
(2009) 02 AHC CK 0064
In the Allahabad High Court

Irshad Husain

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 14

Citation : AIR 2009 All 125 : (2009) 2 AWC 1700 : (2009) 3 BC 222 : (2010) 7 RCR(Civil) 21 : (2009) 106 RD 762 : (2009) 2 UPLBEC 1782

Hon'ble Judges : Amitava Lala, J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—Here the dispute is not with regard to recovery of commercial loan amount by the Bank as land revenue. The dispute is with regard to power of jurisdiction of the authority u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called as Act, 2002) to give assistance to the secured, creditor, i.e., the Bank herein is taking possession of the property in question. The petitioner wanted to make out the case that the order dated 27.1.2009, which has been passed by the Additional District Magistrate/Additional Collector (F. & R.), Moradabad in Case No. 42/78 of 2008, Jammu and Kashmir Bank Ltd. v. Wemesa Fibres (Pvt.) Ltd. and Ors.) is not sustainable in view of the fact that such Additional District Magistrate/Additional Collector (F. & R.), Moradabad has no power or authority to pass such order as per Section 14 of the Act, 2002. Section 14 of the Act, 2002 is quoted 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 asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking

possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, 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.

(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 done in pursuance of this section shall be called in question in any Court or before any authority.

2. According to us, when the above Act is subjective in nature, the Act below is the procedural in nature. Upon going through Section 14A of the U.P. Land Revenue Act, 1901 we find that the Additional Collector has the similar power as of Collector, thereby the Collector includes the Additional Collector. Section 14A of such Act is also quoted hereunder:

14A. Appointment, powers and duties of Additional Collectors. - (1) The State Government may appoint an Additional Collector in a district or in two or more districts combined.

(2) An Additional Collector shall hold his office during the pleasure of State Government.

(3) An Additional Collector shall exercise such powers and discharge such duties of a Collector in such cases or classes of cases as the Collector concerned may direct.

(4) This Act and every other law for the time being applicable to a Collector shall apply to every Additional Collector, when exercising any powers or discharging any duties under Sub-section (3), as if he were the Collector of the district.

3. Against this background we cannot hold and say that the order which has been passed by the Additional Collector is without jurisdiction. Hence, the writ petition is dismissed. However, no order is passed as to costs.

A.P. Sahi, J.

4. I agree.