

(2019) 03 CAL CK 0063

In the Calcutta High Court

Case No : Civil Order/Misc. Cas (CO)No. 2093 Of 2018

?Krishna Builders And Developers And Another

APPELLANT

Vs

Shriram Housing Finance Limited And Others

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13, 13(2), 13(4), 14, 14(1), 14(1A), 14(3), 17, 17(1), 17(3), 18
Code Of Civil Procedure, 1908 — Section 156(3)
Partnership Act, 1932 & mdash; Section 18, 19, 20, 69
Transfer Of Property Act, 1882 & mdash; Section 65A, 69, 69A
Banking Regulation Act, 1949 — Section 9
e Companies Act, 1956 — Section 529A, 529(1)
Public Premises (Eviction Of Unauthorized Occupants) Act, 1971 — Section 10, 15, 16
Kolkata Municipal Corporation Act, 1980 & mdash; Section 587
West Bengal Land Reforms And Tenancy Tribunal Act, 1997 — Section 19
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 03 CAL CK 0063

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Siddartha Banerjee, Debashis Karmakar, Arya Nandi, Anirban Ray, Aasif Hossain, Sayak Ranjan Ganguly, Pooja Sett, Tarique Quasimuddin, Sanchita Chaudhuri, Abbas Ibrahim Khan

Judgement

Sabyasachi Bhattacharyya, J

1. The present petitioner no. 1 is a partnership firm/borrower and petitioner no. 2 is a partner of the said firm. The opposite party no. 1 is a financier/creditor. The petitioner no. 1?firm took a loan from the opposite party no. 1. Subsequently upon the petitioner no. 1 having failed to repay such loan, the opposite party no. 1 issued a demand notice dated August 23, 2017 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act"). The said notice was followed up by a notice of possession under Section 13(4) on

November 4, 2017.

2. Being thus aggrieved by the said notices, the borrower preferred before the Debts Recovery Tribunal^{III} at Kolkata an application under Section 17 of the SARFAESI Act, giving rise to S.A. No. 467 of 2017.

3. During pendency of the aforesaid proceeding under Section 17, the District Magistrate, South 24 Parganas passed an order under Section 14 of the SARFAESI Act on June 18, 2018, thereby authorizing one Arshad Jamal Hasmi, WBCS (EXE) to take possession of the assets and documents of the borrower and to forward the same to the secured creditor with police assistance. The Bhawanipur police station was requested to provide police assistance to the "authorised officer" for taking possession of the secured assets as noted therein.

4. The borrower took out an application, bearing I.A. No. 576 of 2018, in S.A. No. 467 of 2017, praying for a restraint order on the respondents to proceed under Section 14 of the SARFAESI Act, as well as for setting aside the order of the District Magistrate dated June 18, 2018 and for ancillary reliefs.

5. The tribunal, vide Order No. 5 dated June 28, 2018, allowed I.A. No. 576 of 2018, thereby setting aside the order of the District Magistrate. The secured creditor/present opposite party no. 1 preferred against the said order an appeal, bearing No. 138 of 2018. The appellate tribunal, by its order dated July 4, 2018 allowed the said appeal, thereby reversing the order of the tribunal dated June 28, 2018.

6. The primary premise of the order of the first tribunal was that the District Magistrate had violated the provisions of Section 14(1A) of the SARFAESI Act by providing police assistance to the secured creditor for taking possession of the secured assets directly, instead of delegating such task to an officer subordinate to him, as envisaged in the said provision.

7. The appellate tribunal reversed such finding on the ground that the person who was authorised to take possession of the assets, namely one Arshad Jamal Hasmi, was directed not only to take possession of the assets but thereafter to forward those to the secured creditor with police assistance. As such, the Magistrate had not, apparently, permitted the secured creditor itself to take such possession. Accordingly, the appellate tribunal set aside the order of the Debts Recovery Tribunal and remanded the matter to the latter to look into the order of the District Magistrate afresh and pass appropriate order in accordance with law.

8. Learned counsel for the petitioners argues that the application, being I.A. 576 of 2018, was maintainable under Section 17 of the SARFAESI Act itself and that sub²section (3) of Section 14 of the said Act was not a bar to a challenge under Section 17.

9. In support of such submissions, learned counsel for the petitioners cites a judgment reported at (2013) 9 SCC 620 [Standard Chartered Bank vs. V. Noble Kumar and others], placing particular reliance on paragraph nos. 26 and 27 of

the said judgment to strengthen his arguments. It is submitted that although in the said decision it was also held that the remedy of Section 17 was available to the borrower only after losing possession of the property, such portion of the judgment was subsequently read down in other judgments of the Supreme Court.

10. In this context, learned counsel for the petitioners cites a previous judgment reported at (2011) 2 SCC 782 [Kanaiyalal Lalchand Sachdev and others vs. State of Maharashtra and others]. In paragraph nos. 22 and 23 thereof, it was laid down that an action under Section 14 of the SARFAESI Act constitutes an action taken after the stage of Section 13(4) of the Act and therefore, would fall within the ambit of Section 17(1) of the Act. It is argued that the said previous judgment was not considered by the Supreme Court in V. Noble Kumar (supra), denuding the value of the deviating rider, as to Section 17 being available only after dispossession, as a binding precedent.

