IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,NAMAKKAL

Present: Tmt. A.Shanmuga Priya, B.Sc(Agri)., B.L.,
Chief Judicial Magistrate,
Namakkal.

Monday, the 4th day of August 2025

M.P.No.4/2025 and 5/2025
in
Crl.M.P.No.387/2025
(CNR.No.TNNM02-001062-2025)

1.P.Shymala, W/o. (late) D. Parthiban,
D.No. 3,104, Yadhavar Street,
Kattanachempatti,
Rasipuram, Namakkal -637 408.

Also at
No.1, 427, VIP Nagar,
Muthukalipatti,
Namakkal -637 408.

Also at
S.F.No. 159/1, 102/1A, 103/1, Plot No. 312,
Muthukalipatty Village,
Rasipuram, Namakkal REG.
Namakkal -637 408.

2. P. Praveen, S/o. Late. D. Parthiban,
S.F.No. 159/1, 102/1A, 103/1, Plot No. 312,
Muthukalipatty Village,
Rasipuram, Namakkal REG.
Namakkal -637 408.

3. P. Lokesh, S/o. Late. D. Parthiban,
S.F.No. 159/1, 102/1A, 103/1, Plot No. 312,
Muthukalipatty Village,
Rasipuram, Namakkal REG.
Namakkal -637 408.

4. P. Varun, S/o. Late. D. Parthiban,
S.F.No. 159/1, 102/1A, 103/1, Plot No. 312,
Muthukalipatty Village,
Rasipuram, Namakkal REG.
Namakkal -637 408. .. Petitioners/ Respondents

/Vs /

M/s PNB Housing Finance Limited,
Represented by its Authorised Signatory
S. Sulthan,
having its registered office at
9th floor, Antriksh Bhawan,
22 Kasturba Gandhi Marg,
New Delhi – 110001,
having one of its branch office at
No. 104/7, Salem Productivity Council,
Manivannan St., L.I. Colony,
Fairlands, (Opp. To new bus stand)
Salem – 636004. .. Respondent/ Petitioner.

The above petitions came before me for final hearing on 29.07.2025 in the presence of Thiru.L.Sureshkumar, Advocate for the petitioners/Respondents and Advocate Thiru.J.Manimaran, for the Respondent/ Petitioner and upon hearing both side arguments, perusing the material records and having stood over for consideration till this day, this court delivered the following...

COMMON ORDER

The above petitions have been filed by the petitioners/ Respondents to recall the order of this court dated 27.05.2025 passed by this Court in the above main Crl.M.P.No. 387/2025 and to stay all further proceedings in the above main Crl.M.P.No. 387/2025.

2. Brief averments of the affidavit filed in the above petitions as below:

It is submitted that the petitioner's husband Parthiban was working as a driver in the Namakkal District Collector Office and her husband borrowed housing loan of Rs. 15,75,000/- on 27.02.2018, form the respondent bank towards housing loan, for which the petitioner stood as guarantor and the loan number of her husband is NHL /SLM/0218/497084 and the MOD was registered on 22.8.2003 in the Sub Registrar Officer, Rasipuram as document No. 1932 and while sanctioning housing loan, the respondent had persuaded her husband to take an Insurance Master Policy from the respondent, to cover the loan amount in the event of any untoward incident took place to her husband during the loan repayment period and convincing with the persuasion of the respondent, her husband simply trusted them and took two insurance policies from the respondent to cover up the housing loan amount and the respondent issued insurance policy in favour of her husband vide policy number 0235000054 and the premium for the above said police was 68,085/- and the respondent took another Insurance Master policy from Tata AIG insurance company and the policy number is 1901191757 and the premium was 6,196/-, for the loan sanctioned to her husband and the premium amount was paid by the respondent directly from debiting the insurance premium amount from her husband loan account and the respondent entered into a loan agreement with her husband at the time of sanctioning the housing loan and as per the agreement, the repayment period was 156 monthly installments and the installment was debited from her husband's salary and credited to his loan account in the respondent bank and her husband paid 24 installments for the loan borrowed from the respondent bank and in the said circumstances, her husband suddenly died on 11.12.2019 and she and her three sons namely Praveen, Logesh and Varun are the legal heirs of her deceased husband and after the death of her husband, she approached the respondent office in the month of January 2020 and submitted application along with the insurance policies, legalheir certificate to claim the insurance from the respondent and to close the loan account of her husband and to pay the balance amount to her and her sons and also to return the original sale deed deposited to the bank by way of annulling the MOD but the respondent not even considered her request and hired rowdy elements to intimidate her, in the presence of minor kids and also attempted to ransack her house in the name of collecting the loan amount and hence in order to protect their life, she served a legal notice to the respondents through her counsel on 7/6/2022 and 28.12.2022, requesting them to close the loan amount and the said notice were received by the respondents on 08.06.2022 and 29.12.2022 respectively by evoked no response but instead of that, the respondent sent a SMS to her phone number 9790338129, on 05.01.2023, stating that, " Dear customer, this inform you that your loan account number – NHL/SLM/0218/497084 with PNB Housing Finance Limited is allocated to SM- Associates Risk Manage", and the act of the respondent is extremely illegal and against the loan agreement and the respondent is duly bound to close the loan amount in pursuance to the said insurance policies,but none of the respondents discharged the statutory duty and hence, she filed a complaint before the

