

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 14 of 2025

State Bank of India & Anr.
Vs.
The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Indrajit Bhattacharjee, Adv.
For the State	:-	Mr. Paritosh Sinha, Adv. Mr. Debangshu Dinda, Adv.
For the respondent nos. 3 to 6	:-	Mr. Kallol Basu, Adv. Mr. Nimesh Mishra, Adv. Mr. Shauvik Sarkar, Adv. Mr. Atreya Chakraborty, Adv. Ms. Shreejita Sen, Adv.
Heard on	:-	16.01.2025 & 12.02.2025
Judgment on	:-	03.03.2025

Amrita Sinha, J.:-

1. The writ petition is at the instance of a bank challenging the inaction on the part of the District Magistrate in taking steps in response to the request made by the bank under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred to as 'the Act' for the sake of brevity).
2. The facts leading to the request made by the bank are as follows:-

3. The respondent no. 3, borrower availed loan facility from the bank in November, 2007. As the loan amount was not paid in accordance with the loan agreement, the account of the said respondent was marked as non performing asset in July, 2014. A notice was issued by the bank demanding payment from the borrower. As the borrower failed to repay the loan amount, notice under Section 13 (4) of the Act was issued in November, 2014. As the bank intends to take possession of the secured asset, a request was made before the District Magistrate under Section 14 (1) of the Act on 14th October, 2022 along with the required affidavit affirmed by the authorized officer of the bank.
4. The District Magistrate, on receipt of the application from the bank, issued notice to the bank and the borrower to remain present at a hearing with all relevant original documents on 22nd March, 2024. The parties were present in the hearing, but no order has been passed by the District Magistrate.
5. According to the bank, a sum of Rs. 46,92,59,815.61/- as in June, 2014 with further interest, incidental expenses, costs are due and payable by the borrower.
6. Learned advocate for the petitioners submit that the District Magistrate ought to have taken prompt necessary steps on receipt of the application made under Section 14 (1) of the Act and ought not to have slept over the matter for such a long period of time.

7. It has been submitted that the inaction on the part of the District Magistrate is in violation of the provisions of the Act and the Rules made thereunder. Non action/ inaction on the part of the District Magistrate is resulting in wrongful loss to the bank.
8. Prayer has been made to direct the District Magistrate to take steps strictly in accordance with Section 14 (1) of the Act.
9. Learned advocate representing the borrower strenuously opposes the prayer of the petitioner. It has been submitted that the second and third proviso to Section 14 (1) stipulates a time period within which the District Magistrate ought to have taken steps on receipt of the application made by the secured creditor under Section 14 (1) of the Act. On expiry of the prescribed time period, the District Magistrate become functus officio and, accordingly, no direction can be passed upon the District Magistrate, at this stage, to proceed with the application filed by the bank.
10. It has been contended that the Court ought not to revive the application under Section 14 (1) which has died a natural death due to efflux of the prescribed time period.
11. In support of the aforesaid submission the borrower relies on the decisions of the Hon'ble Supreme Court in the matter of ***Balkrishna Rama Tarle dead through legal representatives & Anr. Vs. Phoenix Arc Private Limited & Ors.*** reported in ***(2023) 1 SCC 662*** and ***R.D. Jain & Company vs. Capital First Limited & Ors.***

reported in **(2023) 1 SCC 675**. Reliance has also been placed on the decision passed by the Hon'ble Division Bench of this Court in the matter of ***Birbhum District Central Co-operative Bank Limited & Ors. vs. Paresh Kumar Mukherjee & Ors.*** reported in **(2025) SCC Online Cal 816** and the decision delivered by the Hon'ble Division Bench of the Delhi High Court in the matter of ***Anita Garge & Ors. vs. State Bank of India*** reported in **2021 SCC Online Del 4311**.

