



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

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Balkrishna Rama Tarle (dead) through LRS & Anr. Vs. Phoenix ARC Private Limited & Ors

SPECIAL LEAVE PETITION NO. 16013 OF 2022

Date of Supreme Court's Judgement: September 26, 2022.

Facts of the Case: -

The Religare Finvest Ltd. sanctioned a loan of ₹6 crores (secured by Registered Mortgage) in favor of the borrowers. By a Deed of Assignment dated September 29, 2018, Religare Finvest Ltd assigned all its right, title, interest, and benefit under the said loan agreement to Phoenix ARC Private Limited hereinafter referred as (Respondent). The respondent issued a notice dated May 21, 2019, under Section 13(2) of the SARFAESI Act to borrowers calling upon borrowers to make payment of a sum of ₹5,83,22,866. The respondent filed an application under Section 14 of the SARFAESI Act seeking assistance of District Magistrate, Nashik, for taking physical possession of the secured assets.

Late Balkrishna Rama Tarle thr. LRS & Anr. hereinafter referred as (Petitioner) claiming to be a tenant on a part of the secured assets sought to intervene in the said proceedings. The DM passed the order dated August 27, 2021 and declined to assist the respondent in taking possession of the secured assets and kept the said application pending by observing that after termination of the tenancy rights of the petitioner further orders regarding possession of the mortgage property will be decided. It is required to be noted that neither the borrower(s) nor the petitioner(s) instituted any proceedings before the Debt Recovery Tribunal (DRT) under Section 17 of the SARFAESI Act.

The respondent preferred writ petition before the High Court, who set aside order of the DM by observing that such an order is beyond the scope and ambit of the powers to be exercised under Section 14 of the SARFAESI Act and directed the DM to hear and dispose of the application under Section 14 of the SARFAESI Act in accordance with the provisions of Section 14 of the SARFAESI Act.

Feeling aggrieved by the order passed by the High Court and relying on the decisions of Supreme Court in the cases of *Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and Ors.*; (2014) and *Vishal N. Kalsaria Vs. Bank of India and Ors.*, the petitioner have preferred the Special Leave Petition before Supreme Court asking the court that whether while exercising the powers under Section 14 of the SARFAESI Act, the DM could have passed such an order or not?



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Supreme Court's Observations: -

The Apex Court, after considering the scope, ambit, and jurisdiction of the DM/ Chief Metropolitan Magistrate (CMM) under Section 14 of the SARFAESI Act, observed that immediately after receipt of a written application under Section 14(1) of the SARFAESI Act from the secured creditor for taking over the possession of the property/ies, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor. Relying on the previous Supreme Court decision in the matter of *NKGSB Cooperative Bank Limited Vs. Subir Chakravarty & Ors*, the Court said time is of the essence, and this is the spirit of the special enactment. Further, citing the Apex Court judgment in the case of *M/s R.D. Jain and Co. Vs. Capital First Ltd. & Ors*, the Court observed that it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession. "Thus, the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial step 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," said the Court. It further added, "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 Debts Recovery Tribunal,".

Order: - The High Court has not committed any error in passing the judgment and order and directing the DM to dispose of the application under Section 14 of the SARFAESI Act.

Case Review: - Special Leave Petition dismissed.