District Consumer Redressal Commission, Namakkal, in C.C. 14/2023, against the respondents claiming damages from them for her mental agony and deficiency service and failure of the respondent to collect the amount from the Insurance Company, to close the loan account of her husband and the respondent appeared before the District Consumer Redressal Commission, Namakkal, and filed written statement disputing her claim of insurance amount to close the loan account of her husband and both respondents suppressed the transaction between her husband and the respondents which is absolutely unreasonable and unsustainable.

It is further submit that when the subject matter was pending before the Consumer Forum, the respondent issued symbolic possession notice under section 13(4) of SARFAESI Act on 24.05.2023 having lock of description of property details and no notice under section 13(2) of SARFEASI Act was issued for the reasons best known to the respondents and the respondents have colluded themselves, illegally trying to deprive their right and claim, by invoking the SARFEASI Act and the acts of the respondents are not only arbitrary, unreasonable, illegal but also against the loan insurance policies terms and conditions and after elaborate enquiry before the consumer forum, the above complaint was allowed on 19.11.2024 and directed the insurance company to pay the sum assured amount for balance outstanding from the respondent bank and they order reads as below:

"இறுதியாக கீழ்க்கண்ட உத்தரவுகளை இந்த ஆணையம் பிறப்பிக்கிறது "19(அ). முறையீட்டாளரின் கணவர் ஒன்றாம் எதிர்தரப்பினரிடம் பெற்ற வீட்டுக்கடனின் நிலுவை பாக்கி தொகைக்கு, Master Policy No. 1901191757 என்ற காப்பீட்டின் sum assured தொகையினை இரண்டாம் எதிர்தரப்பினர் வழங்க வேண்டும் என்றும்,

(ஆ). முறையீட்டாளருக்கு ஒன்று மற்றும் இரண்டாம் எதிர்தரப்பினர்கள் ஏற்படுத்திய சேவை குறைபாடு மற்றும் மன உளைச்சலுக்கு இழப்பீடாக ரூ.1,00,000/-முறையீட்டாளருக்கு ஒன்று மற்றும் இரண்டாம் எதிர்தரப்பினர்கள் வழங்க வேண்டும் என்றும்,

(இ). மேலே குறிப்பிட்டுள்ள அனைத்து தொகைகளையும் இந்த ஆணை கிடைக்கப்பெற்ற 30 நாட்களுக்குள் ஒன்று மற்றும் இரண்டாம் எதிர்தரப்பினர்கள் முறையீட்டாளருக்கு வழங்க வேண்டும் என்றும், தவறும் பட்சத்தில் அத்தொகைகளை உத்தரவு தேதியிலிருந்து ஆண்டுக்கு 9% வட்டியுடன் வழங்க வேண்டும் என்றும்,

(ஈ). மேற்கண்ட காப்பீட்டுத்தொகை வீட்டுக்கடன் நிலுவைத் தொகையை விட கூடுதலாக இருப்பின் மீதத் தொகையை ஒன்றாம் எதிர்தரப்பினர் முறையீட்டாளருக்கு வழங்க வேண்டும் அல்லது மேற்கண்ட காப்பீட்டுத் தொகை வீட்டு கடன் நிலுவைத் தொகையை விட குறைவாக இருப்பின் மீதத்தொகையை முறையீட்டாளரிடமிருந்து ஒன்றாம் எதிர்தரப்பினர் வசூல் செய்து கொள்ளலாம் என்றும்,

(உ). வேறு பரிகாரங்கள் இல்லை என்றும் இவ்வாணையம் உத்தரவிடுகிறது.”

