

(2019) 01 UK CK 0028
In the Uttarakhand High Court
Case No : Special Appeal No. 901 Of 2018

Nainital Bank Ltd

APPELLANT

Vs

M/s Naveen Kisan Rice Mill And Others

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(3), 13(4), 14, 14(1), 14(1)(a), 14(1)(b), 17, 35, 37, 41
Code Of Criminal Procedure, 1973 — Section 10(2), 11, 14, 20, 21, 22, 23, 23(2)
Uttar Pradesh Land Revenue Act, 1901 — Section 14A
General Clauses Act, 1897 — Section 3(32)
Constitution Of India, 1950 — Article 226, 227
Defence Of India Act, 1962 — Section 29, 40(1)
Defence Of India Rules, 1939 — Rule 26
Allahabad High Court Rules, 1952 — Rule 5

Citation : (2019) 01 UK CK 0028

Hon'ble Judges : Ramesh Ranganathan, CJ; Lok Pal Singh, J

Bench : Division Bench

Advocate : Rakesh Thapliyal, Atul Kumar Bansal, Prabha Naithani

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred by the 4th respondent-Bank in Writ Petition (M/S) No. 173 of 2018 aggrieved by the order passed by the learned Single Judge on 28.09.2018 allowing the writ petition, quashing the order dated 15.01.2018, declaring a part of the action taken by the Bank subsequent to the said order dated 15.01.2018 a nullity, directing that the property be restored to its position as it was before passing the impugned order dated 15.01.2018, and in directing that the order shall not restrict the District Magistrate from passing a fresh order in accordance with law.

2. The first respondent herein filed Writ Petition (M/S) No. 173 of 2018 seeking a writ of certiorari to quash the notice issued by the Additional District Magistrate, Udham Singh Nagar under Section 14 of the Securitisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") dated 09.10.2017, and to quash the order passed by the Additional District Magistrate dated 15.01.2018 in Case No. 51/66 of 2017.

3. Facts, to the extent necessary, are that the appellant herein issued a notice, under Section 13(2) of the SARFAESI Act, on 18.11.2016 to which the respondent-writ petitioner filed his objections under Section 13(3) of the SARFAESI Act on 20.02.2017. A possession notice, under Section 13(4) of the SARFAESI Act, was issued by the appellant-Bank on 21.02.2017 which, thereafter, rejected the respondent-writ petitioner's objections on 04.03.2017. An order was passed by the District Magistrate, Udham Singh Nagar on 29.04.2017 authorising the Additional District Magistrate (Revenue / Finance), Udham Singh Nagar to dispose of the application filed by the Bank under Section 14 of the SARFAESI Act. By the said order all applications, pending before the Collector / District Magistrate, Udham Singh Nagar under Section 14 of the SARFAESI Act, were transferred to the Additional District Magistrate (Revenue / Finance), Udham Singh Nagar for hearing and disposal. The concerned Officer was directed to deal with the matters under Section 14 of the SARFAESI Act. An application was made by the appellant under Section 14 of the SARFAESI Act, along with an affidavit, on 4/5.5.2017. A notice was issued by the Additional District Magistrate on 09.10.2017 pursuant to which the respondent-writ petitioner filed his objections. The Additional District Magistrate passed an order on 15.01.2018 under Section 14 of the SARFAESI Act.

4. An auction was held on 13.07.2018 pursuant to a sale notice being issued by the Bank, and the highest bidder in the auction paid 25% of the bid amount to the appellant-Bank. As a result of the order of status quo, passed by this Court on 19.07.2018, the appellant has not as yet confirmed the sale in favour of the highest bidder, nor has a sale-certificate been issued till date.

5. In the order under appeal, the learned Single Judge observed that the question which fell for consideration was whether the District Magistrate was a persona designata under Section 14 of the SARFAESI Act, and whether any discretion was vested in him under law not to pass orders regarding possession of the property, on an application being moved before him by the secured creditor, and whether he could delegate these powers to any other officer or to his subordinate officer.

6. After taking note of Section 14 of the SARFAESI Act, the learned Single Judge observed that the entire process of sending a notice, hearing the secured creditor as well as the borrower, had not been undertaken by the District Magistrate, but by the Additional District Magistrate (Finance & Revenue); and the State Government, in its supplementary affidavit, had annexed a copy of the letter dated 29.04.2017 passed by the District Magistrate who had delegated these powers, under Section 14 of the SARFAESI Act, to the Additional District Magistrate (Finance & Revenue). After referring to various judgments of different High Courts cited by learned counsel on either side, the learned Single Judge

observed that there were contrary views of different High Courts on this aspect; in Siddharth Sarawgi (2014) 16 SCC 248, the Supreme Court, after drawing a distinction between delegation of legislative or quasi-judicial powers on the one hand, and delegation of administrative powers on the other, had held that legislative powers cannot be delegated and quasi judicial powers are also normally not to be delegated; and delegation was permissible only regarding administrative powers. The learned Single Judge, thereafter, observed that merely because the functions, which had been assigned to a particular designated person, are executive in nature would not ipso facto mean that it is legally permissible to delegate these powers.

7. The learned Single Judge further observed that Section 14(1) of the SARFAESI Act was amended in the year 2013, and four provisos were inserted; the District Magistrates or the Chief Metropolitan Magistrates were required to examine several aspects as were referred to in the applications to be made by the secured creditors; it is only after satisfying himself of the veracity of these assertions, could the District Magistrate or the Chief Metropolitan Magistrate finally pass orders for possession; it was not as if, by merely moving an application, the secured creditor could secure an order of possession; such an order was required to be passed by the District Magistrate, after satisfying himself of the veracity of the assertions made in the application; the order must be passed after due application of mind on the part of the designated authority; while the District Magistrate was not required to examine the legal niceties of the documents, nor was he required to pass an adjudicatory order, conferment of administrative powers did not mean that the order could be passed without application of mind; the first part of Section 14(1) of the SARFAESI Act required the District Magistrate to take a decision in the matter whether at all an order of possession should be passed or not; this decision was required to be taken on appreciation of certain documents and affidavits which had to be furnished by the secured creditor; such an order could be passed only after due notice was given to the borrower, and he/she was given an opportunity of being heard; the District Magistrate could delegate, the actual taking over of possession of the assets, to a subordinate officer or to the police; however, the actual order for possession had to be passed by the District Magistrate, and by no other authority.

8. The learned Single Judge, relying on Hari Chand Aggarwal AIR 1969 SC 483, held that, looking at the scheme of the Act and considering the nature of the powers, the Legislature, in its wisdom, had given these powers only to a designated person which was the District Magistrate; as such, these powers could not have been delegated by the District Magistrate to the Additional District Magistrate, as it was on him alone that such a power was conferred; and such a delegation was without authority of law, and had no legal basis. Agreeing with the judgments of the Kolkata and the Kerala High Courts on this aspect, the learned Single Judge set aside the notice dated 09.10.2017, and the order dated 15.01.2018. Aggrieved thereby, the present appeal.

