

(2013) 08 MAD CK 0186

In the Madras High Court

Case No : Writ Petition (MD) No's. 11078 of 2011, 7155 of 2012 and 4525, 9833 of 2013 and Connected Miscellaneous Petitions

K. Arockiyaraj

APPELLANT

Vs

The Chief Judicial Magistrate, Srivilliputhur and The Housing Development Finance Corporation Limited
D. Visalakshi Vs The Authorized Officer, Indian Bank, Sivagangai Branch and Rahini Ammal
G.S.S. Latha and D.S. Bright Singh Vs The Authorized Officer, Housing Development Finance Corporation Ltd.
Shanthi and R. Sakthi Devi Vs The Authorised Officer, The Branch Manager, Indo Pacific Housing Finance Ltd., AIG Home Finance (I) Ltd. and G. Subasri

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : AIR 2013 Mad 206 : (2014) 1 BC 6 : (2014) 183 CompCas 88 : (2013) 5 CTC 225 : (2013) 4 LW 485 : (2013) 6 MLJ 641

Hon'ble Judges : T. Mathivanan, J;P. Devadass, J;N. Paul Vasanthakumar, J

Bench : Full Bench

Advocate : Ajmal Khan, for M. Mahaboob Athiff in W.P. MD Nos. 11078 of 2011 and 7155 of 2012, D. Anbarasu in W.P. MD No. 4525 of 2013 and T. Lajapathi Roy in W.P. MD No. 9833 of 2013, for the Appellant; S. Parthasarathy, for Pala Ramasamy, Advocate for Respondent No. 1 in W.P. (MD) No. 7155 of 2012, Respondent No. 2 in W.P. (MD) No. 11078 of 2011 and for Respondent in W.P. (MD) No. 4525 of 2013, S. Sethuraman for D. Sidiq Raja, Advocate for Respondent No. 2 in W.P. (MD) No. 7155 of 2012 and R. Subramanian, Advocate for Respondent No. 3 in W.P. (MD) No. 9833 of 2013, for the Respondent

Judgement

N. Paul Vasanthakumar, J.—These Writ Petitions are filed challenging the Order passed in Crl. M.P. No. 1850 of 2011 dated 12.9.2011 on the file of Chief Judicial Magistrate, Virudhunagar; Crl. M.P. No. 532 of 2012 dated 17.4.2012 on the file of the Chief Judicial Magistrate, Sivagangai; Crl. M.P. No. 1851 of 2011 dated 12.9.2011 passed by the Chief Judicial Magistrate, Virudhunagar; and Crl. M.P. No. 1211 of 2011 dated 23.4.2013 on the file of the Chief Judicial Magistrate,

Dindigul, respectively, contending that the Chief Judicial Magistrates have no jurisdiction to pass orders u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"), as the provision empowers only the Chief Metropolitan Magistrate and the District Magistrate to exercise the powers under the provision and therefore the orders passed by the Chief Judicial Magistrates are void ab-initio. When W.P. (MD) No. 7155 of 2012 was heard by the Division Bench of this Court (consisting the Hon'ble Mr. Justice R.K. Agrawal, A.C.J. and Hon'ble Mrs. Justice Chitra Venkataraman) on 5.3.2013, the Division Bench, taking note of the conflicting decisions, rendered by this Court in Indian Overseas Bank Vs. Sree Aravindh Steels Ltd., Sri S.B. Shankar and The Inspector of Police, the Aurangabad Bench of Bombay High Court, reported in IndusInd Bank Ltd., (formerly known as Ashok Leyland Finance Ltd.) Vs. The State of Maharashtra, , and Bombay High Court in the decision reported in Arjun Urban Co-operative Bank Ltd., Solapur v. C.J.M., Solapur, 2009 (2) DRTC 431 (Bom), thought fit to refer the matter to the Larger Bench. The said reference reads as follows:

The Writ Petition herein challenges the Order dated 17.4.2012 passed by the Chief Judicial Magistrate, Sivagangai, in the Application filed by the Bank to take possession of the Secured Asset, u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" in short).

2. Learned Senior Counsel appearing for the Petitioner referred to the decision of this Court reported in Indian Overseas Bank Vs. Sree Aravindh Steels Ltd., Sri S.B. Shankar and The Inspector of Police, , wherein this Court has taken the view that reference to "Chief Metropolitan Magistrate" u/s 14 of the SARFAESI Act would include the jurisdiction of Chief Judicial Magistrate in a Non-Metropolitan area, for the purpose of Section 14 of the SARFAESI Act.

3. Placing reliance on the decision of the Bombay High Court in Criminal Writ Petition No. 214 of 2008 with Criminal Writ Petition No. 215 of 2008, reported in the case of IndusInd Bank Ltd., (formerly known as Ashok Leyland Finance Ltd.) Vs. The State of Maharashtra, , as well as another decision of the Bombay High Court reported in Arjun Urban Co-Operative Bank Ltd., Solapur v. C.J.M., Solapur, 2009 (2) D.R.T.C. 431 (Bom), taking a contra view that an Application u/s 14 of the SARFAESI Act has to be filed only before the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, learned Senior Counsel submitted that by reason of the clear statutory provision u/s 14, the Chief Judicial Magistrate has no jurisdiction to entertain the Petition u/s 14. He pointed out that the Bombay High Court specifically viewed that the provision of Cr. P.C., particularly Section 3(2), cannot be read with Section 14 of the SARFAESI Act, for the purpose of understanding as to whether the reference to "Chief Metropolitan Magistrate" u/s 14 of the SARFAESI Act would include Chief Judicial Magistrate in a Non-Metropolitan area. Referring to Section 30 of the SARFAESI

Act, he submitted that the proceedings under the Act being one for recovery and hence Civil in nature, Cr. P.C. has no relevance.