It is further submit that the said order was very well known to the respondent bank and the same was suppressed in their affidavit and petition and fraudulently obtained the above order from this court, for delivery of possession through commissioner and the said order itself illegal and obtained collusively, to deprive the rights of her in relation to a property would render the transaction void ab-inito and this an obvious fraud on the court and apparently has been made with a view to gain an unfair advantage by misusing the judicial process and when fraud steps in and deducted, it has the effect of vitiating all and in view of the order before the consumer forum, she had filed an execution petition in REA.No. 5 /2025 which is pending and it was also very well known to the bank and suppressing the entire proceedings, filed false affidavit and obtained fraudulent order from this court which is highly illegal and based upon the fraudulent order, the commissioner had fixed time for eviction on 23.7.25 at about 11.00 am and if further proceedings continued, she will be put in to irreparable loss and petitioners valuable assets will be lost and hence filed the above petitions to recall the order dated.27.05.2025 passed by this court in the above Crlmp.No.387 of 2025 and to stay all further proceedings.

3. Brief averments of the Counter filed by the Respondent as below:

It is contended that the above petitions filed by the petitioner are frivolous, Vexations and not maintainable in facts and on law and the averments made in paragraphs 1 and 2 are true to the extent that the deceased borrower had availed a housing loan of Rs. 15,75,000/- from the respondent on 27.02.2018 and the 1st petitioner stood as a guarantor for the said loan and insurance policies were obtained by the deceased borrower to cover the loan amount but the respondent denies the allegation that it coerced or unduly persuaded the deceased borrower to take such insurance policies and the said policies were taken with the full and informed consent of the borrower, and the premiums were debited from the loan account in accordance with the terms of the loan agreement and it is true that the borrower died on 11.12.2019 and the petitioners are the legal heirs of the deceased borrower and it is denied that the petitioner bank failed to consider or process the insurance claim submitted by the petitioners and the insurance claim is a matter between the petitioners and the insurance company and the respondent is not the insurer but only the secured creditor, entitled to recover the outstanding dues and the loan account cannot be closed without receipt of the insurance proceeds from the insurer or settlement of the amount due by the borrower and the baseless allegations of intimidation, harassment, or deployment of unlawful means as claimed by the petitioners or all denied and the respondent is a regulated financial institution and conducts all recovery proceedings strictly in accordance with law and due process and any lawful communication or recovery action taken by the respondent cannot be construed as intimidation or harassment, the petitioner is put into strict proof of the same.

