

(2008) 08 KL CK 0021
In the High Court Of Kerala
Case No : WA No. 428 of 2008

Muhammed Ashraf and Smt. C. Arifa	APPELLANT
Vs	
Union of India (UOI)	RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1
Constitution of India, 1950 — Article 14, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 2, 3(1), 3(2)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 34(1), 34(2)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 13(4A), 14, 14
Transfer of Property Act, 1882 — Section 17, 17A, 69, 69A

Citation : (2008) 4 ILR (Ker) 404 : (2010) 7 RCR(Civil) 1861

Hon'ble Judges : P.N. Ravindran, J; J.B. Koshy, J

Bench : Division Bench

Advocate : Varghese C. kuriakose, for the Appellant; T. Krishnan Unni (Sr.), for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—In all these cases, the main point argued by the petitioners is that Chief Judicial Magistrate is not vested with the power and jurisdiction to deal with application u/s 14 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act 54 of 2002) (in short 'the Securitisation Act'). In some of the writ petitions, constitutional validity of Section 14 of the Securitisation Act was also challenged, but, no arguments were raised regarding the same. In two writ petitions, it was also contended that Chief Judicial Magistrate, even if has jurisdiction, cannot depute a Commissioner for taking possession of the secured assets. We note that the Hon'ble Supreme Court has in *Mardia Chemicals Ltd. etc. v. Union of India and Ors.* AIR 2004 SC 237 upheld the validity of the provisions of the Securitisation Act except sub.section 2 of Section 17 which was declared ultra vires Article 14 of the

Constitution of India. The said Sub-section originally provided deposit of seventy five per cent of the amount claimed before entertaining an appeal before the Debts Recovery Tribunal u/s 17 of the Securitisation Act. Thereafter, the Act was amended by Amendment Act 30 of 2004 and requirement of deposit of 75% of the amount claimed was deleted. In view of the above, it is not possible for the petitioners to challenge the constitutional validity of the section . Before answering the question whether Chief Judicial Magistrate has got power u/s 14, we may consider the scope of Section 14 of the Securitisation Act.

2. Section 14 of the Securitisation Act 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 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.

(2) For the purpose of securing compliance with the provisions of Sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

A plain reading of the above section shows that it is a procedural section wherein the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, shall render assistance to take possession of secured assets or documents relating to the assets and forward such assets and documents to the secured creditor. Under Sub-section (2) of Section 14, the authority is empowered to take such steps and use such force, as may be necessary, for taking possession of the secured assets and the documents relating thereto. Sub-section (3) of Section 14 further provides that such act of the authority is protected and the action shall not be questioned in any court or before any authority. As pointed out by the petitioners, a trial or adjudication of dispute is not contemplated by the Magistrate under the above section. Of course, Magistrate can consider whether secured property is identifiable and whether 60 days" notice was issued u/s

13(2) as secured creditor can resort to Section 13(4) and take possession of the secured assets only after issuing notice. In this connection, we refer to Section 13 of the Securitisation Act which reads as follows:

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).

(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 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;" (rest not relevant for this case)

Under Section 14 of the Securitisation Act, Chief Metropolitan Magistrate or District Magistrate is only executing that power and assisting the secured creditor to take possession of the secured assets. No appeal or any other proceedings will lie against the orders passed u/s 14. Of course, right of judicial review under Articles 226 and 227 of the Constitution of India cannot be taken away. But, that power can be exercised only on very limited well settled grounds. The rights given to the borrower under the Securitisation Act are summarised by the

Hon"ble Supreme Court in Mardia's case (supra) at paragraphs 80 and 81. We quote the same as follows:

80. Under the Act in consideration, we find that before taking action a notice of 60 days is required to be given and after the measures u/s 13(4) of the Act have been taken, a mechanism has been provided u/s 17 of the Act to approach the Debt Recovery Tribunal. The above noted provisions are for the purposes of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows:

1. Under Sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under Sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal u/s 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under Sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) u/s 17 of the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) u/s 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the Court.

81. In view of the discussion held in the judgment and the findings and directions contained in the preceding paragraphs, we hold that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debt 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 economy of the country and welfare of the people in general which would subserve the public interest.