4. We have perused the judgment of this Court and the judgments of the Bombay High Court. Seen in the context of the object of Central Legislation, viz., the SARFAESI Act, and that of the contra decisions pronounced by the Bombay High Court stated supra, this Court feels that the decision of this Court requires reconsideration, particularly in the context of relevance of Cr. P.C. to SARFAESI Act, which is also a procedural enactment, for the purpose of understanding the clear words of Section 14. Learned Senior Counsel pointed out that given the fact that the Act has its provisions on offences and prosecution before a Magistrate Court, by no stretch of interpretation, the Chief Metropolitan Magistrate could be read as inclusive of and referable to Chief Judicial Magistrate too.

5. Under the circumstances, the issue as to the correctness of the decision rendered by this Court in Indian Overseas Bank Vs. Sree Aravindh Steels Ltd., Sri S.B. Shankar and The Inspector of Police, has to be tested before a Larger Bench. It may also be noted that Section 30 of the SARFAESI Act specifically refers to cognizance of offence, which provides that no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try an offence punishable under the Act. Section 29 of the SARFAESI Act states that if any person contravenes or attempts to contravene or abets the contravention of the provisions of the Act or of any Rules made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

6. In the circumstances, the matter be placed before a Larger Bench to decide whether the reference to Chief Metropolitan Magistrate u/s 14 of the SARFAESI Act would include the Chief Judicial Magistrate in a Non-Metropolitan area to entertain the petition filed u/s 14, by the Secured Creditor.

2. Pursuant to the said reference made, this Full Bench was constituted and by consent of both sides, date was fixed for final hearing of the issue and on 31.7.2013, we have heard the arguments of the parties at length.

3. For easy understanding of the issue involved, it is necessary to refer to the facts of the case in anyone of the Writ Petition. The case of the Petitioner in W.P. (MD) No. 7155 of 2012 are as follows:

(a) Petitioner, who is having the business of processing dry fruits in the name and style of "M/s. Alagappan Manufacturing and Traders" in Sivagangai, in need of financial assistance, borrowed loan from the Indian Bank, Sivagangai Branch and also from Indian Bank, Thallakulam Branch, Madurai. Securing the said loans, the Petitioner deposited Title Deeds of the properties comprised in S. Nos. 157/35, 157/2-B, 3-A, 4-A & 156/1 and of a dwelling house comprised in new S. No. 157/35, both situate in Singampunari Town, Tiruppathur Taluk in Sivagangai District. Besides the above, the Petitioner's husband also stood as a Guarantor.

(b) According to the Petitioner, due to the sudden recession in the business, there was heavy loss and the proprietorship became defunct. Unable to bear the pressure, Petitioner's husband left the business and the loan was classified as Non-Performing Asset (NPA) on 31.3.1994. According to bank, as on 30.9.2004, the total due from the Petitioner and her husband rose to 75,59,24,992/-.

(c) Notice u/s 13(2) of the SARFAESI Act, 2002, was issued on 29.9.2004 as the said amount was not repaid. A Notice u/s 13(4) of the Act was issued on 6.7.2005 and the property was brought to sale on 3.3.2008. The Second Respondent offered Rs. 30,03,000/- and the sale was confirmed in her favour and she was issued with Sale Certificate on 19.5.2008.

(d) The Second Respondent thereafter entered into an Agreement with the Petitioner with regard to the house property on 9.5.2008, agreeing to reconvey the house to the Petitioner on her payment of Rs. 7 lakhs, being the auction amount, with 2% interest per month within 1 1/2 years from the date of the Agreement. Petitioner paid the said dues without default. However, the Second Respondent attempted to dispose of the property in favour of her brother by way of an Agreement dated 9.5.2008.

(e) Petitioner filed a Civil Suit in O.S. No. 6 of 2011 in the Court of District Judge, Sivagangai, for specific performance. The said Suit is still pending and the Petitioner was allowed to deposit Rs. 11,40,444/- on 25.2.2011 and Rs. 14,000/- on 26.6.2008 in Second Respondent's account.

(f) After four years of issuance of sale certificate in favour of the Second Respondent, that was on 9.5.2008, the Second Respondent approached the learned Chief Judicial Magistrate, Sivagangai, filing an Application u/s 14 of the SARFAESI Act, 2002, for taking possession of Petitioner's dwelling house. The learned Chief Judicial Magistrate, Sivagangai, in Crl. M.P. No. 532 of 2012 Order dated 17.4.2012, appointed a Commissioner to take possession and hand over the same to the Second Respondent.