It is further submitted that the respondent is the secured creditor of the said loan and entitled to initiate and continue proceedings under the SARFAESI Act 2002, for recovery of the secured debt due from the petitioners and the petitioners have filed the present petition seeking to recall the order dated 27.05.2025 passed by this court under the SARFAESI proceedings initiated by the petitioner, relying primarily on an order dated 19.11.2024 passed by the District Consumer Disputes Redressal Forum, Namakkal, which directs the insurance company to pay the sum assured under Master Policy No. 1901191757 towards the outstanding housing loan amount, along with compensation of Rs. 1,00,000/- for alleged deficiency in service and the order passed by the Consumer Forum is confined solely to the dispute between the petitioners and the insurance company regarding the insurance claim and compensation and the Consumer Forum's Jurisdiction is limited to consumer disputes and cannot override or interfere with the statutory recovery mechanism under the SARFAESI Act and the said act is a special and exclusive legislation enacted to provide secured creditors with a swift and effective remedy to recover their dues without the intervention of civil courts or other forums, including consumer forums and Section 34 and 35 of the SARFAESI Act expressly bar the jurisdiction of civil courts and other authorities in matters covered by the Act and therefore, any order passed by a consumer forum attempting to stay or interfere with SARFAESI proceedings is without jurisdiction and liable to be set aside and the petitioners have not filed any opposition or objection to the statutory notices issued under section 13(2) (Demand Notice) and section 13(4) (Possession Notice of the SARFAESI Act) which were duly served upon them and the demand notice under section 13(2) was issued on 28.11.2024 and published in the widely circulated Tamil daily Dinakaran and English daily Financial Express on 15.09.2024, the possession notice under section 13(4) was issued on 13.03.2025, affixed at the secured asset premises, and published in the widely circulated Tamil daily Dinakaran and English daily Financial Express on 18.03.2025 and these actions demonstrate strict compliance with the procedural requirements of the SARFAESI Act 2002, ensuring that the petitioners were given adequate notice and opportunity to discharge their liabilities and the respondents filed the C.MP.No. 387/2025 under section 14 of SARFAESI Act 2002 before this Court on 15.04.2025, subsequent to the issuance and publication of the statutory notices, thereby following the prescribed legal timeline and the allegations made by the petitioners regarding intimidation, harassment, or suppression of material facts are denied and the respondent is a regulated financial institution and conducts its recovery proceedings strictly in accordance with law and due process and the claim that the respondent suppressed the Consumer Forum order and obtained possession orders fraudulently is baseless and an abuse of the process of law and the role of the Chief Judicial Magistrate under section 14 of the SARFAESI Act is limited to facilitate the secured creditor in taking possession of secured assets and it does not involve adjudication of disputes between the parties and any grievance against orders passed under section 14 must be challenged before competent court under section 17 of the SARFAESI Act and this court is not ordinarily called upon to entertain objections or stay possession proceedings or recall order based on unrelated orders/ directions passed by consumer forums and the Consumer Forum order directing the insurance company to pay the sum assured and compensation is a separate civil dispute and does not extinguish or affect the secured debt owed by the petitioners to the respondent and if the insurance company pays the sum assured, the petitioners may use such amount to discharge the loan liability, but until such payment is made, the respondent's right to recover the outstanding dues remains intact and the petitioners cannot use the Consumer Forum order or pending execution proceedings as a shield to delay or stay the possession and recovery process under the SARFAESI Act and the respondent is entitled to recover the outstanding dues in accordance with law and the SARFAESI Act provides adequate safeguards to protect the interests of all parties and the allegations of collusion, fraud, and suppression of material facts are vehemently denied and the respondent has at all times acted in good faith and in strict compliance with the law and judicial directions and the possession order dated 27.5.2025 passed by this Court was passed after due consideration of all relevant facts and documents placed before the Court and the petitioners attempt to recall or set aside the said order on the ground of alleged fraud is an abuse of the process of law and liable to be rejected and the petitions filed by the petitioners are not maintainable in law as the petitioners have no locus standi to initiate or maintain the present proceedings before this Court and the petitioners, being legal heirs of the deceased borrower, have not exhausted the statutory remedy available under the SARFAESI Act and have instead sought to circumvent the exclusive jurisdiction competent authorities designated under the Act, and hence prayed to dismiss the petitions filed by the petitioners.

4. **Point for consideration;**

Whether the above petitions are liable to be allowed or not?

5. **Point:**

The learned counsel appeared for the petitioners / respondents submitted that the petitioners had filed a complaint before the District Consumer Redressal Commission Namakkal, in CC.No.14/2023, against the respondents claiming damages from them, for the mental agony and deficiency of service and failure of the respondent to collect the amount from the insurance company to close the loan account of the 1st petitioner's husband and when the subject matter was pending before the Consumer

Forum, the respondent issued symbolic possession notice under section 13(4) of SARFAESI Act on 24.05.2023 having lack of description of property details and no notice under section 13(2) of SARFAESI Act was issued for the best reasons known to the respondents and the respondent have colluded themselves with other party, Illegally trying to deprive their right and claim by invoking the SARFAESI Act and the acts of the respondent are not only arbitrary, unreasonable, illegal but also against the loan insurance policies' terms and conditions and after elaborate enquiry before the consumer forum, the above complaint was allowed on 19.11.2024 and directed the insurance company to, pay the sum assured amount to, the balance outstanding to this respondent bank and the said order was very well known to the respondent bank and the same was suppressed in their affidavit and petition and fraudulently obtained the above order before this court for delivery of possession through commissioner and the said order itself illegal and in view of the order before the consumer forum he has filed execution proceeding in REA.No.5 of 2025 which is also pending and it was also very well known to the bank and suppressed the entire proceedings, filed false affidavit and obtained fraudulent order from this court which is highly illegal and based upon fraudulent order, the commissioner had fixed time for eviction on 23.07.2025 at about 11.00 A.M and if further proceedings continued then they will be put into irreparable loss and petitioners valuable assets will be lost and in support of his argument submitted the following citations: (1) S.V. Subramaniam Vs. M/s Cypress Semiconductor Technology dated-22.01.2008. (2) A.V. Papayya Sastry & others Vs. Government of A.P. & others. Dated-7.3.2007, Civil Appeal No. 5097, 5099 of 2004. (3) Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurka & others, dated-29.8.2008, Civil Appeal No. 5308 of 2008.

