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**(2009) 08 AHC CK 0273**  
**In the Allahabad High Court**

Virendra Kumar Jaiswal

APPELLANT

Vs

Chief Metropolitan Magistrate and Another

RESPONDENT

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**Date of Decision :** 20-08-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2010) 1 AWC 832 : (2010) 2 BC 273

**Hon'ble Judges :** S.P. Mehrotra, J; Ashok Srivastava, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

S.P. Mehrotra and Ashok Srivastava, JJ.—The present writ petition has been filed, inter alia, praying for quashing the order dated 6.7.2009 (Annexure-9 to the writ petition) and the order dated 4.8.2009 (Annexure-12 to the writ petition) passed by the Chief Metropolitan Magistrate, Kanpur Nagar, respondent No. 1.

2. It appears that the proceedings under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, were initiated against Yogendra Kumar Jaiswal, Shiv Kanya Devi and Saurabh Jaiswal in respect of loan taken from the respondent No. 2.

3. After the expiry of the period mentioned in the notice issued u/s 13(2) of the aforesaid Act, measures were taken u/s 13(4) of the said Act in respect of the property given as security for the said loan. An application (Annexure-6 to the writ petition) was filed by the respondent No. 2 u/s 14 of the aforesaid Act for assistance for taking possession of the property given as security for the aforesaid loan.

4. The Chief Metropolitan Magistrate, Kanpur Nagar passed an order dated 6.7.2009 (Annexure 9 to the writ petition) accepting the prayer for giving assistance for the delivery of possession of the property given in security.

5. Subsequently, the petitioner herein filed an application (Annexure-10 to the

writ petition) before the Chief Metropolitan Magistrate, Kanpur Nagar, inter alia, praying for rectification of the said order dated 6.7.2009. By the order dated 4.8.2009 (Annexure-12 to the writ petition), the Chief Metropolitan Magistrate, Kanpur Nagar has rejected the said application filed by the petitioner. The petitioner has, thereafter, filed the present writ petition seeking the reliefs as mentioned above.

6. We have heard Sri Ramendra Asthana, learned Counsel for the petitioner.

7. It is submitted by Sri Ramendra Asthana, learned Counsel for the petitioner, that the first floor of the property in question belongs to the petitioner, and the possession of the said floor cannot be taken in regard to the aforesaid recovery.

8. We have considered the submissions made by the learned Counsel for the petitioner.

9. The order dated 6.7.2009 was passed by the Chief Metropolitan Magistrate, Kanpur Nagar on an application filed u/s 14 of the aforesaid Act for giving assistance in taking possession of the property given in security for the aforesaid loan. The said order dated 6.7.2009 has thus been passed on the application u/s 14 of the aforesaid Act for executing the measures under Sub-section (4) of Section 13 of the aforesaid Act. The order dated 4.8.2009 has been passed rejecting the prayer made by the petitioner for rectifying the said order dated 6.7.2009.

10. The proceedings u/s 14 of the aforesaid Act are taken for executing the measures as are taken by the second creditor under Sub-section (4) of Section 13 of the said Act.

11. Sub-section (3) of Section 14 of the aforesaid Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of the said section shall be called in question in any Court or before any authority.

12. In view of this, the action taken u/s 14 of the aforesaid Act attains finality.

13. Section 17 of the aforesaid Act, inter alia, provides that any person (including borrower), aggrieved by any of the measures referred to in Sub-section (4) of Section 13 taken by the second creditor or his authorised officer, may make an application/appeal to the Debts Recovery Tribunal.

14. In view of the above while it is not open to the petitioner to challenge the order dated 6.7.2009 passed by the Chief Metropolitan Magistrate u/s 14 of the aforesaid Act by filing an application/appeal u/s 17 of the said Act, it is still open to the petitioner to file an application/appeal before the Debts Recovery Tribunal u/s 17 of the aforesaid Act against the measures taken under Sub-section (4) of Section 13 of the said Act. The order passed u/s 14 of the said Act is merely a consequential order.

15. The petitioner thus has an alternative remedy u/s 17 of the aforesaid Act against the measures taken under Sub-section (4) of Section 13 of the said Act.

The questions sought to be raised on behalf of the petitioner in the present writ petition will require investigation of questions of fact, and the same can appropriately be done in proceedings before the Debts Recovery Tribunal u/s 17 of the said Act.

16. In view of the above, we are not inclined to exercise our writ jurisdiction under Article 226 of the Constitution of India in the present case. The present writ petition is liable to be dismissed on the ground of availability of alternative remedy to the petitioner u/s 17 of the aforesaid Act.

The writ petition is accordingly dismissed on the said ground.