(g) The said order of the Chief Judicial Magistrate, Sivagangai, dated 17.4.2012 is challenged in this Writ Petition contending that the Chief Judicial Magistrate has no jurisdiction to pass orders u/s 14 of the SARFAESI Act, as the Section contemplates only the Chief Metropolitan Magistrate, or the District Magistrate to exercise power and the Chief Judicial Magistrate having not been vested with the power, the order passed on 17.4.2012 is illegal and forbear the Respondents from dispossessing the Petitioner from her property comprised in S. No. 157/35 situate in Bharathi Nagar, Singampunari Town, except following due process of law.

4. As jurisdictional issue alone is raised in the Writ Petitions, the Respondents have not filed Counter Affidavit and on 23.7.2013 the respective Counsel agreed to argue the case on 31.7.2013 and accordingly submitted their respective submissions on 31.7.2013.

5. (i) Mr. M. Ajmal Khan, learned Senior Counsel appearing for the Petitioners in W.P. (MD) Nos. 11078/2011 & 7155/2012 submitted that Section 14 of the SARFAESI Act, 2002, empowers the Chief Metropolitan Magistrate and the District Magistrate to assist the Secured Creditors in taking possession of the Secured Assets and the Chief Judicial Magistrate, is not empowered to pass any order to assist the Secured Creditor in taking possession.

(ii) The learned Senior Counsel submitted that the Division Bench of this Court in the decision reported in *Indian Overseas Bank Vs. Sree Aravindh Steels Ltd., Sri S.B. Shankar and The Inspector of Police*, has not laid down the correct law as the Division Bench had taken assistance from the Criminal Procedure Code to render its judgment, which has no application to the SARFAESI Act, 2002. The Division Bench construed Section 14 of the Act by getting aid from Section 3(1) (d) of the Crl. P.C. and the SARFAESI Act, being an independent enactment passed in the year 2002, long after the enactment of Crl. P.C., ought not to have borrowed the provisions from Crl. P.C., as applicability of other provisions of the enactments are excluded u/s 35 of the SARFAESI Act, which states that the provisions of the SARFAESI Act is to override other laws, notwithstanding anything contained inconsistent with any other law for the time being in force.

(iii) The learned Senior Counsel further submitted that the Civil Court's jurisdiction also has been ousted u/s 34 of the Act. When Civil Court's jurisdiction is ousted, the Chief Judicial Magistrate, who is discharging the functions of a Criminal Court, does not have jurisdiction to entertain any Application filed u/s 14 of the Act, and as per Section 14, Chief Metropolitan Magistrate in Metropolitan Areas and in other areas (Non-Metropolitan areas) the District Magistrate, who is also the District collector, alone has got jurisdiction to give assistance to the Secured Creditors in taking possession of the Secured Assets. When the Section is very clear and unambiguous, the interpretation given by the Division Bench in the above referred judgment may not be a good law. In support of his contentions the learned Senior Counsel relied on the judgment of the Aurangabad Bench of the Bombay High Court judgment reported in *IndusInd Bank Ltd., (formerly known as Ashok Leyland Finance Ltd.) Vs. The State of Maharashtra*, . In the said judgment it was held that as per Section 14 of the Act, the District Magistrate, wherever there is no Chief Metropolitan Magistrate, alone can render assistance to the Secured Creditors.

(iv) The learned Senior Counsel further submitted that the Securitisation Act is a special enactment, which contains procedures for realisation of the loan amount by the Financial Institutions from the borrowers and the first step is to issue Notice u/s 13(2), giving time to the borrower and if the borrower has any objection, he can file it and after considering the same, an order should be passed u/s 13(4) of the Act and if the borrower is not satisfied, he can very well approach the Debt Recovery Tribunal (DRT) u/s 17 of the Act and the Secured Creditor can get assistance from the Chief Metropolitan Magistrate or the District Magistrate and it is only an executive action, not involving exercise of any judicial

power.

(v) The learned Senior Counsel again relied on the judgment of the Bombay High Court reported in *Arjun Urban Co-operative Bank Ltd., Solapur v. C.J.M., Solapur*, 2009 (2) DRTC 431 (Bom), wherein also the Division bench of the Bombay High Court held that the Chief Judicial Magistrate is not the Competent Authority to give such assistance and the District Magistrate in Non-Metropolitan area alone is empowered to give such assistance. In the said judgment the decision of this Court in *Indian Overseas Bank Vs. Sree Aravindh Steels Ltd., Sri S.B. Shankar and The Inspector of Police*, , and the Division Bench of the Kerala High Court reported in *Muhammed Asharaf v. Union of India*, AIR 2009 Ker 14, were not followed and the decision of the Aurangabad Bench reported in *IndusInd Bank Ltd., (formerly known as Ashok Leyland Finance Ltd.) Vs. The State of Maharashtra*, , was reiterated and the Division Bench quashed the order passed by the Chief Judicial Magistrate granting liberty to the Secured Creditor to make fresh Application u/s 14 of the SARFAESI Act, before the proper forum.

