



2025:KER:20660

WP(C) NO. 3317 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 11<sup>TH</sup> DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

WP(C) NO. 3317 OF 2025

**PETITIONER/S:**

THE FEDERAL BANK LIMITED, KALLAI BRANCH,  
REPRESENTED BY ITS AUTHORIZED OFFICER, SHIBJU R.,  
ASSISTANT VICE PRESIDENT AND DIVISION HEAD,  
LCRD/KOZHIKODE DIVISION, 1 ST FLOOR, FEDERAL TOWERS,  
MAVOOR ROAD, ARAYADATHUPALAM, KOZHIKODE, PIN - 673016

BY ADVS.  
MOHAN JACOB GEORGE  
P.V.PARVATHY (P-41)  
REENA THOMAS  
NIGI GEORGE  
ANANTHU V.LAL  
SHERIN VARGHESE  
BRAHMA R.K.

**RESPONDENT/S:**

- 1 CHIEF JUDICIAL MAGISTRATE, KOZHIKODE,  
ERANHIPAALAM, ERANHIPPALAM, KOZHIKODE, PIN - 673006
- 2 ANARATH AMMED @ ANARATH AMMED HAJI,  
S/O. ANARATH MOIDU HAJI, ANARATH HOUSE,  
VILLIYAPPALLY P.O., BADAGARA VIA,  
KOZHIKODE, PIN - 673542
- 3 FAYIZ AHMED ANARATH,  
S/O. ANARATH AMMED, ANARATH HOUSE,  
VILLIYAPPALLY P.O., BADAGARAVIA,  
KOZHIKODE, PIN - 673542



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- 4      **SOUMYHA AMMED ANARATH,  
W/O. ANARATH AMMED, ANARATH HOUSE, VILLIYAPPALLY P.O.,  
BADAGARA VIA, KOZHIKODE, PIN - 673542**
  
- 5      **ADV. SEEMA N.G.,  
32/2140 JAYTHRA VILLA, P.O. KOTTAPARAMBA,  
KOZHIKODE, PIN - 673008**

**BY ADVS.  
GAYATHRI MURALEEDHARAN  
BIJU ABRAHAM (KAIPPANPLACKAL)(K/966/2000)  
ARCHANA B.(K/3068/2022)  
ANTIJA JAMES(K/1549/2024)  
NAEEM(K/002664/2024)**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
11.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**‘C.R’****JUDGMENT**

This Writ Petition has been filed *inter-alia* seeking a declaration that Ext.P3 petition filed by the 2<sup>nd</sup> respondent before the Chief Judicial Magistrate Court, Kozhikode (hereinafter referred to as ‘the CJM’) is not maintainable and the issues raised in the petition cannot be adjudicated by the Chief Judicial Magistrate .

**The brief facts:-**

2. The petitioner, a banking company, initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ‘the SARFAESI Act’) to recover amounts due under a loan availed by respondent Nos.2, 3 and 4 from it. The 2<sup>nd</sup> respondent challenged the proceedings by filing an application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal-I, Ernakulam (hereinafter referred to as ‘the Tribunal’). The application was numbered as S.A. No.432 of 2024 before the Tribunal. The Tribunal, on 12.08.2024, issued a conditional interim order on I.A. No.2861 of 2024 in S.A. No.432 of 2024. The interim order of the Tribunal in I.A.



No.2861 of 2024 in S.A. No.432 of 2024 was challenged before this Court by the 2<sup>nd</sup> respondent by filing OP(DRT) No.264 of 2024. This Court, on 22.08.2024, directed that the 2<sup>nd</sup> respondent shall not be ousted from the secured asset subject to the condition that he pays a sum of Rs.1,00,00,000/- (Rupees one Crore only) towards the loan liability on or before 30.09.2024. When OP(DRT) No.264 of 2024 came up for consideration on 30.09.2024, this Court was informed that no amount had been paid by the 2<sup>nd</sup> respondent and therefore, this Court, by Exhibit P5(a) judgment dated 30.09.2024 dismissed O.P(DRT) No.264 of 2024. It appears that after the dismissal of OP(DRT) No.264 of 2024, Exhibit P3 petition was filed by the 2<sup>nd</sup> respondent before the Chief Judicial Magistrate Court, Kozhikode (in the proceedings initiated by the petitioner- bank under Section 14 of the SARFAESI Act before that Court) seeking the following reliefs:-

*"a) An order may be issued to recall the Advocate Commissioner appointed in CMP 747/2024;*

*b) An order and direction may be issued to furnish a fresh affidavit to the petitioner in CMP 747/2024;*



*c) To pass an order for the dismissal of CMP 747/2024 on the ground that the averments in the affidavit are not satisfactory to this Hon'ble court;*

*d) To pass an interim order directing the Advocate Commissioner to abstain from executing the order until the disposal of this CMP;*

*e) For such other relief as this Hon'ble Court may deem fit and proper in the circumstance of this case."*

The petitioner bank filed an Exhibit P4 counter statement, also arguing that Exhibit P3 petition was not maintainable. The petitioner is before this Court aggrieved by the fact that the CJM has not disposed of the Exhibit P3 petition despite it being brought to the court's notice that the petition is not maintainable.