11. Learned counsel for the petitioners cites another judgment, reported at (2010) 8 SCC 110 [United Bank of India vs. Satyawati Tondon and others], for the proposition that the tribunals are empowered to pass even interim orders under Sections 17 and 18 against actions taken under Section 14 of the SARFAESI Act. The High Courts, it was held, do not readily entertain petitions under Article 226 of the Constitution of India against such orders of the District Magistrates.

12. The petitioners next cite a co-ordinate bench judgment of this court reported at 2015 (2) D.R.T.C. 794 (Cal) [Jawahar Singh vs. United Bank of India and others]. One of the questions which fell for consideration in the said judgment was whether an order passed under Section 14(1) of the SARFAESI Act was amenable to challenge in an application under Section 17 in view of Section 14(3) of the said Act and the decision in Harshad Govardhan Sondagar [(2014) 6 SCC 1]. The co-ordinate bench, while answering such questions, held that an order under Section 14 was open to challenge under Section 17 of the SARFAESI Act. It was further observed that the parties did not place the previous judgments of Kanaiyalal Lalchand Sachdev or V. Noble Kumar before the court for consideration, in Harshad Govardhan Sondagar.

13. Learned counsel for the petitioners thereafter cites a judgment reported at AIR 2009 SC 2420 [Authorized Officer, Indian Overseas Bank and another vs. M/s Ashok Saw Mill], for the proposition that the legislature was concerned with measures to regulate securitization and reconstruction of financial assets and enforcement of security interest. As such, the SARFAESI Act enables the banks and financial institutions to realize long term assets, manage problems of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction. The provisions of Section 13 enable the secured creditors not only to take possession of the secured assets of the borrower but also to take over the management of the business of the borrower, including other consequential rights. It was held that, in order to

prevent misuse of such wide powers and to prevent prejudice to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances were introduced in Section 17, which allowed any person, including the borrower, aggrieved by any of the measures referred to in sub?section (4) of Section 13, to make an application to the debts recovery tribunal. As such, it was held that the tribunal under Section 17 acted as a civil court for rectifying any error or wrongful use of the stringent powers vested in banks and financial institutions for recovery of their dues. Learned counsel submits that since it was held in *Kanaiyalal (supra)* that an action taken in Section 14 of the SARFAESI Act is merely an extension of a measure under Section 13(4), the remedy of Section 17 was available against such actions as well.

14. Learned counsel next argues that the order of the District Magistrate, purportedly passed under Section 14 of the SARFAESI Act, did not contain even nine sentences by way of reasons for passing the said order of possession, whereas the proviso to Section 14 specifically stipulates nine points on which the Magistrate is required to be satisfied before passing such an order. It is submitted that the said proviso categorically stipulates that the affidavit duly affirmed by the authorised officer of the secured creditor, on the basis of which action can be taken under Section 14, mandatorily has to contain a declaration comprised of nine points, as stipulated in the proviso. The Magistrate could pass an order under sub?section (1A) of Section 14 only after satisfying herself/himself of the contents of the affidavit. Since, in the present case, no affidavit was produced at any stage and the District Magistrate did not advert to almost any of such nine pre?conditions, the impugned order of the District Magistrate stands vitiated *ex facie*.

15. Learned counsel for the petitioners next argues that the District Magistrate acted without jurisdiction in directing the "authorised officer" of the secured creditor to take possession of the assets and documents of the borrower. It is argued that such a direction could only be passed on a subordinate officer of the Magistrate himself and not on the authorised officer of the secured creditor. In this context, it is pointed out that the first portion of the District Magistrate's order mentioned that the 'Authorised Officer' of the secured creditor/opposite party no. 1 applied before the Magistrate for taking possession of the secured assets. In such view of the matter, it is argued that, following the principle of *ejusdem generis*, the expression "authorised officer" used in the last portion of the said order should also be attributed the same meaning as used in the first portion of the order. As such, it was the authorised officer of the secured creditor who was provided with police assistance for taking possession of the secured assets and forward the same to the secured creditor. Such procedure was violative of the provisions of Section 14 of the SARFAESI Act.

16. In this context, learned counsel for the petitioners cites an unreported judgment dated February 24, 2014, of a co?ordinate bench in W.P. 2545 (W) of 2014 [*Pratima Roy & Anr. vs. Union of India & Ors.*] and another co?ordinate

bench judgment dated June 2, 2016 passed in W.P. 9801 (W) of 2016 [Sri Suhas Kumar Ghosh vs. The State of West Bengal & Ors.], wherein the orders of the Magistrate authorizing the secured creditor to take possession with the help of police authority were deprecated and set aside.