(vi) The learned Senior Counsel also relied on the judgment of the Calcutta High Court rendered in MAT No. 389 of 2013 with CAN No. 3023 of 2013 dated 23.4.2013, wherein also it was held that Section 14 of the Act being clear and unambiguous, thus, no contra interpretation could be made and the judgments of this Court and the Kerala High Court cannot be followed. The learned Senior Counsel also submitted that when the validity of the Securitisation Act was challenged before the Honourable Supreme Court, the Hon'ble Apex Court in the decision reported in *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, , upheld the validity of the Act, except Section 17(2), which was held to be unreasonable and arbitrary. The learned Senior Counsel also submitted that the Division Bench of this Court in the decision reported in *K.R. Chandrasekaran Vs. Union of India, The State Bank of India, The Assistant General Manager State Bank of India Stressed Assets Recovery Branch (SARB) and The Chief Judicial Magistrate Salem - 7*, , upheld Section 14, when a specific challenge was made to it, and therefore the phraseology employed in Section 14(1) has to be given its plain meaning and no manner of interpretation is permissible and submitted that the orders passed by the Chief Judicial Magistrates u/s 14 of the SARFAESI Act, 2002, are illegal and without jurisdiction.

6. Mr. S. Parthasarathy, learned Senior Counsel appearing for the Bank on the other hand heavily relied on the Division Bench Judgment of this Court reported in *Indian Overseas Bank Vs. Sree Aravindh Steels Ltd., Sri S.B. Shankar and The Inspector of Police*, , and the judgment of the Kerala High Court reported in *Muhammed Ashraf and Smt. C. Arifa Vs. Union of India (UOI)*, , and contended that the Chief Metropolitan Magistrate will have jurisdiction in Metropolitan areas and in Non-Metropolitan areas, besides the District Magistrate, the power can also be exercised by the Chief Judicial Magistrate. He further contended that if the Chief Judicial Magistrate in Non-Metropolitan areas are not vested with the power to assist the Secured Creditors, anomalous situation will arise since only in

Metropolitan areas the Secured Creditors will be in a position to approach the Chief Metropolitan Magistrate and District Magistrate and in Non-Metropolitan areas Secured Creditors will be in a position to approach the District Magistrate alone, which will be discriminatory, and that may not be the intention of the Parliament in incorporating Section 14 in the Act. The learned Senior Counsel also submitted that a Proviso was added to Section 14 by Amendment Act No. 1 of 2013, as per that, the Chief Metropolitan Magistrate or the District Magistrate, shall on a request being made to him by the Secured Creditors, are required to go through the Affidavit filed along with the Application seeking assistance declaring the aggregate amount of financial assistance granted and the total claim of the bank as on the date of filing of the Application, the borrower has created security interest to offer various properties and the Bank or Financial Institution is holding a valid subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period, the borrower has created security interest over various properties, who has committed default in repayment of specified amount and the account of the borrower has to be classified as a Non-Performing Asset and by virtue of the said amendment, a judicial mind should be there to consider various aspects stated in the Affidavit. According to the learned Senior Counsel, the Chief Judicial Magistrates in Non-Metropolitan areas alone will be in a position to apply their judicial mind to satisfy as to whether assistance sought for by the Secured Creditors can be ordered or not and the District Magistrate may not be in a position to decide the said issues stated in the Affidavit. The learned Senior Counsel also relied on certain decisions in support of his contentions and argued that the judgment of the Division Bench of this Court in Indian Overseas Bank Vs. Sree Aravindh Steels Ltd., Sri S.B. Shankar and The Inspector of Police, , and the decision of the Kerala in Muhammed Asharaf v. Union of India, AIR 2009 Ker 14, are valid and the said decisions are to be approved by this Full Bench.

7. Mr. S. Sethuraman, learned Counsel appearing for the Private Respondent supported the submissions made by the learned Senior Counsel for the Bank and contended that the Chief Metropolitan Magistrate in Metropolitan area having been vested with the power to assist the Secured Creditor wherever no Chief Metropolitan Magistrate is available, the Chief Judicial Magistrate, who is equivalent to Chief Metropolitan Magistrate under the Tamil Nadu State Judicial Service, will automatically get power to discharge the duties of the Chief Metropolitan Magistrate in terms of Section 3 of CrI. P.C., which was rightly followed by the Division Bench of this Court in its Judgment reported in Indian Overseas Bank Vs. Sree Aravindh Steels Ltd., Sri S.B. Shankar and The Inspector of Police, , and thus argued for approving the said judgment.

8. We have anxiously considered the rival submissions.

9. For deciding the specific issue before us, it is just and proper to refer to the object and purpose for which the SARFAESI Act, 2002 was enacted. In the Statement of Objects and Reasons appended to the Act it is stated that the said

Act was enacted to facilitate easy transfer of financial asset by the Securitisation Company or Reconstruction Company to acquire financial assets of the Banks and Financial Institutions empowering the Banks and Financial Institutions to take possession of securities given for financial assistance or sale or lease out the same or take over Management in the event of default i.e., classification of borrowers account as Non-Performing Asset in accordance with the directions given or under Guidelines issued by RBI from time to time, the rights of the Secured Creditors to be exercised by one or more of its officers authorised in this behalf in accordance with the Rules made by the Central Government. Appeal against the action of any Bank or Financial Institution to the concerned Debt Recovery Tribunal and Second Appeal to the Appellate Debts Recovery Tribunal, etc.