6. Whereas, the learned counsel appeared for the respondent/ petitioner bank submitted that the respondent being the secured creditor of said loan is entitled to initiate and continue, the proceedings under the SARFAESI Act 2002, for recovery of the secured debt due from the petitioners and the petitioners have filed the above petitions seeking to recall the order dated.27.05.2025 by this court under the SARFAESI proceedings initiated by the petitioner, relying primarily on an order dated.19.11.2024 passed by the District

Consumer Disputes Redressal Forum, Namakkal, which directs the insurance company to pay the sum assured under Master Policey No.1901191757 towards the outstanding housing loan amount, along with compensation of Rs.1,00,000/- for alleged deficiency in service and the order passed by the Consumer Forum is confined solely to the dispute between the petitioners and the insurance company regarding the insurance claim and compensation and the Consumer Forum's jurisdiction is limited to consumer disputes and cannot override or interfere with the statutory recovery mechanism under the SARFAESI Act. The SARFAESI Act is a special and exclusive legislation enacted to provide secured creditors with a swift and effective remedy to recover their dues without the intervention of civil courts or other forums, including consumer forums. Sections 34 and 35 of the SARFAESI Act expressly bar the jurisdiction of civil courts and other authorities in matters covered by the Act and therefore, any order passed by a consumer forum attempting to stay or interfere with SARFAESI proceedings is without jurisdiction and liable to be set aside and the petitioners have not filed any opposition or objection to the statutory notices issued under section 13(2) (Demand notice) and Section 13(4) (Possession Notice) of the SARFAESI Act, which were duly served upon them and the possession notice under section 13(4) was issued on 13.03.2025, affixed at the secured asset premises, and published the widely circulated Tamil daily Dinakaran and English daily Financial Express on 18.03.2025 and there actions demonstrate strict compliance with the procedural requirements of the SARFAESI Act 2002, ensuring that the petitioners were given adequate notice and opportunity to discharge their liabilities and the respondent filed the above Crl.M.P.No.387/2025 under section 14 of SARFAESI Act 2002 before this court subsequent to the issuance and publication of the statutory notices, thereby following the prescribed legal timeline and the claim that the respondent suppressed the Consumer Forum order or obtained possession orders fraudulently is baseless and an abuse of the process of law and the role of the Chief Judicial Magistrate under section 14 of the SARFAESI Act is limited to facilitate the secured creditor in taking possession of secured assets and it does not involve adjudication of disputes between the parties and any grievance against orders passed under section 14 must be challenged before competent court under section 17 of the SARFAESI Act and this court is not ordinarily called upon to entertain objections or stay possession proceedings or recall order based on unrelated orders/directions passed by consumer forums and the Consumer Forum order directing the insurance company to pay the sum assured and compensation is a separate civil dispute and does not extinguish or affect the secured debt owed by the petitioners to the respondent and if the insurance company pays the sum assured, the petitioners may use such amount to discharge the loan liability, but until such payment is made, the respondent's right to recover the outstanding dues remains intact and the petitioners cannot use the Consumer Forum order or pending execution proceedings as a shield to delay or stay the possession and recovery process under the SARFAESI Act and the respondent is entitled to recover the outstanding dues in accordance with law and the SARFAESI Act provides adequate safeguards to protect the interests of all parties and the allegations of collusion, fraud and suppression of material facts are vehemently denied and the respondent has at all times acted in good faith and in strict compliance with the law and judicial directions and the possession order dated.27.05.2025 passed by this court was passed after due consideration of all relevant facts and documents placed before the court and the petitioners attempt to recall or set aside the said order on the ground of alleged fraud is an abuse of the process of law and liable to be rejected.

7. Rival submissions considered carefully.

The petitioners/ Respondents have alleged that the Respondent/ Petitioner Bank had suppressed the proceedings initiated by the petitioners before the Consumer Forum and fraudulently obtained the order for delivery of possession through Commissioner in this court and since, the respondent had suppressed the proceedings of Consumer Forum and filed a false affidavit and obtained fraudulent order from this court, it is illegal and hence the order dated 27.05.2025 passed by this court in the above Crl.M.P.No. 387/2025is to be recalled and all further proceedings to be stayed.