9. Sri Rakesh Thapliyal, learned counsel for the appellant-Bank, would draw our attention to the proceedings dated 29.04.2017, whereby the District Magistrate had authorized the Additional District Magistrate to pass orders on the applications filed by the Banks under Section 14 of the SARFAESI Act, to submit that, in the present case, clause (1A) of Section 14 of the SARFAESI Act has not been invoked by the District Magistrate; as a "District Magistrate" includes an Additional District Magistrate also (in view of Sections 20 to 23 of the Criminal Procedure Code and Section 14-A of the U.P. Land Revenue Act), he had merely made over the applications, submitted to him by the secured creditor under Section 14 of the SARFAESI Act, to the Additional District Magistrate; such a power inheres in the District Magistrate and, in any event, must be read as available to him under Section 14 of the SARFAESI Act; the provisos to Section 14(1), and sub-section (1A), were inserted by Act No. 1 of 2013; and since the power to take a decision, to direct possession to be taken over of the secured assets, is administrative in nature, it is always open to the District Magistrate to authorize the Additional District Magistrate to decide the applications, and hand over possession of the subject property to the secured creditor. Learned counsel would rely on Sections 20 and 23 of the Code of Criminal Procedure; Section 14-A of the U.P. Land Revenue Act, 1901; and Section 3(32) of the General Clauses Act, 1897, which defines a "Magistrate". He would also rely on *Irshad Husain* (2009) (106) RD 762; *T.R. Jewellery* 2015 SCC OnLine Hyd 449; *Capital First* 2017 SCC OnLine Bom 9425; *Puran Maharashtra Automobiles* 2009 (6) *Maharashtra Law Journal* 977; *Kanaiyalal Lalchand Sachdev* (2011) 2 SCC 782; *Prafulla Kumar Maheshwari Writ Petition No. 10649 of 2017 dated 22.11.2017*; and *Standard Chartered Bank* (2013) 9 SCC 620.

10. Sri Rakesh Thapliyal, Learned counsel for the appellant-respondent, would also place reliance on *Kanaiyalal Lalchand Sachdev* (2011) 2 SCC 782 to contend that the petitioner has an effective alternative remedy of invoking the jurisdiction of the Debt Recovery Tribunal by filing an appeal under Section 17 of the SARFAESI Act against the order passed by the Additional District Magistrate under Section 14 of the said Act; and as the respondent-writ petitioner has an efficacious alternative statutory remedy, this Court would not exercise its discretion, under Article 226 of the Constitution of India, to interfere.

11. Sri Rakesh Thapliyal, Learned counsel for the appellant-Bank, would further submit that, in any view of the matter, no prejudice had been caused to the first respondent-writ petitioner by the act of the appellant-Bank in taking over possession; physical possession of the subject property was taken as early as on 22.05.2018; the subject premises is in the possession of the appellant-Bank ever since then; the first respondent-writ petitioner has not subjected the notice, issued for auction of the said property, to challenge in appropriate legal proceedings; and the learned Single Judge was not justified in directing that the auction proceedings be declared a nullity.

12. Ms. Prabha Naithani, learned brief holder appearing on behalf of the State of

Uttarakhand, would place reliance on the supplementary affidavit, filed on behalf of the State Government, to submit that the power to pass an order, under the second proviso to Section 14(1) of the SARFAESI Act, is merely an administrative power, and not adjudicatory in character; and the action of the District Magistrate, in authorizing the Additional District Magistrate to pass orders on the applications filed by secured creditors under Section 14 of the SARFAESI Act, is legal and valid.

13. On the other hand Sri Atul Kumar Bansal, learned counsel for the first respondent-writ petitioner, would submit that the provisos to Section 14(1), and sub-section (1A), were inserted by Act No. 1 of 2013 only with a view to provide additional safeguards to a borrower; prior to its amendment, by Act No. 1 of 2013, Section 14 of the SARFAESI Act did not require the District Magistrate to pass an order; while the second proviso now obligates the District Magistrate or the Chief Metropolitan Magistrate to pass suitable orders, for the purpose of the applications, after satisfying himself of the evidence available with the secured creditor, sub-section (1A) enables him to authorize an officer, subordinate to him or her, to take possession of the assets and documents; as the District Magistrate or the Chief Metropolitan Magistrate is required to pass orders on the applications made by the secured creditor under Section 14(1) of the SARFAESI Act, it is not open to the District Magistrate to authorise an officer subordinate to him to pass an order directing possession of the assets, and the documents relating thereto, to be taken; the Statute permits the District Magistrate to authorise another to take possession of the assets and documents of the secured creditor, and not to pass an order as stipulated under the second proviso to Section 14(1); since Parliament did not intend to confer the power to pass orders on any other officer, other than the District Magistrate or the Chief Metropolitan Magistrate, it is not open to any other Executive Magistrate to pass such an order, or for the District Magistrate to authorize the Additional District Magistrate to do so; the provisions of the Criminal Procedure Code, or the U.P. Land Revenue Act or the General Clauses Act, cannot be brought in aid to give a different meaning to the words "District Magistrate / Chief Metropolitan Magistrate" as used in Section 14(1) of the SARFAESI Act; and the learned Single Judge was justified in setting aside the order passed by the Additional District Magistrate dated 15.01.2018.

14. Mr. Atul Kumar Bansal, learned counsel for the respondent-writ petitioner, would rely on Arupesheshwar Chatterjeet and others AIR 2015 Calcutta 282; Chellaperumal and another AIR 2014 (NOC) 574 (Cal.); Sundaram BNP Paribas Home Finance Ltd. Cases III (2009) BC 360; K. Arockiyaraj 2013 (4) Law Weekly 485; and Aseena (2009) Banking Cases 145, in this regard. He would also rely on Hari Chand Aggarwal AIR 1969 SC 483 to submit that it is only if the Statute confers power of delegation, can such power be exercised. He would refer to M/s Amar Nath Om Prakash AIR 1985 SC 218 to contend that, since a judgment should not be read as a Statute, and as the language of Section 14(1) of the SARFAESI Act, its provisos and Section 14(1A), are clear and unambiguous, it is

unnecessary to place reliance on any judgments of Courts on the construction to be placed thereupon; the provisions itself clearly show that the power to pass such an order is conferred only on the District Magistrate; he alone is required to pass the order; and he cannot delegate it to any other officer.

15. Mr. Atul Kumar Bansal, Learned counsel for the respondent-writ petitioner, would place reliance upon Harshad Govardhan Sondagar (2014) 6 SCC 1 to submit that the order of the Additional District Magistrate, under Section 14(1) of the SARFAESI Act, can only be questioned in proceedings under Article 226 of the Constitution of India, and not under Section 17 of the SARFAESI Act; and since an Additional District Magistrate lacks jurisdiction to pass the order, the first respondent-writ petitioner was entitled to approach this Court.

I. Relevant Statutory Provisions:

15. Section 14 of the SARFAESI Act provides for the Chief Metropolitan Magistrate or the District Magistrate to assist the secured creditor in taking possession of the secured asset, and, under sub-section (1) thereof, where possession of any secured asset is required to be taken by the secured creditor, or if any of the secured assets 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.

16. The first proviso to Section 14(1) of the SARFAESI Act stipulates that any application by the secured creditor shall be accompanied by an affidavit, duly affirmed by the authorised officer of the secured creditor, declaring (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, 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 details of the 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 the reasons for non-acceptance of such

objection or representation has been communicated to the borrower; (viii) the borrower has not made any repayment of the financial assistance inspite 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; and (ix) the provisions of this Act and the rules made thereunder have been complied with.

17. The second proviso to Section 14(1) stipulates 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 the application. The third proviso to Section 14(1) stipulates that, if no order is passed by the Chief Metropolitan Magistrate or the 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 the aggregate sixty days. The fourth proviso to Section 14(1) stipulates that the requirement of filing the affidavit, stated in the first proviso, shall not apply to proceedings pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

18. Section 14(1-A) of the SARFAESI Act stipulates that 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. Section 14(2) of the SARFAESI Act stipulates that 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. Section 14(3) of the SARFAESI Act stipulates that no act of the Chief Metropolitan Magistrate or the District Magistrate, and any officer authorized by the Chief Metropolitan Magistrate, done in pursuance of this Section shall be called in question in any court or before any authority.