10. The said SARFAESI Act, 2002, was challenged in *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, , and the Hon"ble Supreme Court considered the objects of the enactment, which means speedy recovery of debts by Secured Creditors, and noting the safeguards given to the borrowers to approach Debt Recovery Tribunal (DRT) u/s 17 of the Act, and u/s 18 before the DRAT, upheld the enactment, except Section 17(2), which mandates deposit of 75% of the debts before filing Appeal before the Debt Recovery Tribunal. In the said judgment the Hon"ble Supreme Curt in Paragraph 81 observed as follows:

81... the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debts Recovery Tribunal. The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of the economy of the country and welfare of the people in general which would sub serve the public interest.

Section 14 of the Act was not specifically challenged before the Hon"ble Supreme Court.

11. In the decision of this Court reported in *K.R. Chandrasekaran Vs. Union of India, The State Bank of India, The Assistant General Manager State Bank of India Stressed Assets Recovery Branch (SARB) and The Chief Judicial Magistrate Salem - 7*, , the validity of Section 14 of the SARFAESI Act, 2002 was challenged and this Court upheld the said provision by following the decision of the Supreme Court in *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, , and held that the Supreme Court having upheld the entire Act, this Court cannot re-examine one of the provision of the Act.

12. The SARFAESI Act, 2002, is a self-contained enactment. Sections 13 & 14 deal with enforcement of security interest. Section 13(2) contemplates issuance of notice to the borrowers on account of default in repayment of debt or installment thereof. Section 13(2), (3) & (4) of the SARFAESI Act, 2002, reads as

follows:

13. Enforcement of security interest.--

(1)

(2) Where any borrower, who is under a liability to a Secured Creditor under a Security Agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the Secured Creditor as Non-Performing Asset, then, the Secured Creditor may require the borrower by notice in writing to discharge in full his liabilities to the Secured Creditor within sixty days from the date of notice failing which the Secured Creditor shall be entitled to exercise all or any of the rights under sub-section (4).

(3) The Notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the Secured Assets intended to be enforced by the Secured Creditor in the event of non-payment of secured debts by the borrower.

(3-A) If, on receipt of the Notice under sub-section (2), the borrower makes any representation or raises any objection, the Secured Creditor shall consider such representation or objection and if the Secured Creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the Secured Creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an Application to the Debts Recovery Tribunal u/s 17 or the Court of District Judge u/s 17A.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the Secured Creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--

(a) take possession of the Secured Assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the Secured Asset;

(b) take over the Management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the Secured Asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the Management of whole of the business or part of the business is severable, the Secured Creditor shall take over the Management of such business of the borrower which is relatable to the security for the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the Secured Assets the possession of which has been taken over by the Secured

Creditor;

(d) require at any time by Notice in writing, any person who has acquired any of the Secured Assets from the borrower and from whom any money is due or may become due to the borrower, to pay the Secured Creditor, so much of the money as is sufficient to pay the secured debt.

13. Section 14 of the Act is an enabling provision to the Secured Creditors in taking possession of Secured Assets. Section 14 of the Act as amended by Act 1 of 2013, reads as follows:

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, 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.

14. On perusal of Sections 13(2), 13(4), 14(1) & 14(2), it is evident that the Secured Creditor can proceed against the Secured Assets, if the borrower makes any default in repayment of secured debts or any installment thereof. Any person aggrieved against the order passed u/s 13(4) of the Act is given a right of Appeal u/s 17 of the Act. The adjudication of the rights of parties will come only if the action of the Secured Creditor is challenged in an Appeal filed u/s 17. A further appeal to the Appellate Tribunal (DRAT) is also provided u/s 18 of the Act.

15. Section 14, inserted through the Amendment Act No. 1 of 2013,

contemplates delegation of power to assist, by the District Magistrate/Chief Metropolitan Magistrate, to any officer subordinate to him, amplifies the intention of the Parliament to treat the power of assistance as an executive function and not as a judicial function. If the power is a judicial function, adjudicatory in nature, there may not be such delegation to any subordinate officer. It is well settled in law that the adjudicating authority cannot delegate his power as it will run contrary to the Principle "Delegata potestas non potest delegari".

16. Section 2 of the SARFAESI Act, 2002, deals with definitions. Sub-section (2) of Section 2 saved the definitions contained in the Indian Contract Act, 1872; Transfer of Property Act, 1882; the Companies Act, 1956; the Securities and Exchange Board of India Act, 1992; which are not inconsistent with the definition given in the SARFAESI Act, 2002. The said section reads as follows:

2(2) Words and expressions used and not defined in this Act but denned in the Indian Contract Act, 1872 (9 of 1872) or the Transfer of Property Act, 1882 (4 of 1882) or the Companies Act, 1956 (1 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall have the same meaning respectively assigned to them in those Acts.

17. Thus, it is beyond any shadow of doubt that no adjudication of rights are involved while getting assistance from the Chief Metropolitan Magistrate or the District Magistrate by the Financial Institution/Secured Creditor u/s 14 of the Act.

18. At this juncture, it is relevant to note, Section 34 of the Act, ousts the jurisdiction of the Civil Court in respect of any matter, which the Debt Recovery Tribunal or Appellate Tribunal is empowered to deal with. The said Section 34 of the Act reads as follows:

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).