17. Learned counsel also cites a judgment reported at 2015 (1) D.R.T.C. 378 (Cal) [Swastyayan Agro Industries & Another vs. Union of India & others], wherein another co-ordinate bench held that an application for grant of police assistance to a Resolution Agent appointed by the bank for the purpose of taking possession of the secured assets could not have been allowed by the District Magistrate. Such an act was held to be violative of Section 14 of the SARFAESI Act and appellable under Section 17 of the said Act.

18. It is then argued on behalf of the petitioners that previously the secured creditor had sought a direction from this court under Article 226 of the Constitution, for early disposal of its application under Section 14. Upon such direction being given, the District Magistrate had allegedly sat tight over the matter, for which a contempt, bearing CPAN 295 of 2018, was filed in connection with the writ petition bearing W.P. No. 1929 (W) of 2018.

19. It is reflected from an order dated June 20, 2018 of a co-ordinate bench, disposing of the said contempt petition, that the learned senior advocate appearing at that juncture for the secured creditor had categorically submitted that in the meantime the Magistrate had passed an order under Section 14 of the SARFAESI Act. It was submitted by the said learned senior advocate that the order passed by the District Magistrate, directing the Commissioner of Police to provide police assistance to the "authorised officer of the bank" to take possession of the secured assets was an irregular exercise of powers under Section 14 of the SARFAESI Act and should be interfered with in the contempt proceedings. Although the co-ordinate bench had disposed of the contempt by observing that since the alleged contemnor/District Magistrate had already acted in terms of an order passed by this court, it was held to be improper to enter into the arena whether such act was an irregular exercise of jurisdiction. Such question was left open for the parties to agitate in the appropriate forum. It is submitted on behalf of the petitioners that such categorical admission on fact, not only as to the exercise of the power under Section 14 by the District Magistrate being irregular, but as to police assistance having been provided to the authorised officer of the secured creditor itself, is binding on the secured creditor. As such, it does not now lie in the mouth of the secured creditor to oppose the petitioners' challenge to the order under Section 14 of the SARFAESI Act.

20. In this context, learned counsel for the petitioners cites a judgment of a three-Judge bench of the Federal court, reported at (1939?40) 44 CWN 29 [Raja Prithwi Chand Lall Choudhry vs. Rai Bahadur Sukhraj Rai and ors.] , wherein it was held that when Counsel take on themselves the responsibility of making statements of fact to the Court, the Court was entitled to assume that those

statements were true in every particular so that it might implicitly rely on them; this was a rule which admitted of no qualification.

21. Learned counsel next cites a division bench judgment of the Madras High Court, reported at AIR 1928 Mad 900 [Ulichy Kotayya vs. Nallamalli Sreeramulu and others], wherein it was held that a finding of fact in the District Munsif's court stood, not having been attacked by the vakil in the lower appellate court and, as such, could not be interfered with by a higher forum. Since the counsel appearing for the party made an admission in course of the trial of the suit in the first court, the parties were bound by such admission made by their counsel on a question of fact, whether the admission was made in the course of the trial in the first court or in the course of hearing of an appeal before an appellate court. A pleader's general powers in the conduct of an appeal included in ordinary cases the abandonment of an issue which, in his discretion, he thinks inadvisable to press. In view of no special circumstances being alleged in the said case, the plaintiff was not permitted to argue the said question of fact regarding the title in the circumstances of such case.

22. As such, it is argued that the secured creditor/opposite party no. 1 could not now take a contrary stand to what had been taken by it in the previous contempt application.

23. Learned counsel for the added opposite parties, who claimed to be other partners of the borrower firm, argued on the basis of their affidavit in opposition that one of the added parties conducted the initial transactions from which the present case arises. Since the added parties were not signatories to the loan agreement itself and no 'No Objection Certificate' (NOC) was obtained from the added parties, as was necessary for taking the loan, the loan transaction itself was vitiated and could not be implemented.

24. Learned counsel places reliance on communications between the added partners and the petitioner no. 2 and with the secured creditor in such regard. It is submitted that an application under Section 156(3) of the Criminal Procedure Code was even allowed against the petitioner no. 2 and other officers of the firm in such context.

25. Moreover, the notice under Section 13(2) was not addressed to the added parties, nor was any notice under Section 14 of the SARFAESI Act served on the borrower or the added opposite parties.

26. As such, it is argued, the notice under Section 13 and the consequential action under Section 14 were not maintainable against the added opposite parties. Hence, it is submitted by the added opposite parties that the order under Section 14 of the SARFAESI Act was palpably vitiated, being not in accordance with law.

27. In reply, it is argued on behalf of the secured creditor/opposite party no. 1 that Sections 18 to 20 of the Partnership Act envisage that partners are agents of

the firm. As such, the borrower was the partnership firm, being the present petitioner no. 1 and was merely represented by its partner/partners.

28. It is further argued that registration of the partnership firm was not necessary to enforce statutory rights. Even if there was any dispute inter se the partners, Section 69 of the Partnership Act did not contemplate a bar to any proceeding by the secured creditor against the borrower.

29. It is further argued that the objections taken by the added opposite parties were, in any event, beyond the pale of the present revisional application and any challenge in that regard ought to have been filed by way of a regular application under Section 17 of the SARFAESI Act, which was barred by limitation long time back at the instance of the added parties.