19. While the first three provisos to Section 14 of the SARFAESI Act were inserted by Act 1 of 2013 w.e.f. 15.01.2013, the words "within a period of 30 days from the date of the application" in the second proviso, and the fourth proviso, were inserted by Act 44 of 2016 w.e.f. 01.09.2016. Sub-section (1-A) was inserted in Section 14, and the words "any officer authorized by the Chief Metropolitan Magistrate or the District Magistrate" were inserted in sub-section (3) of Section 14, by Act 1 of 2013 w.e.f. 15.01.2013.

II. The District Magistrate is required to pass an order on the application under Section 14, after satisfying himself of the contents of the affidavit :

20. Amendments were made to Section 14 of the SARFAESI Act to provide safeguards to the interest of the borrower. These provisions stipulate that a

secured creditor who is seeking the intervention of the Magistrate under Section 14 is required to file an affidavit furnishing the information contemplated under various sub- clauses (i) to (ix) of the first proviso and obligates the District Magistrate or the Chief Metropolitan Magistrate to pass suitable orders regarding taking of the possession of the secured assets only after being satisfied with the contents of the affidavit. (Standard Chartered Bank and Ors. (2013) 9 SCC 620).

21. The authorized officer cannot evict a lessee by force, and should file an application before the Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the Act along with an affidavit. Thereafter, the Chief Metropolitan Magistrate or the District Magistrate should give notice and, after hearing the alleged lessee and the secured creditor consistent with principle of natural justice, should take the decision. The authority, referred to in Section 14, only assists the secured creditor in securing his asset either through himself or through a person subordinate to him after ascertaining, among others, that a notice under Section 13(2) was issued and the property to be proceeded with is a secured property. (Harshad Govardhan Sondagar (2014) 6 SCC 1).

22. The District Magistrate or the Chief Metropolitan Magistrate is obligated to pass suitable orders, regarding taking of the possession of the secured assets, only after being satisfied with the contents of the affidavit. The satisfaction of the Magistrate, contemplated under the second proviso to Section 14(1), necessarily requires him to examine the factual correctness of the assertions made in such an affidavit, but not the legal niceties of the transaction. It is only after recording his satisfaction that the Magistrate can pass appropriate orders regarding taking of possession of the secured asset. (Standard Chartered Bank (2013) 9 SCC 620). Where the secured creditor approaches him directly under Section 14 of the Act, the Magistrate will scrutinize the application as provided in Section 14 and then, if satisfied, authorize a subordinate Officer, as provided under Section 14(1)(A), to take possession of the assets and documents and forward them to the secured creditor. For that purpose the Magistrate may authorize the Officer concerned to use such force as may be necessary. After possession is taken, the assets and documents will be forwarded to the secured creditor. (Standard Chartered Bank (2013) 9 SCC 620).

III. CAN THE DISTRICT MAGISTRATE DELEGATE THE POWER, CONFERRED ON HIM TO PASS AN ORDER UNDER THE SECOND PROVISIO TO SECTION 14(1), TO THE ADDITIONAL DISTRICT MAGISTRATE?

23. The contention urged on behalf of the respondent-writ petitioner, which found favour with the learned Single Judge, was that the Additional District Magistrate lacked jurisdiction to pass the order under the second proviso to Section 14(1) of the SARFAESI Act. In the present case the District Magistrate had, by order dated 29.04.2017, authorised the Additional District Magistrate to dispose of applications of banks under Section 14 of the Act. The order dated 29.04.2017 reads thus:-

"Court Collector / District Magistrate Udham Singh

Nagar

Letter No. (188411) Reader - 2017 Date

- 29 April, 2017

Order

For the disposal of application of banks under Section 14 of SARFAESI Act, Additional District Magistrate (Revenue / Finance) Udham Singh Nagar is hereby authorized.

Pending application in the court of Collector / District Magistrate, Udham Singh Nagar under Section 14 of SARFAESI Act are hereby transferred to Additional District Magistrate (Revenue / Finance) Udham Singh Nagar for hearing / disposal.

Concerned officer (Record) Collectorate, Udham Singh Nagar is hereby directed that matters under Section 14 of the SARFAESI Act to be dealt with after legal advise shall be made available from CRA Patal to Additional District Magistrate (Revenue / Finance) Udham Singh Nagar.

Date - 29 April, 2017

Sd/-

(Dr. Neeraj Kahirwal)

Collector / District Magistrate

Udham Singh Nagar"

24. In examining the question whether the District Magistrate could have delegated his powers, under the second proviso to Section 14(1) of the SARFAESI Act, to the Additional District Magistrate vide order dated 29.04.2017, it must be borne in mind that Section 14(1) of the SARFAESI Act refers only to the Chief Metropolitan Magistrate or the District Magistrate and not to the Additional District Magistrate or any other Executive Magistrate. When it inserted the provisos and sub-section (1-A) to Section 14, by Act 1 of 2013 w.e.f. 15.01.2003, Parliament was aware that, before the said amendment, it had conferred power only on the Chief Metropolitan Magistrate or the District Magistrate under Section 14(1). Parliament has, even then, chosen to confer power, under the second proviso, only on the District Magistrate or the Chief Metropolitan Magistrate to pass suitable orders on the application made by the secured creditor, accompanied by the affidavit affirmed by the authorized officer of the secured creditor, for the purpose of taking possession of the secured assets, and not on the Additional District Magistrate or any other executive Magistrate.

25. Before insertion of the provisos, by Act 1 of 2013 w.e.f. 15.01.2013, there was neither any requirement of an affidavit affirmed by the authorized officer of the secured creditor to accompany the application made by the secured creditor, nor was the District Magistrate or the Chief Metropolitan Magistrate required to pass suitable orders for the purpose of taking possession of the secured assets after satisfying themselves regarding the contents of the affidavit affirmed by the authorized officer of the secured creditor. With the insertion of the first three provisos to Section 14(1), and sub-section (1A) of Section 14, by Act 1 of 2013 w.e.f. 15.01.2013,

Parliament has separated the functions of passing an order on the application made by the secured creditor and the consequential act of taking possession of assets and documents and forwarding them to the secured creditor. Consequent on the insertion of the first and the second provisos to Section 14(1), by Act 1 of 2013 w.e.f. 15.01.2013, the District Magistrate / the Chief Metropolitan Magistrate is now required to pass orders for the purpose of taking possession of the secured assets after satisfying himself regarding the contents of the affidavit.

26. Sub-section (1A) of Section 14 does not authorize the District Magistrate or the Chief Metropolitan Magistrate to delegate the power to pass an order under the second proviso, after satisfying himself of the contents of the affidavit to be submitted in terms of the first proviso, on any officer subordinate to him. While the power to pass an order under the second proviso must necessarily be exercised by the District Magistrate or the Chief Metropolitan Magistrate, that too, after satisfying himself of the contents of the affidavit affirmed by the authorized officer of the secured creditor, it is only the consequential act, following the order passed by the District Magistrate or the Chief Metropolitan Magistrate, which can be delegated by them to any officer subordinate to them, and not the power to pass the order itself. Even if the order, required to be passed under the second proviso, is held to be administrative in character, the power to pass such an administrative order has been conferred by Parliament only on the District Magistrate and the Chief Metropolitan Magistrate, and none else.