3. Section 17 of the Securitisation Act provides a right of appeal. If any person is aggrieved by any of the measures, referred to in Sub-section (4) of Section 13, taken by the secured creditor or his authorised officer, he may make an application to the Debts Recovery Tribunal within 45 days from the date on which such measures had been taken. The Debts Recovery Tribunal/the appellate forum is also given power to restore possession. Section 17 (1) to (4) of the Securitisation Act are quoted below:

17. Right to appeal.- (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.)

(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 of the secured assets to the borrower or restoration or possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in Sub-section (4) of Section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order 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.

Therefore, u/s 14 of the Securitisation Act, Chief Metropolitan Magistrate or District Magistrate, as the case may be, is only rendering assistance to the secured creditor in exercising the right given to the creditor u/s 13(4) and remedy of the aggrieved party is to file an appeal before the Debts Recovery Tribunal u/s 17. It is clear that under Sub-sections (2), (3) and (4) of Section 17 of the Securitisation Act, the statute has provided a complete code, including the powers to the Tribunal to declare any of the measures taken by the secured creditor u/s 13(4) of the Securitisation Act invalid and consequential restoration of possession to the person from whom the possession was taken. In the absence of any adjudicatory power vested in the Magistrate u/s 14, the above authority cannot exercise statutory powers vested in the Tribunal. From orders of the Tribunal a further appeal will lie to Appellate Tribunal u/s 18 of the Securitisation Act. u/s 34 of the Securitisation Act, jurisdiction of Civil Courts to entertain any suit or proceeding is barred. Therefore, aggrieved person has to approach the Tribunal or Appellate Tribunal, as the case may be, under Sections 17 and 18 and if possession is taken u/s 14, other authorities are prohibited from dealing with the subject matter which can be exclusively determined by the Tribunal. Hence, the authority who is called upon to act u/s 14 of the Securitisation Act can only assist the secured creditor in taking possession of the secured assets. The disputes raised between the parties before the authority cannot be adjudicated by it, but, the authority can relegate the aggrieved person to seek statutory remedy under the Securitisation Act after taking possession and handing over to the secured creditor. It is for the borrower to move for stay of the sale or confirmation of sale of the property put in possession of the secured creditor. Possession handed over may be symbolic or physical. If physical possession is handed over, the creditor is entitled to put back the borrower in possession if borrower wins before the Tribunal. Before the secured creditor approaching the Magistrate u/s 14, notice u/s 13(2) must be issued. The Hon"ble Supreme Court has in Transcore Vs. Union of India (UOI) and Another, held as follows:

56. Keeping the above conceptual aspect in mind, we find that Section 13(4) of the NPA Act proceeds on the basis that the borrower, who is under a liability, has failed to discharge his liability within the period prescribed u/s 13(2), which enables the secured creditor to take recourse to one of the measures, namely, taking possession of the secured assets including the right to transfer by way of lease, assignment or sale for realizing the secured assets. Section 13(4A) refers

to the word "possession" simpliciter. There is no dichotomy in Sub-section (4A) as pleaded on behalf of the borrowers. Under Rule 8 of the 2002 Rules, the authorised officer is empowered to take possession by delivering the possession notice prepared as nearly as possible in Appendix IV to the 2002 Rules. That notice is required to be affixed on the property. Rule 8 deals with sale of immovable secured assets. Appendix IV prescribes the form of possession notice. It inter alia states that notice is given to the borrower who has failed to repay the amount informing him and the public that the bank/FI has taken possession of the property u/s 13(4) read with Rule 9 of the 2002 Rules. Rule 9 relates to time of sale, issue of sale certificate and delivery of possession.

Rule 9(6) states that on confirmation of sale, if the terms of payment are complied with, the authorised officer shall issue a sale certificate in favour of the purchaser in the form given in Appendix V of the 2002 Rules. Rule 9(9) states that the authorised officer shall deliver the property to the buyer free from all encumbrances known to the secured creditor or not known to the secured creditor. Section 14 of the NPA Act states that where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred, the secured creditor may, for the purpose of taking possession, request in writing to the District Magistrate to take possession thereof. Section 17(1) of NPA Act refers to right of appeal. Section 17(3) states that if the DRT as an appellate authority after examining the facts and circumstances of the case comes to the conclusion that any of the measures u/s 13(4) taken by the secured creditor are not in accordance with the provisions of the Act, it may by order declare that the recourse taken to any one or more measures is invalid, and consequently, restore possession to the borrower and can also restore management of the business of the borrower. Therefore, the scheme of Section 13(4) read with Section 17(3) shows that if the borrower is dispossessed, not in accordance with the provisions of the Act, then the DRT is entitled to put the clock back by restoring the status quo ante. Therefore, it cannot be said that if possession is taken before confirmation of sale, the rights of the borrower to get the dispute adjudicated upon is defeated by the authorised officer taking possession. As stated above, the NPA Act provides for recovery of possession by non-adjudicatory process, therefore, to say that the rights of the borrower would be defeated without adjudication would be erroneous. Rule 8, undoubtedly, refers to sale of immovable secured asset. However, Rule 8(4) indicates that where possession is taken by the authorised officer before issuance of sale certificate under Rule 9, the authorised officer shall take steps for preservation and protection of secured assets till they are sold or otherwise disposed of. u/s 13(8), if the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the creditor before the date fixed for sale or transfer, the asset shall not be sold or transferred, The costs, charges and expenses referred to in Section 13(8) will include costs, charges and expenses which the authorised officer incurs for preserving and protecting the secured assets till they are sold or disposed of in