30. As regards the arguments of the borrower, the opposite party no. 1 submits that it was specifically mentioned in the order of the District Magistrate that one Arshad Jamal Hasmi, WBCS (EXE), was "authorized" to take possession of the assets and documents of the borrower "and to forward such assets and documents to the secured creditor" with police assistance. As such, it was abundantly clear that the said WBCS officer, being an officer subordinate to the District Magistrate, was empowered to take possession and thereafter to forward the documents and assets to the secured creditor.

31. It is argued that, in the event the secured creditor itself was permitted to take possession, no occasion would arise to further forward the assets and documents to the secured creditor. In the present case, the person on whom the authority to take possession was conferred was obviously the subordinate officer who was authorized to take possession of the assets, and not the "authorised officer" of the secured creditor, as mentioned in the first paragraph of the order of the District Magistrate. It is further evident from the District Magistrate's order itself that the order was recorded to be passed as per amended Section 14(1A) of the SARFAESI Act which, permits the District Magistrate or the Chief Metropolitan Magistrate to authorize only officers subordinate to them to take possession of the assets of the borrower and forward the same to the secured creditor. Adherence to such provision, as reflected in the order of the District Magistrate itself, shuts out any question of the authority being given to someone else than contemplated in the said provision. Hence, such challenge as to the order is baseless.

32. Learned counsel for the opposite party no. 1 argues that the interlocutory application challenging the order under Section 14 could not have been filed under Section 17 of the SARFAESI Act. Section 14(3) of the said Act provides a specific bar to any act of the Magistrate or any officer authorized by the Magistrate, done in pursuance of Section 14, being called in question in any court or before any authority. The SARFAESI Act therefore attaches finality to the decision of the Magistrate, which cannot be challenged before any court or authority. However, challenges under Articles 226 and 227 of the Constitution

were maintainable against such an order, but no appeal under Section 17 of the SARFAESI Act was maintainable at all. In this context, learned counsel relies on a judgment reported at (2014) 6 SCC 1 [Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Limited and others].

33. It is further argued that in both of the unreported cases cited in support of the proposition that the authorised officer of the secured creditor could not be conferred with the power to take possession of assets, the secured creditor was directly empowered to take possession, which was deprecated by the court. In the present case, however, the authorised officer empowered to take such possession was a subordinate officer of the Magistrate and not an authorised officer of the secured creditor. As such, both the tribunals below proceeded on an erroneous premise in deciding either that the authorised officer of the secured creditor was empowered to take possession or in leaving the question open for further argument.

34. Placing reliance on V. Noble Kumar (supra), learned counsel argues that only after losing possession could the borrower come up under Section 17. Hence, the present challenge was premature.

35. Moreover, the tribunal did not, in any event, have the power to entertain a challenge under Section 17 of the SARFAESI Act by way of an interlocutory application in connection with the existing application under Section 17 of the said Act. Since the challenge to the District Magistrate's order was preferred by way of an interlocutory application, the same ought not to have been entertained by the tribunal at all. It is argued that there could not be an interlocutory application under Section 17, in connection with the parent application under the same provision.

36. Alternatively, it is submitted that the said interlocutory application was preferred only to avoid the bar of limitation in taking out an independent challenge under Section 17, which stared at the face of the borrower at the relevant juncture. In order to wriggle out of such time?bar, an interlocutory application was preferred.

37. It is further argued that there was no admission at any point of time on the part of the secured creditor. In fact, the "admission" made by the senior advocate was not accepted by the court before which it was made and as such no reliance could be placed on the same at a subsequent stage. Even if a legal submission was made by learned senior counsel for the opposite party no. 1 in the previous contempt proceeding as to the purported irregularity of the Magistrate's order, such submission on law could not be binding on the opposite party no. 1, more so in subsequent independent proceedings.

38. Learned counsel cites a judgment reported at (2015) 7 SCC 373 [Himalayan Coop. Group Housing Society vs. Balwan Singh and others], for the proposition that a submission of a lawyer cannot bind a client to arrive at a compromise/settlement, since such a submission was the decision of the lawyer. In the

absence of the lawyer being specifically authorized to compromise the matter, no such legal admissions to the detriment of the client's interest were binding on the client. It was further argued that under Article 227 of the Constitution the court is confined to the subject-matter and issues raised by the parties and cannot traverse beyond the same to go into the merits of the case made out by the borrower in its application under Section 17 of the SARFAESI Act.

39. By placing reliance on a judgment reported at (2018) 3 SCC 85 [Authorized Officer, State Bank of Travancore and another vs. Mathew K.C.], it was argued that since the present matter relates to the recovery of public revenue, the court should be cautious in passing any orders in writ petitions. In financial matters, it is argued, interim restraint orders could only be passed on special reasons.

40. It is argued that the co-ordinate bench, while delivering the judgment in Jawahar's case (supra), was not assisted with proper reference to Harshad Govardhan Sondagar (supra), which relies on the bar stipulated in Section 14(3) of the SARFAESI Act, thereby deprecating any intervention under Section 17 with an order passed under the said provision.