12. Learned advocate representing the State respondent raises an issue with regard to the maintainability of the writ petition in the original side jurisdiction of this Court. It has been submitted that the records of this case lie with the authorities located outside the original side jurisdiction and, accordingly, the writ petition in the original side ought not to be entertained.
13. It has been submitted by the State that though a time limit is prescribed under Section 14 (1) of the Act, but the same is only directory and not a mandatory one. As no consequences has been prescribed in the Act for not taking steps within the stipulated time limit, accordingly, the District Magistrate may be permitted to take steps in response to the application made by the bank.
14. In support of the aforesaid submission learned advocate representing the State relies on the judgment delivered by the Hon'ble Supreme Court in the matter of ***C. Bright vs. District Collector & Ors.*** reported in **(2021) 2 SCC 392**.

15. In reply to the objection raised by the State respondent in maintaining the writ petition in the original side, learned advocate for the petitioner relies on the judgment delivered by the Hon'ble Division Bench of this Court in the matter of ***Amala Roy Das alias Amala Das Roy vs. State of West Bengal*** reported in ***AIRONLINE 2022 CAL 1154***.
16. The issue which falls for consideration in the instant writ petition is whether the time limit for taking action by the Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the Act is mandatory or not? Whether the Chief Metropolitan Magistrate or the District Magistrate can proceed to dispose of the application under Section 14 of the Act after expiry of the statutory time period?
17. According to the Act, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on receipt of the affidavit from the Authorized Officer, shall after satisfying the contents of the affidavit, pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application. If no order is passed within the aforesaid period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.
18. The aforesaid issue has been conclusively decided by the three judge Bench of the Hon'ble Supreme Court in C. Bright (supra) wherein the Court held that keeping the objective of the Act in mind, time limit has

been fixed for taking action by the District Magistrate and the Chief Metropolitan Magistrate. Inability to take possession within the stipulated time period does not render the District Magistrate functus officio. The secured creditor has no control over the District Magistrate exercising jurisdiction under the Act. Section 14 is not to be interpreted literally without considering the object and purpose of the Act. The time limit has been fixed to instil confidence in the creditors that the District Magistrate will make an attempt to deliver possession in a time bound manner. The time limit is also to impose a duty on the District Magistrate to make an earnest effort to comply with the mandate of the Statute to deliver the possession within thirty days and on failure to do so within sixty days by recording reasons therefor. If the District Magistrate is unable to handover the possession within the stipulated time period, the authority will still be duty bound to facilitate delivery of possession at the earliest.

19. On the teeth of the order passed by the Hon'ble Supreme Court in C. Bright (supra) the private respondents places Balkrishna Rama Tarley (supra) wherein the Hon'ble Supreme Court observed that it is the statutory obligation of the Chief Metropolitan Magistrate/ District Magistrate to immediately move into action on receipt of the written application under Section 14(1) of the SARFAESI Act and to pass order after verification of compliance of all formalities and after being satisfied in that regard, to take possession of the secured assets and documents and forward the same to the secured creditor at the

earliest. The aforesaid Act is a ministerial act and cannot brook delay. Time is the essence and spirit of the subject enactment.

20. In R.D. Jain (supra) the Court observed that as per the second proviso to Section 14 of the Act, suitable order for taking possession of the secured asset is required to be passed within a maximum period of sixty days from the date of application. Relying on the aforesaid observation the private respondents argue that, the time limit so fixed in the Act is mandatory and on failure to act within the stipulated time period, the District Magistrate becomes functus officio and cannot proceed any further to decide the Section 14 application.
21. Reference has also been made to the judgment of Anita Garg (supra) to impress the Court that the time limit in the Act is mandatory and the same cannot be extended under any circumstances. Paresh Kumar Mukherjee (supra) has been cited by the private respondents in support of the proposition that the Court cannot ignore the statutory provision, even if, it considers a distress to the result from its operation.
22. An issue has also been raised with regard to the maintainability of the writ petition in the original side jurisdiction of this Court as, the respondent authorities are located outside the original side jurisdiction of this Court.
23. In Amala Roy Das (supra) the Court observed that the Calcutta High Court is one High Court and for administrative facility there are two

sides, the original side and the appellate side. A judge of the Calcutta High Court is a judge of the Calcutta High Court as a whole. It is only for the facility of the administration that matters are heard either in the original or in the appellate side. The matters filed before the Court are decided on merits and the same cannot be thrown out on the ground that the same has been filed in the original side and not in the appellate side or on the ground that the judge lacks jurisdiction to decide the issue. A litigant cannot be denied justice by holding that the matter should be heard in the original side and not in the appellate side. The same tantamount to denial of justice to the litigant. The Court permitted conversion of the proceeding of the original side to the proceeding in the appellate side.