terms of Rule 8(4). Thus, Rule 8 deals with the stage anterior to the issuance of sale certificate and delivery of possession under Rule 9. Till the time of issuance of sale certificate, the authorised officer is like a court receiver under Order XL, Rule 1, CPC. The court receiver can take symbolic possession and in appropriate cases where the court receiver finds that a third party interest is likely to be created overnight, he can take actual possession even prior to the decree. The authorized officer under Rule 8 has greater powers than even a court receiver as security interest in the property is already created in favour of the banks/FIs. That interest needs to be protected. Therefore, Rule 8 provides that till issuance of the sale certificate under Rule 9, the authorized officer shall take such steps as he deems fit to preserve the secured asset. It is well settled that third party interests are created overnight and in very many cases those third parties take up the defence of being a bona fide purchaser for value without notice. It is these types of disputes which are sought to be avoided by Rule 8 read with Rule 9 of the 2002 Rules. In the circumstances, the drawing of dichotomy between symbolic and actual possession does not find place in the scheme of the NPA Act read with the 2002 Rules.

A reading of the statutory provisions would show that u/s 14 of the Securitisation Act, the Magistrate is only rendering assistance to the secured creditor in taking possession of the secured assets as provided u/s 13(4) of the Securitisation Act. After 60 days' notice as prescribed u/s 13(2), secured creditor can approach the Magistrate for taking possession of the land. Magistrate has no power to refuse the request, but, before taking action, he can verify whether 60 days' notice as prescribed u/s 13(2) was issued or not and whether secured asset is identifiable. A similar view was expressed by Gujarat High Court in *Bank of India v. Pankaj Dilipbhai Hemnani and Ors.* AIR 2007 Guj 201. But, even as an executing or administering authority, before taking action, he must himself be satisfied that notice u/s 13(2) was issued and the property to be proceeded is the secured property. Even though there is no scope of adjudication or trial of a dispute u/s 14, the Chief Metropolitan Magistrate or District Magistrate is not like an Amin of the court executing a court order. The fact that authority is entrusted with a senior functionary shows that Magistrate must satisfy himself that petition is maintainable. Arbitrary and high handed action at the instance of secured creditor also has to be avoided as taking possession of the property may some times affect substantial rights which may not always be curable by subsequent restoration of possession. If the application is in order, the Magistrate has no option but to take possession of the secured property.

4. The contention raised by the petitioners is that since the authority u/s 14 is not exercising any judicial or quasi judicial functions and no adjudicatory process is involved, only the authorities specified u/s 14 can render assistance under the above section to the secured creditor. The authorities mentioned therein are Chief Metropolitan Magistrate and District Magistrate. In *Solaris Systems Pvt. Ltd. and Anr. v. Oriental Bank of Commerce and Anr.* I.L.R 2006 Ker 645, a learned single Judge of this Court held that Chief Judicial Magistrate can exercise

the powers u/s 14 of the Securitisation Act as the words 'Metropolitan Magistrate' would include Chief Judicial Magistrate also if the area in question is not a metropolitan area as the functions assigned to both the Magistrates are similar. Similar view was followed by another learned single Judge of this Court and those impugned judgments are under appeal. Since those writ appeals are under consideration of the Division Bench, subsequent writ petitions filed are also referred to be heard along with the above writ appeals. 'Metropolitan area' is defined u/s 2(k) of the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C.') which is as follows:

2.(k) "metropolitan area" means the area declared, or deemed to be declared, u/s 8, to be a metropolitan area;

Section 3(1)(a) of the Cr.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;

Section 3(1)(d) of the Cr.P.C. reads as follows:

3. Construction of references.

(1) xx xx xx xx (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.