41. By placing reliance on a division bench judgment of this court, reported at 2015 (3) CHN 543 [Syndicate Bank & Anr. vs. M/s Kaliji Engineering Works & Ors.], it is argued that in the absence of any particular format or mandate being envisaged under the SARFAESI Act requiring the District Magistrate to pass an order under Section 14 of the said Act in a particular way, as long as the order reflects that the Magistrate had applied her/his mind to the contents of the affidavit and if the affidavit contained all such requirements envisaged in the said provision, no fault could be found with the order of the District Magistrate so far as this aspect of the matter was concerned. In the said case, the District Magistrate had actually authorized the secured creditor to take possession, which was corrected by the court.

42. Next placing reliance upon a judgment reported at AIR 1963 SC 1895 [Nibaran Chandra Bag vs. Mahendra Nath Ghughu (deceased) after him his heir and legal representative], learned counsel argues that the scope of Article 227 of the Constitution is very limited and ought not to be exercised in the present case.

43. Learned counsel next relies on a judgment reported at (2017) 14 SCC 329 [Indian Bank vs. S.K. Jeevanandam], wherein it was held that since the borrower had remained quiet and had not responded to the notice under Section 13(2) of the SARFAESI Act, there was no infirmity in the order of the Magistrate ordering possession to be taken from the borrower, notwithstanding the fact that the basis of satisfaction reached was not expressly recorded in the order of the Magistrate. The requirement of recording satisfaction that the affidavit discloses the essential facts stipulated by the proviso to Section 14 came in only after insertion of the proviso in the year 2013. Even otherwise, if the proposition that the satisfaction had to be specifically recorded by the Magistrate, prior to the insertion of the proviso in 2013, was to be tested from the standpoint of every

judicial order being based upon and prompted by requisite satisfaction of the court, it must be acknowledged that the existence of satisfaction for a species of judicial orders was not dependent on the existence of reasons recorded in the order itself. An order under Section 14 of the SARFAESI Act prior to the amendment, was held to belong to the aforesaid specie of judicial orders.

44. By placing reliance on the judgment reported at (2015) 7 SCC 373 [Himalayan Coop. Group Housing Society vs. Balwan Singh and others], it is argued that the lawyer's authority to make concession/admission/statement/compromise/settlement on behalf of his client before the court was not binding on the client. Although lawyers are perceived to be agents of their clients, the law of agency does not apply strictly to client and lawyer relationship, since the lawyers also stand in a fiduciary relationship to their clients, their duties are more demanding than those of other agents and lawyers are required to respect the client's autonomy to make decision in his matter. Though lawyers, it was held, could decide about tactics/means to be adopted while dealing with the cases without consulting with their clients, appropriate instructions from the client or his authorized agents should be sought before making any concession/statement/admission/settlement/compromise before the court which may, directly or remotely, affect the rightful legal right of the client.

45. The opposite party then submits that in a judgment reported at AIR 2016 Calcutta 100 [Dimension Realtors Private Limited and another vs. The District Magistrate, North 24 Parganas and others], a co-ordinate bench of this court distinguished the judgment rendered in Jawahar's case (supra) and diluted the principle laid down therein, by placing reliance on Harshad Govardhan Sondagar (supra).

46. In reply, the petitioner argues that the order under Section 14 of the SARFAESI Act, being an extension of the measures contemplated under Section 13(4) of the Act, as laid down in Kanaiyalal 's case (supra) could very well be challenged in an interlocutory application in connection with a proceeding under Section 17 of the Act. Such a challenge would also be covered by the wide sweep of Section 17.

47. It is argued that V. Noble Kumar's case (supra) dealt with a pre-2016 amendment matter and could not be a precedent on the requirement as to a nine-point affidavit having to be filed by the secured creditor. Moreover, in view of Kanaiyalal's case (supra) and Satyawati Tondon's case (supra), the said principle of Noble Kumar (supra) could not be held to be good law. This apart, the judgment reported at (2017) 14 SCC 329 [Indian Bank vs. S.K. Jeevanandam] dilutes the value of Noble Kumar as a precedent in respect of satisfaction to be arrived at by the Magistrate as to a nine-point affidavit being filed by the secured creditor. Dimension Realtors (supra) strengthens rather than distinguishes Jawahar's case (supra) and stipulates that a challenge can be maintained under Section 17 of the SARFAESI Act even when the secured creditor approaches the Magistrate prior to dispossession. In such view of the

matter, it is argued, the impugned order ought to set aside, thereby reviving the order of the Debts Recovery Tribunal and setting aside the order passed under Section 14 of the SARFAESI Act by the District Magistrate.

48. For a complete adjudication of the present revisional application, the following provisions ought to be looked into:

"Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002:?"

13. Enforcement of security interest. ? (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(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).

Provided that -

(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.

(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.

(3A) 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 fifteen days 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 under

section 17 or the Court of District Judge under section 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.

(5) Any payment made by any person referred to in clause (d) of sub? section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.