27. "Delegation" is defined in Black's Law Dictionary as "the act of entrusting another with authority by empowering another to act as an agent or representative". In P. Ramanatha Aiyar's, *The Law Lexicon*, "delegation" is defined as "the act of making or commissioning a delegate". Delegation, generally, means parting of powers by the person who grants the delegation, but it also means conferring of an authority to do things which otherwise that person would have to do himself. (Sidhartha Sarawgi (2014) 16 SCC 248). Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or the delegator. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The

ultimate power always remains in the delegator and is never renounced. (Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. (1974) 4 SCC 98; Sidhartha Sarawgi (2014) 16 SCC 248)

28. *Delegatus Non Potest Delegare* means that a delegate has no power to delegate. The said maxim indicates a rule of construction of a statute or other instrument conferring an authority. Ordinarily, a discretion conferred by a statute on any authority is intended to be exercised by that authority, and by no other. But the intention may be negated by any contrary indications in the language, scope or object of the Statute. (Barium Chemicals Limited and Anr. AIR 1967 SC 295; Sidhartha Sarawgi (2014) 16 SCC 248). The Legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and formally enacting that policy into a binding rule of conduct. After the performance of essential legislative functions by the Legislature, and laying the guiding policy, the Legislature may delegate, to the executive or administrative authority, any ancillary or subordinate powers that are necessary for giving effect to the policy and purposes of the enactment. Regulations, dealing with the procedure on implementation of plenary legislation, is generally a task entrusted to a specified authority. In construing the scope and extent of delegated power, the difference between the essential and non-essential functions of the delegate should be borne in mind. While there cannot be sub-delegation of any essential functions, in order to achieve the intended object of the delegation, the non-essential functions can be sub-delegated to be performed under the authority and supervision of the delegate. Since the Legislature need not spend its time for working out the details on implementation of the law, it may entrust the said task to an agency. That agency cannot entrust such task to its subordinates as it would be a breach of the confidence reposed on the delegate. (Sidhartha Sarawgi (2014) 16 SCC 248).

29. In *Sundaram BNP Paribas Home Finance Ltd. Cases III* (2009) BC 360, the Kerala High Court held that the repository of statutory power, under Section 14, is the District Magistrate or the Chief Metropolitan Magistrate, as the case may be; the SARFAESI Act, the empowering statute, does not authorize delegation of that statutory power; bereft of that, the repository of that statutory power has to exercise that power by himself and cause the relief to be worked out under his control; that cannot be delegated; he may, for such purpose, issue a commission, even to a subordinate in the official hierarchy, to supervise, or / and authorize the police force to take further action; but, this can be only under his control and orders; and, therefore, the delegation done is impermissible.

30. The specific power of delegation, conferred by Sub-section (1-A) of Section 14, on the District Magistrate or the Chief Metropolitan Magistrate is only to authorize any officer, subordinate to them, to take possession of the assets and documents relating thereto, and to forward such assets and documents to the secured creditor. The power conferred on the District Magistrate or the Chief Metropolitan Magistrate, under the second proviso, to pass suitable orders on the

application made by the secured creditor, in terms of the first proviso, has not, unlike sub-section (1-A), been permitted by Parliament to be delegated to any other officer. If Parliament intended to confer the power to pass an order also on an officer, subordinate to the District Magistrate or the Chief Metropolitan Magistrate, it would have so specified in sub-section (1A) of Section 14 and would not have confined the power, to authorize a subordinate officer, only to the taking possession of the assets and documents, and forwarding such assets and documents to the secured creditor. In the absence of Parliament conferring authority on the District Magistrate or the Chief Metropolitan Magistrate to delegate its powers, to pass an order under the second proviso to Section 14(1), the doctrine of *delegatus non potest delegare* would apply, and any such delegation would then contravene the provisions of Section 14, and would be illegal.

IV. Addition of words to a statutory provision is impermissible.

31. Accepting the construction placed on Section 14 of the SARFAESI Act, by the appellant-respondents, would require the words "Additional District Magistrate" to be added in Section 14(1), and its second proviso. A provision must be construed according to the natural meaning of the language used. The Court, in interpreting a Statute, must therefore proceed without seeking to add words which are not to be found in the Statute. (*Southern Petrochemical Industries Co. Ltd.* AIR 2007 SC 1984; *Mohindra Supply Co.* AIR 1962 SC 256; *Bank of England* LR (1891) AC 107; *Anjum M.H. Ghawala* (2002) 1 SCC 633; *J. Srinivasa Rao* (2006) 12 SCC 607). Statutory language must always be given presumptively the most natural and ordinary meaning which is appropriate in the circumstances (*Chertsey Urban District Council* (1964) 2 All ER 627). When the language is plain and unambiguous, and admits of only one meaning, no question of construction of a Statute arises, for the Act speaks for itself. The meaning must be collected from the expressed intention of the legislature. (*Dr Vijay Anand Maharaj* (1963) 1 SCR 1).

32. In construing a statutory provision, the first and foremost rule of construction is the literal construction. All that the court has to see, at the very outset, is what does that provision say. If the provision is unambiguous and if, from that provision, the legislative intent is clear, the Court need not call into aid other rules of construction of Statutes (*Raghunath Rai Bareja* (2007) 2 SCC 230; *Hiralal Ratanlal* (1973) 1 SCC 216), nor would it be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. (*Kanai Lal Sur* 1958 SCR 360)), as it is well recognised that the language used speaks the mind and reveals the intention of the framers. (*T.V. Sundaram Iyengar (P) Ltd.* (1976) 1 SCC 77). The legislature is presumed to have made no mistake and to have intended to say what it has said. Assuming there is a defect in the words used by the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible

result. (Raghunath Rai Bareja (2007) 2 SCC 230; Ombalika Das (2002) 4 SCC 539; Sodra Devi AIR 1957 SC 832; Prakash Nath Khanna (2004) 9 SCC 686; Delhi Financial Corpn. (2004) 11 SCC 625). It would be impermissible to call in aid any external aid of construction to find out the hidden meaning. (D.D. Joshi (1983) 2 SCC 235). Where the words of a Statute are clear and unambiguous, recourse cannot be had to principles of interpretation other than the literal rule. (Swedish Match AB AIR 2004 SC 4219; Raghunath Rai Bareja (2007) 2 SCC 230). The language of Section 14(1) of the SARFAESI Act, and its second proviso, are clear and unambiguous. It is unnecessary, therefore, to resort to external aids, such as the provisions of other enactments, to understand its meaning.

V. Intention of the Legislature must be ascertained from a reading of other clauses of Section 14, and not merely the second proviso thereto:

33. The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to other provisions of the Statute also. It must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs. (State of W.B. v. Union of India AIR 1963 SC 1241; Province of Bombay 1947(49)BomLR 257; Okara Grain Buyers' Syndicate Ltd. AIR 1964 SC 669; R.S. Raghunath AIR 1992 SC 81; and Manik Lal Majumdar AIR 2005 SC 1090). No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

(R.S. Raghunath AIR 1992 SC 81; Peerless General Finance and Investment Co.

34. Bearing these principles in mind, let us now examine the various sub-sections, provisos and clauses of Section 14 of the SARFAESI Act. Clauses (i) & (ii) of Section 14(1A) are in pari-materia with clauses (a) & (b) of Section 14(1) of the SARFAESI Act. Consequent, on the insertion of Sub-Section (1A) to Section 14, the power conferred under Section 14(1) on the District Magistrate and the Chief Metropolitan Magistrate to take possession of the assets and documents, and to forward such assets and documents to the secured creditor, can now be delegated by the District Magistrate or the Chief Metropolitan Magistrate to any officer subordinate to them, and consequently such a power can now be exercised by any officer subordinate to the District Magistrate or the Chief Metropolitan Magistrate, on their being so authorized by the District Magistrate or the Chief Metropolitan Magistrate.