Section 3(2) of the Cr.P.C. reads as follows:

3(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.

The Criminal Procedure Code also permits that executive powers can be exercised by an Executive Magistrate. Adjudication like sifting of evidence, trial etc. shall be exercisable by a Judicial Magistrate. Contention of the petitioners is that since a trial is not contemplated in a proceeding u/s 14, the power under that section can be exercised by an Executive Magistrate. Learned single Judge held that power of Chief Judicial Magistrates in non-metropolitan areas and Chief Metropolitan Magistrates in metropolitan areas are equal and those terms are used only to indicate the same meaning. But, according to the petitioners, even though it is mentioned in the Cr.P.C. that Chief Judicial Magistrate, wherever mentioned in the Code with respect to metropolitan areas will be the Chief Metropolitan Magistrate, the converse is not mentioned and, therefore, as Chief Metropolitan Magistrate is referred to in the section, it will not include Chief

Judicial Magistrate in non- metropolitan areas. In other words, only Chief Metropolitan Magistrates in metropolitan areas, apart from the District Magistrates, are the empowered authorities u/s 14 of the Securitisation Act. Therefore, in non-metropolitan areas, only the District Magistrate can exercise the power. We are unable to accept the above arguments. Powers of the Chief Judicial Magistrates in non-metropolitan areas and Chief Metropolitan Magistrates in metropolitan areas are one and the same. Only difference is that Chief Metropolitan Magistrate exercises powers of the Chief Judicial Magistrate in metropolitan areas. If Kochi city is notified as a metropolitan area by the State Government, the Chief Judicial Magistrate in Kochi will be termed as Chief Metropolitan Magistrate. The functions are same, powers are same and these words are interchangeably used. One is synonymous for the other depending on the area under his jurisdiction. The only difference is that former one exercises jurisdiction over non- metropolitan areas and latter one exercises the jurisdiction in metropolitan areas only.

5. Learned Counsel for the petitioners argued that so long as the word `Chief Judicial Magistrate" is not mentioned in Section 14 of the Securitisation Act, merely because Chief Metropolitan Magistrate is mentioned in Section 14, it cannot be stated that Chief Judicial Magistrate in non-metropolitan areas also has the power u/s 14. Relying on the decision of the Hon"ble Supreme Court in AIR 2003 SC 2103 it was argued that the court cannot supply the omissions by the Legislature. While interpreting a provision, the court only interprets the law and cannot legislate it. It is for the legislature to amend, modify or repeal it, if it is deemed necessary. By the principle of casus omissus, court cannot supply the law. In the above case, the Hon"ble Supreme Court was considering the Recovery of Debts Due to Banks and Financial Institutions Act (RDBI Act). u/s 34(1) of the above Act, it was mentioned that the provisions of that Act have overriding effect over other Acts. But, the question is whether RDBI Act was enacted in addition to other Acts. Sub-section (2) of Section 34 of the above Act provides that it is in addition to certain specified Acts like Financial Corporation Act etc. Uttar Pradesh Public Monies (Recovery of Dues) Act, 1972 (U.P. Act) was not included u/s 34(2) of the RDBI Act. Therefore, the Hon"ble Supreme Court has held that Financial Corporation can approach for recovery of dues under the RDBI Act or under the Financial Corporation Act, but, not under the U.P. Act, 1972 as it was not enacted in addition to the U.P. Act, 1972. Here, the position is entirely different. The question is whether the term "Chief Metropolitan Magistrate" in metropolitan areas will include Chief Judicial Magistrate in non-metropolitan areas. We are of the view that legislation has to be understood in a reasonable manner. In the context of the definition in the Cr.P.C., it can be gathered that a Chief Judicial Magistrate in non-metropolitan area and Chief Metropolitan Magistrate in metropolitan area are used in legal parlance similarly. As held in *Holmes v. Bradfield Rural District Council* 1949 (1) All ER 381 (page 384) and *Sri Nasiruddin Vs. State Transport Appellate Tribunal*, this Court has to adopt ` just reasonable and sensible" interpretation. In this connection, we refer

to the following observations of the Denning, L.J. in *Seaford Court Estates Ltd. v. Asher* (1949) 2 All ER 155, p. 164(CA)):

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.