8. While so, "Section 14 in The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 reads as below:

(1)Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating there to may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him

(a)take possession of such asset and documents relating thereto;

and(b)forward such asset and documents to the secured creditor.

[Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that-

(i)the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii)the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii)the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above.

(iv)the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v)consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a nonperforming asset;

(vi)affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii)the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii)the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the seccured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix)that the provisions of this Act and the rules made thereunder had been complied with:Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, 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] [Inserted by Act No.1 of 2013]:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.] [Substituted by Act No. 44 of 2016.]

[Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said 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.] [Inserted by Act No. 44 of 2016.]

(1A)[The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,

(i)to take possession of such assets and documents relating thereto;

and(ii)to forward such assets and documents to the secured creditor.]

(2)For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3)No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] [Inserted by Act No. 1 of 2013] done in pursuance of this section shall be called in question in any Court or before any authority."

9. Being so, it has been held in various judgments that the power of Designated Court under Section 14 SARFAESI Act, 2002 is ministerial and non- adjudicatory in nature and the process to be followed under Section 14 does not involve any element of quasi judicial function.

10. In the decision of our Hon'ble Apex Court in Balkrishna Rama Tarle (Dead) Through Lrs vs Phoenix Arc Private Limited dated 26.09.2022, it has been held as below:

" 8……………………..While disposing of the application under Section 14 of the SARFAESI Act, no element of quash 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.

11. Thus, in view of the scheme of the SARFAESI Act, more particularly, Section 14 of the SARFAESI Act and the nature of the powers to be exercised by learned Chief Metropolitan Magistrate/learned District Magistrate, the High Court in the impugned Judgment and order has rightly observed and held that the power vested in the learned Chief Metropolitan Magistrate/learned District Magistrate is not by way of persona designata." 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. 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 Debts Recovery Tribunal. Under the circumstances in the present case no error has been committed by the High Court in setting aside the order dated 27.08.2021 passed by the designated authority keeping the application pending till the secured creditor initiates the legal proceedings for eviction of the tenant cannot get the possession in an application under Section 14 of the SARFAESI Act. The High Court has rightly directed the designated authority to proceed further with the application under Section 14 of the SARFAESI Act, and to dispose of the same in accordance with the provisions of Section 14 of the SARFAESI Act."

12. The above said legal position has been once again reiterated by our Hon'ble Apex Court in Kotak Mahindra Bank vs Girnar Corrugators Pvt. Ltd. & Ors. Dated 05.01.2023.

"10. ....While exercising power under Section 14 of the SARFAESI Act, even the District Magistrate has no jurisdiction and/or District Magistrate and/or even the Chief Metropolitan Magistrate has no jurisdiction to adjudicate the dispute between secured creditor and debtor. Under Section 14 of the SARFAESI Act, the District Magistrate or the Chief Metropolitan Magistrate as the case may be is required to assist the secured creditor in getting the possession of the secured assets. Under Section 14 of the SARFAESI Act, neither District Magistrate nor Metropolitan Magistrate would have any jurisdiction to adjudicate and/or decide the dispute even between the secured creditor and the debtor. If any person is aggrieved by the steps under Section 13(4) / order passed under Section 14, then the aggrieved person has to approach the Debts Recovery Tribunal by way of appeal / application under Section 17 of the SARFAESI Act".

13. In the decision of Our Hon'ble Apex Court of India in Standard Chartered Bank case it has been held as below:

"23. We must make it clear that these provisions were not in existence on the date of the order impugned [V. Noble Kumar v. Standard Chartered Bank, (2010) 8 MLJ 282 :(2011) 1 CTC 513] in the instant proceedings. These amendments are made to provide safeguards to the interest of the borrower. These provisions stipulate that a secured creditor who is seeking the intervention of the Magistrate under Section 14 is required to file an affidavit furnishing the information contemplated under various sub-clauses (i) to (ix) of the proviso and obligates the Magistrate to pass suitable orders regarding taking of the possession of the secured assets only after being satisfied with the contents of the affidavits.

24. An analysis of the nine sub-clauses of the proviso which deal with the information that is required to be furnished in the affidavit filed by the secured creditor indicates in substance that:

24.1. (i) there was a loan transaction under which a borrower is liable to repay the loan amount with interest,

24.2. (ii) there is a security interest created in a secured asset belonging to the borrower, 24.3. (iii) that the borrower committed default in the repayment, 24.4. (iv) that a notice contemplated under Section 13(2) was in fact issued,

24.5. (v) in spite of such a notice, the borrower did not make the repayment,

24.6. (vi) the objections of the borrower had in fact been considered and rejected,

24.7. (vii) the reasons for such rejection had been communicated to the borrower, etc.