35. Section 14(3), prior to its amendment by Act 1 of 2013 with effect from 15.01.2013, stipulated that no act of the District Magistrate or the Chief Metropolitan Magistrate, done in pursuance of Section 14, shall be called in question in any court or before any authority. As a result of the amendment, the words "any officer authorized by the Chief Metropolitan Magistrate or the District Magistrate" have been inserted in Sub-Section (3). Since Parliament has inserted the aforesaid words only in sub-section (3), and has not so stipulated in the

second proviso to Section 14(1), it is clear that the power to pass an order, under the second proviso to Section 14(1), has been conferred only on the Chief Metropolitan Magistrate or the District Magistrate, and not any other officer. When words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense, and the conclusion must follow that the two expressions have different connotations. (Arthur Paul Benthall AIR 1956 SC 35). When the legislature has taken care of using different phrases in different sub-sections normally different meaning is required to be assigned to the language used by the legislature. (Arthur Paul Benthall AIR 1956 SC 35; Hansrajbhai V. Kodala (2001) 5 SCC 175). If the legislative intention was not to distinguish, and while stating "District Magistrate" it was intended to include the "Additional District Magistrate" or any subordinate officer, there would have been no necessity of expressing the position differently. When the situation has been differently expressed the legislature must be taken to have intended to express a different intention. (CIT v. East West Import and Export (P) Ltd. AIR 1989 SC 836)

VI. Judgments relied upon by learned counsel on either side :

36. It is only if the words "District Magistrate" or "Chief Metropolitan Magistrate" are held to include an Additional District Magistrate or the Additional Chief Metropolitan Magistrate or any other Executive Magistrate, can exercise of power by the Additional District Magistrate, to pass an order under the second proviso to Section 14(1), be held to be valid. Before examining whether it is permissible to place such a construction, let us now take note of the judgments cited by learned counsel on either side.

37. In T.R. Jewellery 2015 SCC OnLine Hyd 449, the Full Bench of the High Court at Hyderabad observed that Section 14 of the SARFAESI Act refers only to the Chief Metropolitan Magistrate and the District Magistrate; if really the proceedings before the Chief Metropolitan Magistrate were judicial in nature, the Legislature would not have allowed the District Magistrate or the Chief Metropolitan Magistrate to authorize any Officer subordinate to them to take possession of such assets and documents relating thereto, and forward such assets and documents to the secured creditor; the argument that the delegation in Section 14(1A) is only with regards execution of the order by an Officer subordinate to the Chief Metropolitan Magistrate or the District Magistrate, and not passing of the order, could not be accepted; Section 14(1)(a) & (b), which dealt with assistance by Chief Metropolitan Magistrate and the District Magistrate, also refers to taking possession of such assets and documents and forwarding them to the secured creditor; a reading of Section 37 discloses that the provisions of SARFAESI Act or the Rules made thereunder are in addition to, and not in derogation of, any other law for the time being in force; the phrase "any other law for the time being in force" used in Section 37 would definitely include the provisions of the Code of Criminal Procedure; the provisions of Code cannot be excluded from consideration while dealing with the SARFAESI Act; and

the finding of the Full Bench of the Tamil Nadu High Court that, in view of Section 35 of the Act, the provisions of SARFAESI Act would override the provisions of Cr.P.C., and the phraseology used in Section 14 should be given its true meaning without any assistance of the Cr.P.C., may not be correct.

38. Section 20 of the Criminal Procedure Code, 1973 relates to Executive Magistrates and, under sub-section (1) thereof, in every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate. Under sub-section (4) thereof, the State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as the occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate. Under sub-section (4-A), the State Government may, by general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub-section (4) to the District Magistrate.

39. Section 23 CrPC relates to Subordination of Executive Magistrates and, under sub-section (1) thereof, all Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate. Section 23(2) stipulates that the District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.

40. In examining the question whether the provisions of Sections 20 and 23 of the Criminal Procedure Code, 1973 can be read into the provisions of Section 14 of the SARFAESI Act, it is useful to note that Section 35 of the SARFAESI Act stipulates that the provisions of the SARFAESI Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Section 37 of the SARFAESI Act stipulates that the application of other Acts are not barred and, thereunder, the provisions of the SARFAESI Act, or the Rules made thereunder, shall be in addition to, and not in derogation of the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force.

41. In view of Section 35 of the SARFAESI Act, if there is any provision in the SARFAESI Act, and if there is any provision in any other law which is inconsistent therewith, the provision of the SARFAESI Act will have effect and not the provision of any other law. (Harshad Govardhan Sondagar (2014) 6 SCC 1). The first three Acts, referred to in Section 37, deal with securities generally, and the Recovery of Debts Due To Banks And Financial Institutions Act, 1993 deals with recovery of debts due to banks and financial institutions. Section 41 of the SARFAESI Act makes amendments in three Acts-the Companies Act, the Securities Contracts (Regulation) Act, 1956, and the Sick Industrial Companies

(Special Provisions) Act, 1985. Only the first two Acts are included in Section 37, and not the third i.e. the Sick Industrial Companies (Special Provisions) Act, 1985. (Madras Petrochem Limited and another (2016) 4 SCC 1). The effect of Section 37 is that, in addition to the provisions contained under the SARFAESI Act in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or any other law for the time being in force. (Mathew Varghese (2014) 5 SCC 610)

42. Neither Section 35 nor Section 37 of the SARFAESI Act is subject to the other. If a literal meaning is given to the expression "or any other law for the time being in force" in Section 37, Section 35 will become completely otiose as all other laws will then be in addition to and not in derogation of the SARFAESI Act. This could not have been the Parliamentary intendment, after providing in Section 35 that the SARFAESI Act will prevail over all other laws that are inconsistent therewith. The two apparently conflicting Sections can best be harmonized by giving meaning to both. This can only be done by limiting the scope of the expression "or any other law for the time being in force" contained in Section 37. This expression will therefore have to be held to mean other laws having relation to the securities market only, as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is the only other special law, apart from the SARFAESI Act, dealing with recovery of debts due to banks and financial institutions. (Madras Petrochem Limited (2016) 4 SCC 1). As the words "or any other law for the time being in force", used in Section 37 of the SARFAESI Act, only mean other laws relating to the securities market, and the Criminal Procedure Code is not one such, the Full Bench of the Hyderabad High Court in T.R. Jewellery 2015 SCC OnLine Hyd 449 was in error in treating the Criminal Procedure Code, 1973, as among the laws falling within the ambit of Section 37. Reliance placed by Sri Rakesh Thapliyal, learned counsel for the appellant-respondent, on T.R. Jewellery 2015 SCC OnLine Hyd 449, is therefore of no avail.

43. In Prafull Kumar Writ Petition No. 10649 of 2017 dated 22.11.2017 the High Court of Madhya Pradesh observed that, as per Section 20 of the Code of Criminal Procedure, 1973, the State Government may appoint as many persons as it think fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate; further sub-section (2) of Section 20 provides that the State Government may appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate shall have such of the powers of a District Magistrate under this Code or any other law for the time being in force as may be directed by the State Government; an Additional District Magistrate is thus empowered to exercise all the powers which are conferred over the District Magistrate under the Code of Criminal Procedure as directed by the State Government; a bare reading of Section 23 CrPC would show that the Additional District Magistrate is not subordinate to the District Magistrate; in other word all

Executive Magistrates, except the Additional District Magistrate, are subordinate to the District Magistrate; sub-section (2) of Section 23 of the Code clarifies that the District Magistrate may, from time to time, allocate the business to the Additional District Magistrate which he empowers to perform; the legislature has specifically used the word 'distribute' for other Executive Magistrate and 'allocate' for the Additional District Magistrate; once, any specific work is allocated to the Additional District Magistrate, his competence and authority to perform the same cannot be questioned; the Additional District Magistrate is empowered to exercise the powers under the SARFAESI Act if he is authorised to do so by the District Magistrate; prior to the amendment, only the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, was entitled to exercise the powers under Section 14 of the SARFAESI Act; however, after amendment, sub-section (1A) has been inserted; and, by the said sub-section, the District Magistrate or the Chief Metropolitan Magistrate is empowered to authorise any officer subordinate to them.