3. Sri. Mohan Jacob George, the learned counsel appearing for the petitioner, submits that the power of the Magistrate under Section 14 of the SARFAESI Act has been considered by the Supreme Court in ***Balkrishna Rama Tarle v. Phoenix ARC (P) Ltd.; (2023) 1 SCC 662***. It is submitted that this Court also considered the powers exercised by the Magistrate under Section 14 of the SARFAESI Act in ***State Bank of India, TVM and Another v. Chief Judicial***



***Magistrate, Kollam and Others; 2021 (6) KHC 83.*** It is submitted that, on the application of the law laid down by the Supreme Court in ***Balkrishna Rama Tarle (supra)*** and this Court in ***State Bank of India, Tvm (supra)***, it is clear that no application will lie at the instance of the borrower before the CJM as the CJM does not exercise any adjudicatory power while deciding applications under Section 14 of the SARFAESI Act.

4. Smt. Gayathri Muraleedharan, the learned counsel appearing for the 2<sup>nd</sup> respondent submits that rather than merely assisting secured creditors mechanically in taking possession of the secured asset, the learned CJM must exercise the statutory power envisaged under Section 14 of the SARFAESI Act by verifying the correctness of the contents in the affidavit filed by the Authorised Officer of the Bank. The learned counsel further refers to the Statement of Objects and Reasons of the SARFAESI Act to contend that the scheme of the SARFAESI Act makes it clear that the Magistrate has the power to adjudicate and decide the correctness of the information in the application. Therefore, it is her submission that while the CJM performs a ministerial act in matters filed under Section 14



of the SARFAESI Act, the CJM must verify the correctness of the details stated in the application filed. It is submitted that on 21.02.2021, the petitioner Bank and the co-borrowers entered into a restructuring agreement to which the 2<sup>nd</sup> respondent was not a party. It is stated that the 2<sup>nd</sup> respondent did not sign or authorize anyone to sign the agreement on his behalf. It is also submitted that the 2<sup>nd</sup> respondent is the owner of the mortgaged property. However, since the 2<sup>nd</sup> respondent has never signed any subsequent restructuring agreement no valid security interest has been created. She further submitted that the account in question was classified as a Non-Performing Asset on 03.06.2023. It is submitted that although the CJM has sufficient power to verify the correctness of the affidavit/application filed by the petitioner, the CJM failed to exercise his statutory powers and thereby erred in passing Ext.P2 order. She further submits that, for these reasons, the 2<sup>nd</sup> respondent has filed Ext. P3 petition to recall Ext. P2 order. It is submitted that the CJM has the authority to recall Ext. P2 order and is competent to verify the correctness of the affidavit filed by the petitioner in Ext. P1 petition. Thus the writ petition is liable to be dismissed, is the



submission.

5. Having heard the learned counsel as above, I am certain that the petitioner is entitled to succeed. The power exercised by a Magistrate under Section 14 of the SARFAESI Act has been the subject matter of many decisions of the Supreme Court. In ***Indian Bank v. D. Visalakshi; (2019) 20 SCC 47*** it was held:-

*“36. Suffice it to observe that an inquiry conducted by the stated authority under Section 14 of the 2002 Act, is a sui generis inquiry. In that, majorly it is an administrative or executive function regarding verification of the affidavit and the relied upon documents filed by the parties. That inquiry is required to be concluded within the stipulated time-frame. While undertaking such an inquiry, as is observed by this Court, the authority must display judicious approach, in considering the relevant factual position asserted by the parties. That presupposes that it is a quasi-judicial inquiry though, a non-judicial process. The inquiry does not result in adjudication of inter se rights of the parties in respect of the subject property or of the fact that the transaction is a fraudulent one or otherwise.”*

*37-38.....*

*39. Now we may turn to the decision in Standard Chartered Bank. The Court was called upon to consider*





*the argument that secured creditor before invoking the remedy under Section 14 of the 2002 Act, must necessarily make an attempt to take possession of the secured assets and can take recourse thereto only if he fails in that effort and encounters resistance to such an attempt. While considering that argument, the Court analysed Sections 13, 14 and 15 of the 2002 Act and opined that Section 14 of the 2002 Act enables the secured creditor who desires to seek the assistance of "State's coercive power" for obtaining possession of the secured assets to make a request in writing to the authority designated therein, within whose jurisdiction the secured asset is located. It also noted that the authority after receiving such request under Section 14 of the 2002 Act, was not expected to do any further scrutiny of the matter except to verify from the secured creditor whether notice under Section 13(2) of the Act has already been given or not and whether the secured asset is located within his jurisdiction. There is no adjudication of any kind at this stage. The Court also noticed in para 23 of the reported judgment that after amendment of Section 14 of the 2002 Act, by inserting first proviso therein, the designated authority has to satisfy itself only with regard to the matters mentioned in clauses (i) to (ix). In para 25 of this decision, the Court noted as follows :*