Section 35 of the Act states that the provisions of the SARFAESI Act, 2002, should override other laws, which reads as follows:

35. The provisions of this Act to override other laws.--The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

19. From the perusal of the above Section 35, it is evident that the provisions of SARFAESI Act, 2002, shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus, the SARFAESI Act will override other laws including the provisions of Crl. P.C. Section

36 of the Act deals with limitation. The limitation question can be raised after passing an order u/s 13(4), if the claim in respect of the financial asset is not made within the period of limitation prescribed under the Limitation Act. Thus, the applicability of Limitation Act, 1963, is permitted u/s 36, however, as per Section 35, the application of Crl. P.C. is not permitted.

20. In this context, we have to consider the Division Bench Judgment of this Court reported in Indian Overseas Bank Vs. Sree Aravindh Steels Ltd., Sri S.B. Shankar and The Inspector of Police, . The said Division Bench relied on Section 3 of Crl. P.C. to come to its conclusion. Section 3 of Crl. P.C. reads as follows:

3. Construction of references.--(1) In this Code,--

(a) any reference, without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires,--

(i) in relation to an area outside a Metropolitan area, as a reference to a Judicial Magistrate;

(ii) in relation to a Metropolitan area, as a reference to a Metropolitan Magistrate;

(b) any reference to a Magistrate of the Second Class shall, in relation to an area outside a Metropolitan area, be construed as a reference to a Judicial Magistrate of the Second Class, and, in relation to a Metropolitan area, as a reference to a Metropolitan Magistrate;

(c) any reference to a Magistrate of the First Class shall,--

(i) in relation to a Metropolitan area, be construed as a reference to a Metropolitan Magistrate exercising jurisdiction in that area;

(ii) in relation to any other area, be construed as a reference to a Judicial Magistrate of the first class exercising jurisdiction in that area;

(d) any reference to the Chief Judicial Magistrate shall, in relation to a Metropolitan area, be construed as a reference to the Chief Metropolitan Magistrate exercising jurisdiction in that area.

(2) In this Code, unless the context otherwise requires, any reference to the Court of a Judicial Magistrate shall, in relation to a Metropolitan area, be construed as a reference to the Court of the Metropolitan Magistrate for that area.

(3) Unless the context otherwise requires, any reference in any enactment passed before the commencement of this Code,--

(a) to a Magistrate of the First Class, shall be construed as a reference to a Judicial Magistrate of the First Class;

(b) to a Magistrate of the Second Class or of the Third Class, shall be construed as a reference to a Judicial Magistrate of the Second Class;

(c) to a Presidency Magistrate or Chief Presidency Magistrate, shall be construed

as a reference, respectively, to a Metropolitan Magistrate or the Chief Metropolitan Magistrate;

(d) to any area which is included in a Metropolitan area, as a reference to such Metropolitan area, and any reference to a Magistrate of the First Class or of the Second Class in relation to such area, shall be construed as a reference to the Metropolitan Magistrate exercising jurisdiction in such area.

(4) Where, under any law, other than this Code, the functions exercisable by a Magistrate relate to matters--

(a) which involve the appreciation or shifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Code, be exercisable by a Judicial Magistrate; or

(b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

21. Section 5 of Crl. P.C. Provides a saving clause, which reads as follows:

5. Saving.--Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

22. "Metropolitan area" is stated in Section 8 of Crl. P.C. "Chief Judicial Magistrate" and "Additional Chief Judicial Magistrate" are dealt with u/s 12 of Crl. P.C. The local jurisdiction of Chief Judicial Magistrate is mentioned in Section 14. "Chief Metropolitan Magistrate" and "Additional Chief Metropolitan Magistrate" are stated in Section 17.

23. "The Executive Magistrate" is mentioned in Section 20, which reads as follows:

20. Executive Magistrates.--

(1) In every district and in every Metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have such of the powers of a District Magistrate under this Code or under any other law for the time being in force, as may be directed by the State Government.

(3) Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the executive administration of the

district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

(4) The State Government may place an Executive Magistrate in charge of a subdivision and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-Divisional Magistrate.

(4-A) The State Government may, by general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub-section (4) to the District Magistrate.

(5) Nothing in this Section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a Metropolitan area.

The local jurisdiction of the Executive Magistrate is mentioned in Section 22.

24. On a perusal of the above referred provisions of the Code of Criminal Procedure, Chief Metropolitan Magistrate, Chief Judicial Magistrate and District Magistrate are separately dealt with and only for the purpose of convenience, the High Court is empowered to appoint the Chief Judicial Magistrate to perform the functions akin to Chief Metropolitan Magistrate in Metropolitan areas, which includes judicial functions and administrative functions. When CrI. P.C. itself is dealing with District Magistrates and their jurisdiction, the phraseology used in Section 14(1) should be given its true meaning without any assistance from the Criminal Procedure Code, particularly in the light of Section 35 read with Section 2(2) of the SARFAESI Act, 2002.