(5B) Where the secured creditor, referred to in sub?section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub?section (4) of section 13. (5C) The provisions of section 9 of the Banking Regulation Act, 1949 (10 of 1949) shall, as far as may be, apply to the immovable property acquired by secured creditor under sub?section (5A).

(6) Any transfer of secured asset after taking possession thereof or take over of

management under sub? section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub?section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of the notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets, ?

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub?section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

(9) Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub? section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than sixty percent in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956): Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub? section (1) of section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen?s dues with the liquidator in accordance with the provisions of section 529A of that Act: Provided also that liquidator referred to in the second proviso shall intimate the

secured creditors the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator: Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any. Explanation. For the purposes of this sub-section,

(a) "record date" means the date agreed upon by the secured creditors representing not less than sixty percent in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act.

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

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 assets 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 within a period of thirty days from the date of application:

Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days:

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.

(1A) 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.

....

17. Application against measures to recover secured debts. ? (1) 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 this Chapter, may make an application along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty?five days from the date on which such measures had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.-For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub?section (1) of section 17. (1A) An application under sub?section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction -

- (a) the cause of action, wholly or in part, arises;
- (b) where the secured asset is located; or
- (c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub?section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, 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 this Act and the rules made thereunder, and require restoration of the management or restoration of possession of the secured assets to the borrower or other aggrieved person, it may, by order -

- (a) declare the recourse to any one or more measures referred to in sub?section (4) of section 13 taken by the secured creditors as invalid; and

- (b) restore the possession of the secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub?section (1), as the case may be; and

- (c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub?section (4) of section 13.

(4) If the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub?section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub?section (4) of section 13 to recover his secured debt.

(4A) Where -

- (i) any person, in an application under sub?section (1), claims any tenancy or leasehold rights under the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy, ?

- (a) has expired or stood determine; or

- (b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

- (c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub?section (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub?clause (a) or sub?clause (b) or sub?clause (c) or sub?clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.

(5) Any application made under sub?section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub?section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub?section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."

49. As regards the appellability of an act done or order passed under Section 14 of the SARFAESI Act, Dimension Realtor's case (supra) can be taken as an authority, since the same was a co? ordinate bench decision, binding on this court, having taken into consideration the previous relevant judgments, including Jawahar's case (supra). The crux of the said judgment is found in paragraph no. 104 of the same, where the principles governing the matter were culled out by "ironing out creases in the SARFAESI Act" "to make it workable". Such principles are as follows: "104:

(i) The process under Section 14 of the Act is non?adjudicatory and administrative in nature. The appropriate magistrate has to ascertain whether the nine aspects referred to in the first proviso to Section 14(1) of the Act are covered by the declaration furnished in the affidavit filed by the authorised officer of the secured creditor. The magistrate cannot make any inquiry into the truth of the contents of the affidavit. The magistrate is not called upon to issue any

notice to any person who is likely to be affected by any order passed or action taken under such provision. The magistrate should act promptly and ensure such assistance as may be proportionate to the requirement, but only upon checking that all nine clauses of the proviso are covered in the affidavit.

(ii) A petition under Article 226 of the Constitution against anything done or not done under Section 14 of the Act is maintainable; but such a petition should, ordinarily, not be received to be assessed on merits if filed by a person, other than the secured creditor, who claims to be affected or likely to be affected thereby. As a corollary, a petition under Article 226 of the Constitution can be entertained on merits against an order passed or any act done under Section 14 of the Act, if the complaint pertains to the lack of jurisdiction (primarily, on territorial considerations) or when the absurdity of that which is complained against is demonstrable. A further corollary would be that a secured creditor may maintain a petition under Article 226 of the Constitution on merits if the complaint is of lack of, or the inadequacy of, the assistance rendered under Section 14 of the Act.

(iii) Neither any order nor any assistance provided under Section 14 of the Act may be challenged by a borrower or any other person aggrieved thereby before any court or tribunal; but such person (other than a secured creditor) may apply under Section 17 of the Act in respect of the grievance by citing the secured creditor approaching a magistrate under Section 14 of the Act as a step taken in respect of a measure under Section 13(4) of the Act.

(iv) Any overt step taken by a secured creditor to actuate any of the measures under Section 13(4) of the Act would give rise to an immediate cause of action to a person who may be aggrieved thereby. Such aggrieved person may apply under Section 17 of the Act upon being aware of the overt step taken by the secured creditor, without having to wait for the completion of the relevant measure by the secured creditor. As to the nature of any order that may be passed on such application, whether immediately or otherwise, would depend on the facts of a particular case viewed in the context of the ultimate object of the Act to facilitate the access of the secured creditors to the secured assets without waiting for the completion of a process of adjudication. In assessing the desirability of passing an order, the tribunal will defer to the statutory command in Section 34 of the Act that "no injunction shall be granted by any ... authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act" to ascertain whether the act complained of is within the entitlement of the secured creditor "in pursuance of any power conferred by or under this Act."