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."

14. It was further held by our Hon'ble Supreme Court of India In ... vs Noble Kumar & Others1. Lastly He Lays ... on 21 July, 2023

"12) Even if the leading judgment of the Hon'ble Supreme Court of India in paragraph 24 of the Standard Chartered Bank judgment (1 supra) is examined, which is cited by the Supreme Court of India, the following details must be mentioned in the affidavit as per Para 26:

(i) there was a loan transaction under which a borrower is liable to repay the loan amount with interest,

(ii) there is a security interest created in a secured asset belonging to the borrower,

(iii) that the borrower committed default in the repayment,

(iv) that a notice contemplated under Section 13(2) was in fact issued,

(v) in spite of such a notice, the borrower did not make the repayment,

(vi) the objections of the borrower had in fact been considered and rejected,

(vii) the reasons for such rejection had been communicated to the borrower, etc.

13) It is also clarified in the subsequent paragraphs that the Magistrate is under an obligation to examine the factual correctness made in the affidavit but not the legal niceties of the transaction. It is also apparent that while dealing with the application under Section 14, the Magistrate is not required to decide the "rights" of the parties. An issue about the rights of the parties is not capable of being decided by the learned Magistrate in the course of an order under Section 14."

15. While being so, in this case it was argued by the learned counsel appearing for the petitioners/ respondents that, the respondent/ petitioner bank had suppressed the entire proceedings before Consumer Forum and filed false affidavit and since the execution proceedings are pending before the Consumer Forum based on the order of Consumer Forum dated 19.11.2024, the respondent/ petitioner bank had no right to proceed against the petitioners/ respondents under SARFAESI Act and being so, by filing false affidavit, the respondent/ petitioner had obtained fraudulent order from this court for eviction and hence it has to be recalled.

16. As held by our Hon'ble Apex Court, Under Section 14 of the SARFAESI Act, neither District Magistrate nor Metropolitan Magistrate would have any jurisdiction

to adjudicate and/or decide the dispute even between the secured creditor and the debtor. If any person is aggrieved by the steps under Section 13(4) / order passed under Section 14, then the aggrieved person has to approach the Debts Recovery Tribunal by way of appeal / application under Section 17 of the SARFAESI Act.

17. Further, it has been held by Hon'ble Punjab Haryana High Court in the matter of **Shri Ram Housing Finance Ltd. vs State of Haryana & Ors.**, that a District Magistrate, after passing an order under Section 14 of SARFAESI Act, 2002 has no jurisdiction to review or recall such order. The Hon'ble Gujarat High Court in the matter of Prime Co-operative Bank Ltd. vs District Magistrate/Chief Metropolitan Magistrate held that after passing of an order under Section 14 of SARFAESI Act, 2002, the District Magistrate becomes functus offcio and he cannot reopen a concluded issue. The same view has been taken by the Hon'ble Madhya Pradesh High Court at Jabalpur in the matter of India Shelter Finance Corporation vs State of Madhya Pradesh & Ors.

18. While being so, Section 17 of SARFAESI Act, 2002 provides a remeady to the aggrieved person to challenge the validity of the measures taken by the Secured Creditors under Section 14 of the SARFAESI Act, 2002.

19. As held by our Hon'ble Apex Court, the remeady available to the petitioners / respondents is to raise objections in the proceedings under Section 17 of the SARFAESI Act, before Debts Recovery Tribunal.

20. Hence, on considering all the above, this court is of the view that, the above applications filed by the borrowers i.e., petitioners/ respondents to recall the order dated 27.05.2025 passed by this court in the above Crl.M.P.No. 387/2025 and to stay all further proceedings are liable to be dismissed.

21. Hence, it is hold that the above M.P.No.4/2025 and M.P.No.5/2025 are liable to be dismissed. Considering the facts and circumstances of the case, no orders as to costs.

In the result, M.P.No. 4/2025 and M.P.No. 5/2025 are dismissed. No costs.

This order dictated to the Steno Typist, typed by her through computer, corrected and pronounced by me, in the open court on this 04th day of August 2025.

Sd/- A.Shanmuga Priya,
Chief Judicial Magistrate,
Namakkal.

// True copy //