25. Section 14 of the Act is very clear and unambiguous. It states that the Chief Metropolitan Magistrate or the District Magistrate can assist the Secured Creditors in taking possession of the Secured Assets. It means, in Metropolitan areas, the Secured Creditors can approach either the Chief Metropolitan Magistrate or the District Magistrate and in Non-Metropolitan areas, where there is no Chief Metropolitan Magistrate, the Secured Creditors can seek the assistance of the District Magistrate alone, as no power is vested on the Chief Judicial Magistrate to give assistance to the Secured Creditors in Non-Metropolitan areas. There is no omission in the said section as contended by the learned Senior Counsel for the respondents. If there is no authority mentioned to assist the Secured Creditor in Non-Metropolitan areas, the Secured Creditors may be justified in contending that in case of omission, the meaning given in CrI. P.C. can be imported for the effective implementation of the SARFAESI Act. The said situation being not there, the learned Senior Counsel for the Respondent is not justified in contending that wherever there is no Chief Metropolitan Magistrate, the Chief Judicial Magistrate will automatically get the powers to assist the Secured Creditors. If such an interpretation is accepted, the phraseology used in Section 14 that Chief Metropolitan Magistrate or District

Magistrate will have no meaning.

26. It is a well settled principle of law that while interpreting the words used in a legislation or parliamentary enactment, the intention of the legislature is to be borne-in-mind. The Act was enacted in the year 2002. The legislature was aware of the fact that in Non-Metropolitan areas, the Chief Judicial Magistrates function like Chief Metropolitan Magistrates in Metropolitan areas. If the intention of the Parliament is to confer power to the Chief Judicial Magistrate in Non-Metropolitan areas also, the same should have been specifically stated in Section 14 itself. The legislature purposely not included the Chief Judicial Magistrate in Section 14 to give assistance to the Secured Creditors in Non-Metropolitan areas. The said view was taken by the Aurangabad Bench of the Bombay High Court in the decision reported in *IndusInd Bank Ltd., (formerly known as Ashok Leyland Finance Ltd.) Vs. The State of Maharashtra*, . Section 14(1) clearly states that Chief Metropolitan Magistrate or District Magistrate may on such request being made to assist taking of possession of such assets and documents to the Secured Creditors, which the Secured Creditor is entitled to take possession, referable to Section 13(4). In the said judgment it is held that the legislature does not seem to have entrusted the functions to the Chief Judicial Magistrate in Non-Metropolitan areas, although such function has been entrusted to the Chief Metropolitan Magistrate, a Judicial Officer in Metropolitan areas.

27. The Bombay High Court in the decision reported in *Arjun Urban Co-operative Bank Ltd., Solapur v. C.J.M., Solapur*, 2009 (2) DRTC 431 (Bom), also interpreted Section 14 to the effect that in Non-Metropolitan areas the District Magistrate alone can be approached for getting assistance by the Secured Creditor as Section 14 do not contemplate adjudication of any issue and is intended only to render assistance to recover possession including the support of force. The Judgment of the Kerala High Court in *Muhammed Asharaf v. Union of India*, AIR 2009 Ker 14, was also rendered on the basis of the wordings used in *Crl. P.C.* As we have already held that the SARFAESI Act being a complete Act by itself, the provisions of the *Crl. P.C.* cannot be imported viz., Section 3. There is no *casus omissus* in the enactment. Therefore, giving interpretation in the context of the definition given in *Crl. P.C.* does not arise.

28. The Hon'ble Supreme Court in the decision reported in *The Official Liquidator, U.P. and Uttarakhand Vs. Allahabad Bank and Others*, considered the question of law as to whether the Company Judge under the Companies Act, 1956, has jurisdiction at the instance of the Official Liquidator to set aside the auction or sale held by the Recovery Officer under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short RDB Act), or whether the Official Liquidator is required to follow the route as engrafted under the RDB Act by filing an Appeal assailing the auction and the resultant confirmation of sale. The Supreme Court held that the RDB Act, which was enacted for speedy and summary remedy for recovery of the amount, which was due to the Banks and Financial Institutions and special procedures having been stated therein must be

given preference, which will override the provisions of the Companies Act, 1956, to the extent if there is anomalies, inconsistency between the Acts.

29. Applying the said principles to the facts of this case, the SARFAESI Act, 2002, being a special enactment, intended for the benefit of the Secured Creditors for speedy recovery of NPA amount, will have preference over any other Act.

30. In the decision reported in Sri Nasiruddin Vs. State Transport Appellate Tribunal, , the Supreme Court held that the Court has to adopt "just, reasonable and sensible" interpretation, by referring the observations of Lord Justice Denning, M.R. in Seaford Court Estates Ltd. v. Ashar, 1949 (2) All ER 155, wherein the learned Lord observed:

When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give "force and life" to the intention of the Legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

31. From the above referred observations of Lord Denning, it is clear that a Judge must not alter the material of which the Act is woven, but he can and should iron out the creases, which means, if the intention of the legislature is clear and unambiguous, the Judge is expected not to give any different interpretation as the language used is clear and unambiguous.

