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**(2011) 08 CAL CK 0171**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 12321 of 2010**

Sk. Akbar Ali

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 18-08-2011

**Acts Referred:**

**Citation :** (2011) 08 CAL CK 0171

**Hon'ble Judges :** Jayanta Kumar Biswas, J.

**Bench :** Single Bench

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## Judgement

Jayanta Kumar Biswas, J.—The petitioner in this Art. 226 petition dated June 11, 2011 is questioning a notice (at p.22), a copy whereof was forwarded to him by the office of the District Magistrate, Burdwan by a memo dated June 1, 2010. The notice was issued on behalf of the District Magistrate, Burdwan in connection with hearing of a case under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It was addressed to the Authorised Officer of ICICI Bank Ltd. By the notice the petitioner was requested to appear before the Additional District Magistrate (LA), Burdwan on the date mentioned therein with all documents in support of his case.

2. Counsel for ICICI Bank has submitted that the notice was issued in connection with an application submitted by the bank under S. 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. Mr. Samanta appearing for the petitioner and relying on Azaib Singh v. Gorbachan Singh and Ors. AIR 1965 SC 1619 , Hari Chand Aggarwal Vs. Batala Engineering Co. Ltd., , State of Karnataka and Another Vs. Dr. Praveen Bhai Thogadia, , and the provision of S. 14 of the Act, has submitted that since the Additional District Magistrate, Burdwan fixing the S. 14 application for hearing is not the District Magistrate who is only empowered to decide the S. 14 application, the notice is without jurisdiction.

4. As to the Single Bench decision of this Court dated August 25, 2010 in W.P.No. 14664(W) of 2010 (Mr. Harun Ali Mallick v. The State of West Bengal and Ors.) relied on by Mr. Mitra appearing for the bank, Mr. Samanta has submitted apart from the fact that the decision was given without considering the authorities he has now cited, it is also to be noted that none has come to say that in this case the State Government duly conferred on the Additional District Magistrate fixing the S. 14 application for hearing the power of the District Magistrate conferred by S. 14 of the Act.

5. In the Single Bench decision dated August 25, 2010 the question whether an Additional District Magistrate can decide an application under S. 14 of the Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 was considered, and after considering several authorities and the relevant provisions of law it was held that if the State Government confers power on an Additional District Magistrate to exercise the power of the District Magistrate conferred on the District Magistrate by S. 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, then the Additional District Magistrate concerned will be competent to decide S. 14 application such as the one filed by the bank in this case.

6. In my opinion, the three decisions cited now do not provide any reason to take a view different from the one I took in the decision dated August 25, 2010. In these decisions what was held is that an Additional District Magistrate is not a District Magistrate. There is no dispute that an Additional District Magistrate even if the State Government duly confers on him all or any of the powers of the District Magistrate does not become a District Magistrate. He still remains an Additional District Magistrate holding a position below the District Magistrate.

7. This, however, does not lead to the conclusion that if a power of the District Magistrate, on being duly conferred on him, is exercised by an Additional District Magistrate, it will not be a valid exercise of power. Once the power is duly conferred on an Additional District Magistrate, such Additional District Magistrate is competent to decide an application under S. 14 of the Act. It is not necessary that the power has to be exercised by the District Magistrate.

8. In this context reference can also be made to the decisions of the Supreme Court in United Bank of India Vs. Satyawati Tondon and Others, : United Bank of India Vs. Satyawati Tondon and Others, and Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, clearly holding that the High Court should not interfere in exercise of power under Art. 226 in a proceeding initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. A S. 14 order is to be questioned by filing an appeal under S. 17 of the Act. For these reasons, the petition is dismissed. No costs. Certified xerox.