(v) Any person aggrieved by any measure taken by a secured creditor (where the commencement of the taking of the measure is upon an overt step being taken by the secured creditor in such direction after the Section 13(3A) stage is completed) may obtain, and be granted, if entitled on facts, the reliefs of repossession or restitution or damages by the appropriate tribunal without there

being a distinction, in such regard, between a borrower as defined in the Act and other persons aggrieved who may apply under Section 17 thereof."

50. It is seen from the said judgment that the Magistrate has to ascertain that the nine points referred to in the first proviso to Section 14(1) of the SARFAESI Act are covered by the declaration furnished in the affidavit filed by the secured creditor. Although the Magistrate cannot make any inquiry into the truth of the contents of such affidavit, the nine clauses of the proviso being covered or not in the affidavit, has to be checked out by the Magistrate. Unless the complaint pertains to lack of jurisdiction [primarily on territorial jurisdiction] or the absurdity which is complained against is demonstrable, no application under Article 226 of the Constitution of India can be maintainable, but persons other than the secured creditor (including a borrower) may apply under Section 17 of the Act in respect of a grievance, by citing the secured creditor approaching the Magistrate under Section 14 of the Act as a step taken in pursuance of a measure under Section 13(4) of the Act. It was further held that such aggrieved persons may apply under Section 17 of the Act upon being aware of the overt step taken by the secured creditor, without having to wait for the completion of the relevant measure by the secured creditor.

51. Even without going into a multitude of statutes, it is well known that several statutes contemplate and stipulate bar to jurisdiction of civil courts/other authorities and attaches finality to orders passed by authorities in specific terms, as in Sections 15 and 10 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 respectively.

52. As regards the bar contemplated in Section 14(3) of the SARFAESI Act, the language of the same permits of various interpretations. If some provisions in other statutes are seen, it will be evident that the protection given in Section 14(3) of the SARFAESI Act can have various shades and meanings attributed to it.

53. For example, Section 587 of the Kolkata Municipal Corporation Act, 1980 provides for an indemnity in respect of actions of persons acting under the direction of municipal authorities, etc. The said provision is as follows:

"Kolkata Municipal Corporation Act, 1980:?"

587. Indemnity. - No suits shall be maintainable against any municipal authority or any officer or employee of the Corporation or any person acting under the direction of any municipal authority or any officer or employee of the Corporation or of a Magistrate in respect of anything done lawfully and in good faith and with due care and attention under this Act or the rules or the regulations made thereunder."

54. Section 19 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 also contemplates a protection to action taken in good faith by the authorities stipulated therein. The said provision is as follows:

"West Bengal Land Reforms and Tenancy Tribunal Act, 1997:?"

19. Protection of action taken in good faith. - No suit, prosecution or other legal proceeding shall lie against -

(a) the State Government or any officer of that Government, or

(b) the Chairman or any Judicial Member or any Administrative Member, or any officer or other employee of the Tribunal, or any officer appointed to assist the Tribunal in the discharge of its functions under this Act, for anything which is in good faith done or intended to be done under this Act or the rules or the regulations made thereunder. "

55. Again, Section 16 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 provides a cloak of protection to actions taken in good faith under the said Act. In contrast, Sections 10 and 15 of the said Act are specifically captioned as 'finality of orders' and 'bar of jurisdiction' respectively.

The said provisions are quoted herein below:

"Public Premises (Eviction of Unauthorised Occupants) Act, 1971:?"

16. Protection of action taken in good faith. - No suit, prosecution or other legal proceedings shall lie against the Central Government or the statutory authority or the appellate officer or the estate officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

10. Finality of orders. - Save as otherwise expressly provided in this Act, every order made by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding 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. 15. Bar of jurisdiction. - No court shall have jurisdiction to entertain any suit or proceeding in respect of -

(a) the eviction of any person who is in unauthorised occupation of any public premises, or

(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or

(c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or

(cc) the sealing of any erection or work or of any public premises under section 5C, or

(d) the arrears of rent payable under sub?section (1) of section 7 or damages payable under sub?section (2), or interest payable under sub?section (2A), of that section, or

(e) the recovery of -

- (i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or
- (ii) expenses of demolition under section 5B, or
- (iii) costs awarded to the Central Government or statutory authority under sub-section (5) of section 9, or
- (iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority."

56. Even without going into a multitude of statutes, it is well known that several statutes contemplate and stipulate bar to jurisdiction of civil courts/other authorities and attaches finality to orders passed by authorities in specific terms, as in Sections 15 and 10 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 respectively.

57. If seen in such perspective, sub-section (3) of Section 14 of the SARFAESI Act is not an independent section and does not carry a caption to indicate that it is intended to operate as a specific bar of jurisdiction or to provide for the finality of actions or orders taken/passed by Magistrate. Section 14 is only a ministerial extension of the powers conferred under Section 13(4), to implement the measures under Section 13(4) of the SARFAESI Act. As such, the act of a Magistrate, who operates as an arm of the authorities to help in implementation of a measure under Section 13(4), is given protection under sub-section (3) of Section 14. Hence, such a protection could not ipso facto be construed to be a bar to a challenge against an order or Act passed/done under Section 14. Hence, the proposition that Section 14(3) provides immunity from a challenge under Section 17 of the SARFAESI Act could not, in any event, be acceptable in law.

