit before the Chief Metropolitan Magistrate, Calcutta filed

in terms of the first proviso to section 14. The other point is that the demand notice issued under section 13(2) of the Act had been waived by the

bank.

123. Mr. Mantha contended that an affidavit had been filed in terms of the statutory mandate. I need not examine the point, since it is not in dispute

that the impugned order has been implemented by taking possession of the secured asset on May 20, 2015. In my view, since possession has

already been taken in pursuance of the impugned order, remedy of the petitioner lies in questioning such order before the tribunal under section 17

in terms of the observations made above. W.P. 11787 (W) of 2015 is not entertained and it stands disposed of, without order for costs.

124. Since possession has been taken over on May 20, 2015 and this writ petition was presented on June 8, 2015, the period during which it was

pending before this Court shall be excluded for computing the period of limitation and the tribunal may, in its discretion, grant the benefit of section

14 of the Limitation Act to the petitioner, if it is approached within 10(ten) days from date.

W.P. 5651(W) of 2015

125. An order dated February 23, 2015 passed by the Debts Recovery Tribunal No. 1, Kolkata dismissing the petitioner"s application under

section 17 of the SARFAESI Act is under challenge in this writ petition. The petitioner, claiming itself to be a tenant under one Puspesh Baid, inter

alia, felt aggrieved by orders dated February 7, 2015 and February 11, 2015 of the Chief Metropolitan Magistrate, Kolkata on an application

under section 14 of the SARFAESI Act and an application for modification of the order dated February 7, 2015 respectively, filed the by State

Bank of India, SME Branch, Howrah. The tribunal held that the question of tenancy can only be decided by the Chief Metropolitan Magistrate in

view of the decision in Harshad Govardhan Sondagar (supra) and that the section 17 application was not maintainable before it.

126. In my view, for the reasons indicated above, the tribunal fell in error in rejecting the application of the petitioner under section 17 of the

SARFAESI Act. Since I have held that the decision in Harshad Govardhan Sondagar (supra) turns on its facts, it has no application in the case at

hand. Whether or not the petitioner is a lawful tenant is to be decided by the tribunal itself and cannot be left to the decision of the magistrate under

section 14 of the Act, as erroneously observed by the tribunal. The order dated February 23, 2015, accordingly stands set aside with the result

that application being No. SA/37/15 would stand revived. The tribunal shall proceed to consider and dispose of such application in accordance

with law as early as possible.

127. W.P. No. 5651(W) of 2015 stands allowed to the extent indicated above, without order for costs.

W.P. No. 10048(W) of 2015

128. The petitioner being the secured creditor had applied before the District Magistrate, 24 Parganas (South), for taking possession of a secured

asset being a residential flat on the 1st floor of "Soundarjya Apartment" along with car parking space on the ground floor at Manik Bandopadhyay

Sarani, P.S. Regent Park. By a letter dated October 22, 2014, the district magistrate spurned the application on the ground that notice under

section 13(2) was not properly served on the borrower.

129. The respondents 6 and 7 (private respondents) have not entered appearance to oppose the writ petition despite dispatch of copies thereof to

them by speed post on May 5, 2015.

130. Mr. Bhattacharya referred to page 28 of the writ petition, being a letter dated March 25, 2008 written by a learned advocate engaged by the

respondent No. 6 and contended that such letter clearly indicates receipt of notice under section 13(2) of the SARFAESI Act by the respondent

No. 6. Based thereon, he contended that the district magistrate erred in law in refusing to grant assistance under section 14 on the ground of non-

service of notice under section 13(2) of the Act on the borrower.

131. In course of hearing, the relevant file leading to the order impugned dated October 22, 2014 was called for. It appears from such file that the

district magistrate was approached with an application dated December 26, 2012 under section 14 by the petitioner. Since the application was

filed before January 15, 2013 i.e. the date on which the amendments under section 14 came into operation, there was no necessity for the

petitioner to file an affidavit of the nature referred to in the first proviso to amended section 14. However, an affidavit appears to be on record

which, however, does not contain the letter dated March 25, 2008 referred to above. Despite the letter dated March 25, 2008 not being part of

the affidavit, notices dated February 1, 2008 under section 13(2) of the Act addressed to the respondents 6 and 7 are part of such affidavit, which

were sent by registered post with A.D. Although photocopies of some A.D. cards are part of the affidavit, it cannot conclusively be said based

thereon that satisfaction could have been reached by the district magistrate of the section 13(2) notices having duly served on the respondents 6

and 7. Rejection of the application perceiving that due notices were not served could have been a possible conclusion.

132. I would have dismissed the writ petition if indeed the district magistrate had come to such a conclusion on his own. However, it appears from

the file that some officer was delegated with the function of ascertaining the position from the documents in the file and it was his conclusion that the

application should be rejected on the ground of proper notice under section 13(2) not being served, was agreed to by the district magistrate. The

district magistrate only signed the order without applying his mind. This is not an appropriate manner of dealing with an application under section

14 of the SARFAESI Act. What is more intriguing is that the order of the district magistrate is contained in Memo dated October 22, 2014 but the

draft of the order was checked by the officer who prepared it and placed for the signature of the district magistrate on November 7, 2014,

whereafter the district magistrate signed on November 10, 2014. It is, therefore, clear that the order that was sent to the petitioner was an

antedated order.

133. In the result, the order impugned is set aside and W.P. 10048(W) of 2015 stands allowed. The application under section 14 shall stand

revived and considered afresh in accordance with law by the district magistrate in the light of the observations made above.

134. The file shall be returned to Mr. Sen.

135. Photocopy of this judgment and order duly signed by the Assistant Registrar (Court) shall be retained with the records of all the writ petitions

except W.P. No. 11828(W) of 2015.

Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 4 days from date of putting in requisites

therefor.

Later:

Prayer for stay made by Mr. Kali, learned advocate for the petitioner in W.P. No. 11993 (W) of 2015 is considered and refused.