*“25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate 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 of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset.”*

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XXX”

In ***R.D. Jain & Co. v. Capital First Ltd.; (2023) 1 SCC 675***

the Supreme Court held:-

*“25. As observed and held by this Court in NKGSB Coop. Bank, the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the Advocate Commissioner who is considered as an officer of his/her court. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. Thus, we reiterate that the step to be taken by the CMM/DM under Section 14 of the Sarfaesi Act, is a ministerial step. While disposing of the application under Section 14 of the Sarfaesi Act, no element of quasi-judicial function or application of mind*



*would require. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets.”*

In ***Balkrishna Rama Tarle*** (*supra*) it was held:-

*“18. Thus, the powers exercisable by CMM/DM under Section 14 of the Sarfaesi Act are ministerial steps and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section 14 of the Sarfaesi Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the Sarfaesi Act, before the Debts Recovery Tribunal.”*



In ***Sama Rubbers v. South Indian Bank Ltd.; 2023 KLT***

***OnLine 1955*** this Court held:-

*“23. The inquiry conducted by the Chief Judicial Magistrate under Section 14 of the SARFAESI Act does not result in an adjudication of the parties' inter se rights regarding the subject matter. It is an administrative or executive function regarding the verification of the affidavit and documents relied on by the parties. The authority must display a judicial approach in considering the relevant facts asserted by the parties. It is a quasi-judicial inquiry through a non-judicial process.”*

Paragraph 16 of the judgment of this Court in ***State Bank of India, TVM*** (*supra*) reads:

*“16. The authorised Magistrate will have to act strictly in conformity with the statutory conferment of powers under section 14 and there is no scope for any application by the borrower for any purpose whatsoever. The borrower cannot maintain any application under section 14 of the SARFAESI Act nor can the borrower invoke the jurisdiction of the authorised Magistrate under section 14 of the Act. Further, the statute does not contemplate an adjudicatory order to be passed by the Magistrate or to consider the application as in a judicial process. The procedure prescribed under section 14 of the SARFAESI*



*Act is part of a non-judicial process. The said power is no doubt peculiar to the special statute.” (Emphasis is supplied)*

In the facts of this case, after failing to comply with the conditional order in I.A. No.2861 of 2024 in S.A. No.432 of 2024 and after OP(DRT) No.264 of 2024 was dismissed by this Court, the 2<sup>nd</sup> respondent sought the adjudication of various issues by the CJM. This was clearly not maintainable, in the light of the decisions referred to above.

Therefore, this Writ Petition is allowed. It is declared that the Chief Judicial Magistrate, Kozhikode has no jurisdiction to adjudicate on the issues set out in Exhibit P3 petition. The proceedings taken on Exhibit P3 petition by the Chief Judicial Magistrate, Kozhikode will stand set aside and consequently Exhibit P3 petition will stand dismissed.

**Sd/-**

**GOPINATH P.,**

**JUDGE**



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**APPENDIX OF WP(C) 3317/2025**

**PETITIONER EXHIBITS**

- Exhibit P1** COPY OF THE ABOVE SAID CMP NO.747/2024 FILED BY THE PETITIONER BEFORE THE 1 ST RESPONDENT
- Exhibit P2** COPY OF THE ORDER DATED 16.03.2024 OF THE 1 ST RESPONDENT IN CMP NO.747/2024
- Exhibit P3** COPY OF THE CMP NO.2801/ 2024 IN CMP NO.747/2024 DATED 24.10.2024
- Exhibit P4** COPY OF THE COUNTER DATED 06.11.2024 FILED BY THE PETITIONER AGAINST THE EXT-P3 PETITION THROUGH ITS COUNSEL
- Exhibit P5** COPY OF INTERIM ORDER DATED 22.08.2024 IN SAID O.P (DRT) NO.264/2024
- Exhibit P5(a)** COPY OF THE JUDGMENT DATED 30.09.2024 IN O.P (DRT) NO.264/2024 OF THIS HON'BLE COURT
- Exhibit P6** COPY OF THE PROCEEDINGS OF THE HON'BLE CJM IN CMP NO.747/2024
- Exhibit P7** COPY OF JUDGMENT IN BALAKRISHNA RAMA TARLE DEAD THR. L.RS. AND OTHERS VS. PHOENIX ARC PRIVATE LIMITED AND ORS.REPORTED IN MANU/SC/1244/2022

**RESPONDENT EXHIBITS**

- Exhibit R2(a)** The true copy of the agreement 21.01.2021