44. As noted hereinabove Section 20(2) Cr.P.C. stipulates that an Additional District Magistrate shall have such of the powers of a District Magistrate under the Criminal Procedure Code or under any other law for the time being in force, as may be directed by the State Government. The words "any other law for the time being in force" in Section 37 of the SARFAESI Act relates to laws relating to securities markets only, and would not include the provisions of the Cr.P.C. Reliance placed, on behalf of the appellants, on Union Bank of India AIR 2010 Bom 150, is also of no avail.

45. In *Irshad Husain* (2009) (106) RD 762, on which reliance is placed on behalf of the appellant, the Allahabad High Court held that, upon going through Section 14A of the U.P. Land Revenue Act, 1901, the Additional Collector has a similar power as that of the Collector; and thereby the Collector includes the Additional Collector. Section 14A of the U.P. Land Revenue Act, 1901 relates to appointment, powers and duties of Additional Collectors and, under sub-section (1) thereof, the State Government may appoint an Additional Collector in a district or in two or more districts combined. Under sub-section (2), an Additional Collector shall hold his office during the pleasure of the State Government. Under sub-section (3) an Additional Collector shall exercise such powers and discharge such duties of a Collector in such case or classes of cases as the Collector concerned may direct. Under sub-section (4), this Act and every other law for the time being applicable to a Collector shall apply to every Additional Collector, when exercising any powers or discharging any duties under sub-section (3), as if he were the Collector of the district. The powers which the Additional Collector can exercise, under Section 14-A(3), are the powers of the Collector under the U.P. Land Revenue Act, 1901 and not under the SARFAESI Act, for the State Legislature would lack legislative competence to deal with matters within the exclusive domain of Parliament, such the SARFAESI Act. Reliance placed on behalf of the appellants, on *Irshad Hussain*, is also misplaced.

46. Parliament must be held to be aware of the provisions of the Code of Criminal Procedure, 1973 when it enacted the provisos to Section 14, and Section 14(1-A), of the SARFAESI Act; and, if it intended to confer such a power on other officers, apart from the District Magistrate or the Chief Metropolitan Magistrate, it would have so specified in the provision itself. Provisions of enactments, such as the Code of Criminal Procedure or the U.P. Land Revenue Act, cannot be relied upon to contend that the District Magistrate, referred to in Section 14(1), would also include an Additional District Magistrate. Since the power to pass an order, on the application made under the first proviso to Section 14(1), has been conferred by Parliament, in terms of the second proviso, only on the District Magistrate or the Chief Metropolitan Magistrate, the District Magistrate could not have exercised his powers under the Cr.P.C. to authorize the Additional District Magistrate to deal with matters under Section 14 of the SARFAESI Act, in the absence of any provision in the SARFAESI Act conferring power on him to do so.

47. In *Union Bank of India* AIR 2010 Bom 150, the Bombay High Court held that Section 14 of the SARFAESI Act is procedural in nature, and that procedure stipulated therein enables the secured creditor to take the assistance of Chief Metropolitan Magistrate or the District Magistrate in taking possession of the secured assets; Section 14 only empowers the authorities to assist the secured creditor in taking possession of the secured assets as per the procedure contemplated under Section 14, but does not clothe the District Magistrate with the power to adjudicate in respect of any dispute pertaining to any secured asset; the proviso to Section 14 of the Act does not vest the District Magistrate with the jurisdiction to adjudicate and decide any dispute regarding the secured assets; and a similar view was taken by a Division Bench of the Bombay High Court in *International Asset Reconstruction Company Private Limited through its Authorized Representative of the Constituted Attorney Shri Tushar B. Patel* AIR 2011 Bom.163.

48. In *Mansa Synthetic Pvt. Ltd. and others* AIR 2012 Guj 90, a Division Bench of the Gujarat High Court held that the District Magistrate or the Chief Metropolitan Magistrate is bound to assist the secured creditor in taking possession of the secured asset, and is not empowered to decide the question of legality or propriety of any action taken by the secured creditor under Section 14 of the Act.

49. Observations of judges are not to be read as Euclid's theorems, nor as provisions of the statute. The observations must be read in the context in which they appear. (*M/s Amar Nath Om Prakash and others* AIR 1985 SC 218; *Sreenivasa General Traders* 1983 AIR 1246). Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. (*Herrington* (1972) 2 WLR 537; *M/s Amar Nath Om Prakash and*

others AIR 1985 SC 218). The observations of the Bombay High Court in Union Bank of India AIR 2010 Bom 150, and the Gujarat High Court in Mansa Synthetic Pvt. Ltd. AIR 2012 Guj 90, cannot be read out of context, or be understood as requiring the words "District Magistrate" in Section 14 of the SARFAESI Act, to include an Additional District Magistrate.

50. Section 3(32) of the General Clauses Act, 1897 defines "Magistrate", to include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force. The powers of a Magistrate under the Criminal Procedure Code, 1973 would not include the powers conferred on the District Magistrate or the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act. Section 3(32) of the General Clauses Act has, therefore, no application.

51. Let us now take note of the judgments of the Supreme Court where it has been held that the District Magistrate, referred to in Section 14(1) of the SARFAESI Act, would not include an Additional District Magistrate or that the words Chief Metropolitan Magistrate would not include the Chief Judicial Magistrate. In *K Arockiyaraj* 2013 (4) Law Weekly 485, the Full Bench of the Madras High Court held that the SARFAESI Act was enacted in the year 2002; the legislature was aware of the fact that in non-Metropolitan areas, the Chief Judicial Magistrate functions like the Chief Metropolitan Magistrates in Metropolitan areas; if the intention of Parliament was to confer power on the Chief Judicial Magistrate in Non-Metropolitan areas also, the same should have been specifically stated in Section 14 itself; the legislature, purposely, has not included the Chief Judicial Magistrate in Section 14 to give assistance to the Secured Creditors in Non-Metropolitan areas; the said view was taken by the Aurangabad Bench of the Bombay High Court in *IndusInd Bank Ltd.* 2008 (110) Bom. LR 2880; and in the said judgment it was held that the legislature does not seem to have entrusted the functions to the Chief Judicial Magistrate in Non-Metropolitan areas, although such function has been entrusted to the Chief Metropolitan Magistrate, a Judicial Officer in Metropolitan areas.

52. In *Aseena* (2009) Banking Cases 145, the Kerala High Court held that Section 14 mandates that the Bank can approach only the District Magistrate or the Chief Metropolitan Magistrate for assistance, and the District Magistrate is not authorized to delegate the function and he cannot make over the matter to the Sub-Divisional Magistrate for passing orders; a delegate, without authority, cannot further delegate; and the District Magistrate has to take up the matter and pass orders according to law.

53. In *Arupeshwar Chatterjee and others* AIR 2015 Calcutta 282, the Calcutta High Court held that the substantive decision to take possession under Section 14 has to be taken by the District Magistrate; this view was fortified by the second proviso to sub-section (1) which says that, after receipt of an affidavit from an authorised officer and after satisfying himself regarding the contents, the District Magistrate will "pass suitable orders for the purpose of taking

possession of the secured assets"; and, therefore, after the District Magistrate issues an order, for taking possession of the secured assets, he can authorize an officer subordinate to him to take possession under sub-section (1A).