24. After careful consideration of the facts and circumstances of the instant case, I am of the considered opinion that the District Magistrate / Chief Metropolitan Magistrate does not become functus officio if steps under Section 14 of the Act cannot be conclusively taken within the stipulated time period of thirty days or the extended time period of sixty days. The aforesaid authorities will still have jurisdiction to take steps under Section 14 and they do not become functus officio as pleaded by the borrower.
25. The primary object of the Act being recovery of debts owing to banks and financial institutions in a timely manner, a time limit was inserted in the Act by way of an amendment with effect from 1st September, 2016. The secured creditor will be left remediless if the District

Magistrate or the Chief Metropolitan Magistrate, for any reason whatsoever, fails to act within the aforesaid time period. The secured creditor will be required to restart the process under Section 14 all over again which, in turn, will lead to further delay in recovery of the loan amount.

26. There is no reason as to why a secured creditor will be made to suffer financially due to inaction or non-action or delayed action on the part of the statutory authorities. The very purpose and object of the Act will be frustrated if the recovery process fails. The same will aid in unjust enrichment of the borrower and financial loss to the secured creditor.
27. If the submission of the borrower is to be accepted, then it will be a herculean task for the banks and financial institutions to recover the loan amount from the defaulting borrowers. The secured creditor will be left running from pillar to post to get the loan amount liquidated and the borrower may resort to all sorts of antics to delay in paying off the dues and lastly the banks and financial institutions may be compelled to write off the dues as bad debt. The entire business of lending will go for a toss if the procedure for recovery of loan is not a robust one. The borrower should not harbour the idea that once loan is obtained there is no way for the secured creditor to recover the same. At the same time the secured creditor should be assured that if the borrower fails to repay the loan amount, there is a mechanism in place to recover the same. Public money cannot be left to be squandered in such a manner.

28. The Act prescribes a remedy to the secured creditor to recover the unpaid loan amount by taking possession of the secured asset. If the secured creditor is not able to take possession of the mortgaged asset, then the lender will not be in a position to recover the dues. Merely holding the documents of the mortgaged asset, will not serve the purpose. It is only when the mortgaged property is sold, that the lender will get an opportunity to recover the dues unpaid by the borrower.
29. There cannot be two opinions that the Section 14 authorities ought to have taken steps within the stipulated time period, but in the same breath it has to be held that, failure to take steps within the prescribed timeline, cannot be said to be a fatal one. The right of the secured creditor will be severely impacted if any other interpretation is given to the said provision. A borrower is liable to repay the loan taken from the financial institution and he does not have any right to object to any step taken by the lender to recover its dues.
30. It is the borrower who is at fault in not repaying the loan amount; a wrongdoer cannot be permitted to take advantage of his own wrong. The lender has been compelled to knock the doors of justice for getting relief and it is the duty of the Court to protect the right of the lender. Not allowing the prayer of the bank will result in sheer injustice to the bank and the borrower may be encouraged to avoid repaying the dues.

31. To uphold the sanctity and object of the Act, the writ petition is liable to be allowed and is, accordingly, allowed. The District Magistrate is directed to dispose of the application of the bank made under Section 14 of the Act in accordance with law, at the earliest, but positively within four weeks from the date of communication of this order.
32. As, admittedly, the cause of action for filing the instant writ petition arose outside the original side jurisdiction of this court, accordingly, the instant writ petition is directed to be converted to the appellate side and then renumbered. The writ petition in the original side shall be treated as disposed of. The renumbered writ petition in the appellate side shall also stand disposed of.
33. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)