32. The Calcutta High Court in its Judgment dated 23.4.2013 in M.A.T. No. 389 of 2013 with CAN 3023 of 2013, considered the decisions of this Court, Kerala High Court as well as the decisions of Aurangabad Bench and the Bombay Principal Bench. In the said Judgment it is clearly stated as follows:

...the legislature did not intend to bring the Court of law at the stage of Section 13 or 14. Hence it entrusted the Chief Executive of the District to exercise the power u/s 14. Only exception was made in case of Metropolis that was entrusted to the Chief Metropolitan Magistrate. We do not support the logic of the Madras High Court or the Kerala High Court to the extent, District Magistrate should be seen as Chief Judicial Magistrate. The learned Single Judge of the Madras High Court considered the relevant provisions of the Criminal Procedure Code where the Chief Metropolitan Magistrate was authorized to use the power that was vested on the Chief Judicial Magistrate. It was not other way round. Had it been only Chief Metropolitan Magistrate, we would have supported the logic. Once the District Magistrate was clearly mentioned in Section 14, the intent was clear and unambiguous. We cannot interpret otherwise. We fully agree, in a case of Metropolis, the Chief Metropolitan Magistrate having the expertise to examine the provisions of law, would judiciously exercise such power whereas in case of other cities or towns the District Magistrate being an Executive without having

the legal expertise would not be so competent like Chief Metropolitan Magistrate. It is for the legislature to amend the law if they intend to do so. So long it is not done, we are unable to support the learned Single Judge on the proposition of law.

33. The literal interpretation is to be given if the words in the statute are clear and unambiguous and the object of the enactment should be borne-in-mind while interpreting the statute. This was emphasised by the Hon"ble Supreme Court in its following decisions:

(a) In Bhudan Singh and Another Vs. Nabi Bux and Another, , the Hon"ble Supreme Court held thus,--

The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on "Statutory Constructions" that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instance, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent.

(b) In K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, , it is held thus,--

...The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he laid:

...it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.

...the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate

recourse to the setting in which all appear, and which all collectively create.

(c) In *Atma Ram Mittal Vs. Ishwar Singh Punia*, the Supreme Court held thus,--

9. Judicial time and energy is more often than not consumed in finding what is the intention of Parliament or in other words, the will of the people. Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law.

(d) In *Indian Administrative Service (S.C.S.) Association, U.P. and Others Vs. Union of India (UOI) and Others*, , the Apex Court in Paragraph 9 held thus.

9. where the intention of statutory amendment is clear and expressive, words cannot be interpolated. In the first place they are not, in the case, needed. If they should be added, the statute would more than likely fail to carry out the legislative intent. The words are the skin of the language which the Legislature intended to convey. Where the meaning of the statute is clear and sensible, either with or without omitting the words or adding one, interpolation is improper, since the primary purpose of the legislative intent is what the statute says to be so. If the language is plain, clear and explicit, it must be given effect and the question of interpretation does not arise. If found ambiguous or unintended, the court can at best iron out the creases. Any wrong order or defective legislation cannot be righted merely because it is wrong. At best the Court can quash it, if it violates the fundamental rights or is ultra vires the power or manifestly illegal vitiated by fundamental laws or gross miscarriage of justice....

(e) In the case of *Nasiruddin and Others Vs. Sita Ram Agarwal*, , in Paragraphs 35 & 37, the Apex Court held as follows:

35. In a case where the statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.

37. The Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used....

(f) In *High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others*, , in Paragraphs 33 & 38 the Supreme Court held as follows:

33. In *United Bank of India v. Abhijit Tea Co. (P) Ltd.*, this Court noticed: (SCC p.366, Paras 25-26)

25. In regard to purposive interpretation, Justice Frankfurter observed as follows:

Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose."

38. In the *Interpretation and Application of Statutes* by Reed Dickerson, the author at p.135 has discussed the subject while dealing with the importance of context of the statute in the following terms:

... The essence of the language is to reflect, express, and perhaps even affect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called "conceptual map of human experience".

(g) In *Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat*, the Apex Court held thus,--

14. The more stringent the law, the less is the discretion of the Court. Stringent laws are made for the purpose of achieving its objectives. This being the intendment of the legislature the duty of the Court is to see that the intention of the legislature is not frustrated....

20..... The Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language...

(h) In the case of *New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another*, , in Paragraph 52 the Supreme Court held as follows:

52. Barak in his exhaustive work on "Purposive Construction " explains various meanings attributed to the terms "purpose". It would be in the fitness of discussion to refer to Purposive Construction in Barak's words:

Hart and Sachs also appear to treat "purpose" as a subjective concept. I say "appear" because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfil their Constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the

author would have had, had he or she acted reasonably.

34. From the perusal of the above judgments as well as the statutory provisions contained in Section 14 of the SARFAESI Act, 2002, in its independent existence, we are of the firm view that Section 14 does not contemplate the Secured Creditors to approach the Chief Judicial Magistrates for assistance to secure their assets and the Secured Creditors can approach the Chief Metropolitan Magistrate in Metropolitan areas and in Non-Metropolitan areas, the Secured Creditors has to approach the District Magistrate, and not the Chief Judicial Magistrate.

35. In fine, the reference is answered by holding that the decision of the Division Bench of this Court reported in Indian Overseas Bank Vs. Sree Aravindh Steels Ltd., Sri S.B. Shankar and The Inspector of Police, , does not laid down the correct proposition of law, and thus it is overruled. The Reference is answered accordingly. As we are called upon to answer only the reference made to us, as to "whether the reference to the Chief Metropolitan Magistrate u/s 14 of the SARFAESI Act, 2002, would include Chief Judicial Magistrate in Non-Metropolitan areas", we are not dealing with the rights of the Petitioners as well as Respondents in this Judgment. For deciding the other issues, we are inclined to post the Writ Petitions before the appropriate Bench.