54. Section 10 of the Criminal Procedure Code, 1898 related to a District Magistrate and, under sub-section (1) thereof, in every district, outside the presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate. Section 10(2) enabled the Local Government to appoint any Magistrate of the first class to be an Additional District Magistrate for a period not exceeding six months, and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code as the Local Government may direct. In *Hari Chand Aggarwal AIR 1969 SC 483*, the question which arose for consideration before the Supreme Court was whether the Additional District Magistrate, who had been invested with all the powers of the District Magistrate under Section 10(2) of the Code of Criminal Procedure, 1898 could make an order, under Section 29(1) of the Defence of India Act, 1962, requisitioning a shop belonging to Batala Engineering Co. Ltd., and which was in the occupation of the appellant as a tenant. Section 29 of the Defence of India Act, 1962, empowered the Central Government or the State Government to requisition any immovable property in the circumstances mentioned in the Section by an order in writing. Section 40 of the Defence of India Act prescribed the power of delegation, and Section 40(1) read thus:

"The Central Government may, by order, direct that any power or duty which by this Act or by any rule made under this Act is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also-

(a) by any officer or authority subordinate to the Central Government, or

(b) whether or not the power or duty relates to a matter with respect to which a State Legislature has power to make laws, by any State Government or by any officer or authority subordinate to such Government, or

(c) by any other authority.

(2) The State Government may, by order, direct that any power or duty which by this Act or by any rule made under this Act is conferred or imposed on the State Government or which, being by this Act or any such rule conferred or imposed on the Central Government, has been directed under sub-section (1) to be exercised or discharged by the State Government, shall, in such circumstances and under such conditions, if any as may be specified in the direction, be exercised or discharged by any officer or authority not being (except in the case of a Union territory) an officer or authority subordinate to the Central Government."

55. In the exercise of the powers, conferred by Section 40(1) of the Defence of India Act, the Central Government promulgated a notification delegating its

power under Section 29 of the Act to all Collectors, District Magistrates and Deputy Commissioners in the State. Batala Engineering Co. Ltd. filed an application for ejectment of Sri Hari Chand Aggarwal before the Rent Controller, Batala and, thereafter, resorted to the device of getting the shop requisitioned at the instance of the Labour Commissioner, who wrote to the Additional District Magistrate that the shop was required for setting-up of a cooperative consumer store. On 24th March, 1964, the Additional District Magistrate issued a requisitioning order, purportedly under Section 29 of the Act, requisitioning the shop in question and directing Mr. Aggarwal to deliver possession thereof.

The requisitioning order was challenged by Mr. Aggarwal, among others, on the ground that the notification issued under Section 40(1) of the Act by the Central Government empowering, among others, the District Magistrate to exercise powers, which were exercised by the Central Government under Section 29, was illegal and invalid. The Division Bench of the Punjab & Haryana High Court held that the Additional District Magistrate was competent to make the requisitioning order since he had been empowered to exercise the powers of the District Magistrate under Section 10(2) of the Code of Criminal Procedure. The writ petition was consequently dismissed.

56. On Mr. Aggarwal preferring an appeal thereagainst, the Supreme Court, while allowing the appeal preferred by Mr. Aggarwal and quashing the order impugned in the writ petition passed by the Additional District Magistrate, observed:-

".....It is well known that the object of appointing an Additional District Magistrate is to relieve the District Magistrate of some of his duties and that he is subordinate to the District Magistrate to the extent specified in sub-s. (3) of s.

10. It is equally well known that the District Magistrate occupies a very important position in the district and is the head of the Executive there and he exercises powers of superintendence and control over the other Magistrates in the district. Apart from the powers which have been conferred by the Code of Criminal Procedure on him the District Magistrate is also known as the Collector for purposes of revenue laws. He is variously called Collector in some States and Deputy Commissioner in other States. Under s. 11 of the Code whenever in consequence of the office of District Magistrate becoming vacant, any officer succeeding temporarily to the Chief executive administration of the district such officer also exercises all the powers and performs all the duties conferred and imposed by the Code on the District Magistrate. The Additional District Magistrate as has previously been noticed, can similarly exercise all or any of the powers of a District Magistrate if the State Government makes a direction under s. 10(2) of the Code but even an officer who heads the chief executive administration of the district temporarily under s. 11, exercises all the powers of a District Magistrate. The scheme of S. 10 of the Code leaves no room for doubt that the District Magistrate and the Additional District Magistrate are two different and distinct authorities and even though the latter may be empowered under sub-s. (2) to exercise all or any of the powers of a District Magistrate but by no stretch of

reasoning can an Additional District Magistrate be called the District Magistrate which are the words employed in Sub-S. (1) of S. 10.

..... Learned counsel for the appellant has assailed the decision of the High Court principally on two grounds for which he has sought support from a decision of the Nagpur High Court in *Prabhulal Ramlal Kabra v. Emperor*. In that case an order had been made under Rule 26 of the Defence of India Rules by the Additional District Magistrate of Raipur directing the detention of one Bharatchandra Kabra. That Rule conferred power of detention on the Central Government and the Provincial Government but by virtue of the provisions relating to delegation the District Magistrate had been empowered by the Provincial Government to exercise those powers. The Additional District Magistrate who made the order of detention had been conferred powers under s. 10(2) Cr. Pt. Code almost in similar terms as are to be found in the present case. In other words he could exercise all the powers of a District Magistrate under the Code or under any other law for the time being in force. Two points were agitated before the Nagpur court; the first was that the word "law" in "any other law" occurring in s. 10(2) of the Code was not meant to include an executive order but only legislative enactments, and rules, regulations or orders which had the force of law. The second was that the Act and the Rules made thereunder were special laws enacted to meet an emergency and they conferred extraordinary and drastic powers on the executive and it was precisely for that reason that it was imperative that those powers must be exercised with due sense of responsibility and with circumspection by an officer or authority of a certain status and experience and, therefore, that power had been delegated to the District Magistrate. Both these contentions prevailed with the Nagpur High Court and it was held that the Additional District Magistrate could not exercise powers under Rule 26 of the Defence of India Rules simply by virtue of the notification under s. 10(2) of the Code of Criminal Procedure. There is an exhaustive discussion on the first point in the Nagpur judgment but it is altogether unnecessary to examine its correctness because we are of the opinion that most of the reasons given in support of the determination of the second point are clear and cogent and must be accepted as correct. These reasons may be summarised as follows (i) very wide, 'almost autocratic, powers are conferred on the Government in the matter of detention and therefore they must be exercised with a due sense of responsibility and circumspection by an officer of a certain status and experience; (ii) when the Government delegates its power to an officer or authority subordinate to it, is not unreasonable to assume that it fully considers the fitness of the delegate before making the order in respect of delegation; (iii) the Additional District Magistrate who is invested with the powers of a District Magistrate does not thereby attain the status of a District Magistrate as there can be only one person in the district who can be a District Magistrate and (iv) the Government when it conferred the power on the District Magistrate conferred it on the officer actually holding the office of the District Magistrate and no one else.....

.....Apart from these considerations we see no reason to deviate from the normal rule that the expressions or words which have been used in the notification must be read as such and not in any other manner unless the context requires that the latter course should be followed. In the present case the words "District Magistrate" could not possibly be read as Additional District Magistrate and it is only by resorting to the notification issued under s. 10(2) of the Code that the Additional District Magistrate can be said to have empowered to exercise the powers of the District Magistrates. The reasons which prevailed with the Nagpur court and which have already been summarised adequately meet the contrary view that the Additional District Magistrate should be held to be competent to act under s. 29 of the Act even though the Nagpur case was one of detention....." (emphasis supplied).