58. Even Kanaiyalal (supra) and Satyawati Tondon (supra) held in the same line, that a grievance against an order passed under Section 14 of the SARFAESI Act could be ventilated under Section 17 of the said Act, despite the provision of Section 14 (3). A plain reading of Section 17 makes it clear that any person, including a borrower, aggrieved by any of the measures referred to in Section 13(4), may make an application under the said provision before the Debts Recovery Tribunal. Since it has been categorically held in Jawahar's case (supra), Kanaiyalal case (supra) as well as Dimension Realtor's case (supra) that an order under Section 14 is amenable to challenge under Section 17, being an extension of the measures under Section 13(4), and since in the present case, admittedly the order under Section 14 was sought pursuant to a notice under Section 13(4) of the SARFAESI Act, the same was squarely amenable to a challenge under Section 17.

59. This apart, since the parent challenge under Section 17 was against the notice under Section 13(4) itself, the interlocutory application challenging a consequential order under Section 14 was very much maintainable in aid of the parent challenge under Section 17.

60. As regards the nine-point satisfaction, it is not reflected even in a single sentence of the District Magistrate's order that the District Magistrate was satisfied with such nine points having been mentioned in the affidavit filed by the secured creditor. The specific language of the second proviso to Section 14 of the Act is that the Magistrate, "shall after satisfying the contents of the affidavit pass suitable orders ". In the absence of any reflection of such satisfaction, the order under Section 14 is vitiated ex facie. Although no detailed inquiry as to the veracity of such nine points was perhaps required under the law, the Magistrate was duty bound to record satisfaction as to such points being mentioned in the affidavit. The purported reasons in the order of the Magistrate were entirely alien to a consideration under Section 14 and as such stood vitiated.

61. However, the other challenge of the borrower, as to the authorised officer of the secured creditor having been empowered by the impugned order of the Magistrate under Section 14, does not hold good, since it is evident from the order itself that it was intended therein that the person authorised in the previous paragraphs of the order to take such possession and to forward the assets and documents recovered to the secured creditor, was an officer subordinate to the Magistrate.

62. As regards the vague contention that no interim order ought to be consciously passed in financial matters, such a sweeping and blanket proposition could not prevent the court from exercising its powers of judicial review to look into a matter where a patent injustice had been occasioned. Since the Magistrate acted palpably without jurisdiction in violating the specific mandate of Section 14 to record satisfaction as to the nine points stipulated therein being mentioned in the affidavit, the order under Section 14 stands vitiated and was rightly set aside by the Debts Recovery Tribunal, although on a different consideration. Despite the ratio of the order of the tribunal being not strictly in consonance with law, the conclusion thereof, being correct in law, ought not to have been interfered with by the appellate tribunal at all.

63. It is well-settled that an authority exercising a power conferred by a statute has to exercise such power strictly in accordance with the provisions of the statute empowering it to do so. The Magistrate violated such basic tenet of jurisprudence in passing the impugned order in contravention of Section 14 of the SARFAESI Act.

64. However, the argument of the borrower, as to the submissions of the senior advocate in a previous proceeding binding the secured creditor, is not accepted by this court, since such "admission" was made on a legal question without specific authority being given by the secured creditor to do so. Moreover, the said legal contention was not accepted by the co-ordinate bench of this court before which the argument was advanced. This apart, such argument was advanced in the context of a contempt proceeding, which was entirely different in scope than the present challenge under Section 17 of the SARFAESI Act. As such, the legal submission made in the previous proceeding could not be held to be binding on

the secured creditor in the current one.

65. As far as the contentions of the added opposite parties beyond those advanced by the borrower, those cannot be gone into in the present challenge, since the scope of the instant application under Article 227 of the Constitution could not be enlarged to permit the aggrieved parties to agitate their grievances against the parent notice under Section 13(4) of the SARFAESI Act. In the event the added opposite parties had any remedy in law, including a challenge under Section 17 of the SARFAESI Act, the said opposite parties were and are free to take recourse of the same in accordance with law and subject to adjudication of the same on all points, including limitation, by the appropriate forum.

66. Thus, in view of the discussions above, the appellate tribunal acted without jurisdiction in setting aside the order of the Debts Recovery Tribunal and remanding the matter for further consideration.

67. Hence, C.O. No. 2093 of 2018 is allowed on contest, thereby setting aside the order of the Debts Recovery Appellate Tribunal and reviving the order of the Debts Recovery Tribunal, Kolkata, whereby the order of the District Magistrate under Section 14 of the SARFAESI Act was set aside. The matter is sent back to the District Magistrate concerned to dispose of the petition/affidavit of the secured creditor under Section 14 of the SARFAESI Act afresh, upon recording proper satisfaction as to whether the said affidavit contained the nine points stipulated in the first proviso to Section 14(1) of the SARFAESI Act.

68. There will be no order as to costs.

69. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.