Though the above view was criticized by House of Lords in *Magor and St. Mellons R.D.C. v. Newport Corporation* (1951) 2 All ER 839 (HL), it was quoted with approval by the Hon"ble Supreme Court in *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, , *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, , *NEPC Micon Limited and Others Vs. Magma Leasing Limited*, etc. But, House of Lords in *Inco Europe Ltd. and Ors. v. First Choice Distribution (a firm) and Ors.* 2000 (2) All ER 109, p. 115 held that court can add words in its interpretative process in suitable cases if omission or inadvertence of drafting is noticed, to give effect to the purpose of the Legislature. In *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, a Constitution Bench of the Supreme Court held that "a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself...". After referring to the decisions in *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.* (1987) 1 SCC 406 and *Kehar Singh and Others Vs. State (Delhi Administration)*, and various other decisions on the point, the Hon"ble Supreme Court in *National Insurance Co. Ltd. v. Laxmi Narain Dhut* 2007 (2) KLT 470 (SC) has considered how statute should be interpreted. The Hon"ble Supreme Court held as follows:

34. A statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of those who make it and the duty of the court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises difficulties because of various reasons, in as much as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to foresee all situations exhaustively and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate.

Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. (See *District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another*, .

35. It is also well settled that to arrive at the intention of the legislation depending on the objects for which the enactment is made, the Court can resort to historical, contextual and purposive interpretation leaving textual interpretation aside. Francis Bennion in his book "Statutory Interpretation" described "purposive interpretation" as under:

A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.

Here, in this case, there is no *casus omissus* also. Chief Judicial Magistrates in metropolitan areas are designated as Chief Metropolitan Magistrates and vice versa *mutatis-mutandis* by implication and by reference to the area of jurisdiction. Chief Judicial Magistrate in a non-metropolitan area stands in the same footing as Chief Metropolitan Magistrate in metropolitan area and, their designations are used synonymously to denote the authority depending upon where one is situated, in a metropolitan area or a non-metropolitan area and, therefore, we agree with the view of the learned single Judge that in non-metropolitan areas, apart from the District Magistrate, the powers can be exercised by the Chief Judicial Magistrate also. A similar view was taken by the Madras High Court in *The Dhanlakshmi Bank Limited Vs. Kovai Foods and Beverages and Others*, and we are unable to agree with the decision of the Bombay High Court (Aurangabad) in *IndusInd Bank Ltd., (formerly known as Ashok Leyland Finance Ltd.) Vs. The State of Maharashtra*, which took a contrary view.

6. With regard to the argument that a Commissioner cannot be appointed by the

Chief Judicial Magistrate as part of giving assistance in taking possession of the secured assets while rendering assistance to the secured creditor to get possession of the secured assets, we are of the view that it is not necessary that the District Magistrate or the Chief Judicial Magistrate should go personally and take possession. Section 14(2) of the Securitisation Act provides that the Magistrate can order even police assistance and use all necessary powers in taking possession of the secured assets. In *Sakiri Vasu Vs. State of U.P. and Others*, the Hon"ble Supreme Court held as follows:

18. It is well settled that when a power is given to a authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the stature, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his *Statutory Construction* (3rd Edn., p. 267):

...If these details could not be inserted by implication, the drafting of legislation would be an interminable process and the legislative intent would likely be defeated by a most insignificant omission.

20. In ascertaining a necessary implication, the court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as it it were specifically written therein.

21. An express grant of statutory powers carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Thus in *ITO v. M.K. Mohammad Kunhi* AIR 1969 SC 430 this Court held that the Income Tax Appellate Tribunal has implied powers to grant stay, although no such power has been expressly granted to it by the Income Tax Act.

22. Similar examples where this Court has affirmed the doctrine of implied powers are *Union of India and another Vs. Paras Laminates (P) Ltd.*, , *Reserve Bank of India and others Vs. Peerless General Finance and Investment Company Ltd. and another*, , *Chief Executive Officer and Vice-Chairman, Gujarat Maritime Board Vs. Haji Daud Haji Harun Abu and Others*, , *M/s. J.K. Synthetics Ltd. Vs. Collector of Central Excise*, , *State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others*, , etc.

An overall reading of the section shows that the power of the Magistrate is to render assistance to the secured creditor in taking possession of the secured assets. He can also appoint a Commissioner for identification of the secured assets and taking possession of the secured assets etc. and if there is any

resistance, ask for police assistance and take any effective steps to have possession of the secured assets taken over.

In the above circumstances, we dismiss the writ appeal, the writ petitions and the CrI.R.P.