57. In the light of the law declared by the Supreme Court, in Hari Chand Agarwal AIR 1969 SC 483, it is evident that, as Parliament has conferred power only on the District Magistrate or the Chief Metropolitan Magistrate, it is not unreasonable to assume that it considered the fitness of these officers before conferring power on them; the Additional District Magistrate, who is invested with the powers of a District Magistrate under the Criminal Procedure Code, does not thereby attain the status of a District Magistrate for exercise of powers under the second proviso to Section 14(1) of the SARFAESI Act; Parliament, when it conferred power on the District Magistrate or the Chief Metropolitan Magistrate, intended to confer such power only on the officer holding the office, and none else; and the words "District Magistrate or Chief Metropolitan Magistrate", used in the second proviso to Section 14(1), must be read as such, and not in any other manner.

VII. Is the alternative remedy under Section 17 of the SARFAESI Act a bar for exercise of jurisdiction under Article 226 of the Constitution:

58. Mr. Rakesh Thapliyal, learned counsel appearing on behalf of the appellant-Bank, would submit that the respondent-writ petitioner had an adequate and efficacious alternate remedy of invoking the jurisdiction of the Debts Recovery Tribunal under Section 17 of the SARFAESI Act; ordinarily relief, under Articles 226/227 of the Constitution of India, would be denied if an efficacious alternative remedy is available to any aggrieved person (Sadhana Lodh (2003) 3 SCC 524; Surya Dev Rai (2003) 6 SCC 675; Allied Chemical Laboratories (2006) 9 SCC 252; Kanaiyalal Lalchand (2011) 2 SCC 782); action, under Section 14 of the SARFAESI Act, constitutes an action taken after the stage of Section 13(4), and would therefore fall within the ambit of Section 17(1) of the Act; the SARFAESI Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an application to be made before the DRT (Kanaiyalal Lalchand (2011) 2 SCC 782; Authorised Officer, Indian Overseas Bank and Anr. (2009) 8 SCC 366); and, therefore, the learned Single Judge ought not to have interfered with the order passed by the Additional District Magistrate dated 15.01.2018, and should have

relegated the respondent-writ petitioner to the remedy of approaching the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

59. On the other hand, Mr. A.K. Bansal, learned counsel for the respondent-writ petitioner, would submit that statutory provisions, attaching finality to the decision of an authority excluding the power of any other authority or Court to examine such a decision, will not be a bar for the High Court to exercise the jurisdiction vested by the Constitution, because a statutory provision cannot take away a power vested by the Constitution (Harshad Govardhan Sondagar (2014) 6 SCC 1; Columbia Sportswear Company (2012) 11 SCC 224); the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party; and, if such a challenge is made, the High Court can examine the decision of the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with settled principles of law. (Columbia Sportswear Company (2012) 11 SCC 224; Harshad Govardhan Sondagar (2014) 6 SCC 1).

60. The power of judicial review, conferred on the High Court under Article 226 / 227 of the Constitution of India, is part of the basic structure of the Constitution (L. Chandra Kumar Vs. Union of India AIR 1997 SC 1125). Since such a power cannot be negated even by an amendment to the Constitution, no statutory provision, plenary or subordinate, can circumscribe or curtail exercise of such a power. While this Court would, ordinarily, exercise restraint and refrain from exercising its discretionary jurisdiction under Article 226 of the Constitution to interfere, where the petitioner has an effective alternative statutory remedy, there are exceptions, to this self-imposed limitation, and this Court would then interfere, despite the existence of an alternative remedy. One of such exceptions is that the order, impugned in the writ petition, suffers from inherent lack of jurisdiction (Whirlpool Corporation (1998) 8 SCC 1). In the present case, the respondent-writ petitioner invoked the jurisdiction of this Court contending that the Additional District Magistrate lacked jurisdiction to pass the impugned order. Further, as held in Harshad Govardhan Sondagar (2014) 6 SCC 1, a decision under Section 14 of the SARFAESI Act can always be challenged before the High Court under Article 226 of the Constitution of India. The learned Single Judge has exercised his discretion to entertain the writ petition. Such exercise of discretion would, ordinarily, not be interdicted in an intra-court appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules. We see no reason therefore, more so at the appellate stage, to relegate the respondent-writ petitioner to the remedy of approaching the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

VIII. Could the subsequent proceedings be declared a nullity even in the absence of any challenge thereto:

61. While, as a consequence of the order of the Additional District Magistrate dated 15.01.2018 being set-aside, the action of the respondent, in taking possession of the subject premises on 22.05.2018, under the protection of such

an order, would also necessitate being set-aside, the learned Single Judge has, in the order under appeal, also declared all actions taken by the Bank, subsequent to the order of the Additional District Magistrate dated 15.01.2018, a nullity. While we are in agreement with the opinion expressed by the learned Single Judge that the subject property is liable to be restored to the position it was in before the impugned order dated 15.01.2018 was passed, we make it clear that the order of the learned Single Judge would not have any bearing on the auction held by the appellant-Bank on 13.07.2018 pursuant to the sale notice issued by the Bank, nor would it have any bearing on the 25% of the bid amount paid by the auction purchaser.

62. The respondent-writ petitioner has not even chosen to challenge the action of the appellant-Bank in putting the property to auction. Even if the respondent-writ petitioner was of the view that the action of the appellant-Bank, in putting the subject property to auction pursuant to the sale notice, is illegal, the only way to resist the unlawful action was by recourse to the law. An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective, for its ostensible purpose, as the most impeccable of orders. (Wade and Forsyth in ADMINISTRATIVE LAW, Seventh Edn., 1994; *Smith v. East Elloe Rural District Council* [1956] UKHL 2; *F. Hoffmann-La Roche & Co.A.G.* [1974] 2 All ER 1128; *Lovelock* (1980) 40 P&CR 336; *M.K. Kunhikannan Nambiar Manjeri Manikoth* 1996 SCC (1) 435). No order/proceedings can be ignored unless a finding is recorded that it is illegal, void or not in consonance with the law. This principle is equally true even where the 'brand of invalidity' is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court. (*Pune Municipal Corporation* AIR 2007 SC 2414). Even if the order/proceedings is void/voidable, the party aggrieved thereby cannot decide that the said order is not binding upon them. They must approach the Court and seek such a declaration. The order may hypothetically be a nullity and yet, even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the Petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person. (*Krishnadevi Malchand Kamathia & Ors.* AIR 2011 SC 1140; *Board of Trustees of Port of Kandla* Port 2013 3 SCC 182; *Pune Municipal Corporation* AIR 2007 SC 2414; *Gurdev Singh* (1992) 111 J 283 SC; *R. Thiruvirkolam* 1997 1 SCC 9; *M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil* 1996 SCC (1) 435. and *Tayabhai M. Bagasarwalla & Anr.* 1997 (3) SCC 443). As the respondent-writ petitioner has not subjected the auction proceedings to challenge, the order of the learned Single Judge, to the extent such proceedings have also been declared a nullity, is set aside. We may not be understood to have affirmed the action of the appellant-Bank in putting the subject property to auction. All that

we have held is that, in the absence of a challenge thereto by the respondent-writ petitioner, the said proceedings could not have been declared a nullity. We make it clear that the order, now passed by us, shall not disable the respondent-writ petitioner from questioning the said auction proceedings in appropriate legal proceedings and, in case a challenge is mounted thereto, the competent court/Tribunal shall examine the contentions urged on its merits, uninfluenced by any observation made in this order.

IX. Conclusion:

63. Except to the limited extent indicated hereinabove, the order of the learned Single Judge is affirmed. The Special Appeal is partly allowed, and partly dismissed. However, in the circumstances, without costs.