

**HIGH COURT OF GUJARAT (D.B.)**  
**ISSAN OVERSEAS LIMITED & 5 ORS**  
*Versus*  
**UNION OF INDIA MINISTRY OF FINANCE & 2 ORS**

**Date of Decision:** 26 September 2012

**Citation:** 2012 LawSuit(Guj) 991

**Hon'ble Judges:** [Bhaskar Bhattacharya](#), [J B Pardiwala](#)

**Case Type:** Special Civil Application

**Case No:** 372 of 2011

**Subject:** Banking, Constitution

**Acts Referred:**

[Constitution Of India Art 227](#), [Art 226](#)

[Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 Sec 14](#), [Sec 17](#), [Sec 13\(4\)](#).

**Advocates:** [Kaushik P Bhatiya](#), [Nanavati Associates](#), [Saurabh G Amin](#)

**Cases Referred in (+): 1**

**J. B. Pardiwala, J.**

**[1]** This petition under Article 226 of the Constitution of India is, at the instance of a debtor of a Co-operative Bank, questioning the Constitutional validity of Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act 2002"), and also questioning the legality, validity and propriety of the order dated 13th January, 2011, passed by the learned Chief Metropolitan Magistrate, Ahmedabad, in an application filed by the Bank, under Section 14 of the Act, 2002, by which the learned Chief Metropolitan Magistrate, Ahmedabad, permitted the Bank to take over the possession of the secured assets, with the help of the Police. The learned Chief Metropolitan Magistrate, Ahmedabad directed the concerned Police Station to provide necessary assistance to the Bank, for the purpose of taking over of the possession of the property narrated in the application.

**[2]** At the very outset, we may state that the Constitutional validity of Section 14 of the Act, 2002, fell for our consideration in the case of Mansa Synthetic Private Limited Vs. Union of India and others, being Special Civil Application No. 1829 of 2012. By our judgment and order dated 12th March, 2012, we upheld the Constitutional validity of Section 14 of the Act, 2002. Under such circumstances, therefore, it is not necessary for us to adjudicate this issue any further. We propose to rely on the observations made by us in Special Civil Application No. 1829 of 2012.

"Our final conclusions are summarised thus :

Section 14 of the Act is a valid piece of legislation and is declared intra vires.

The District Magistrate or Chief Metropolitan Magistrate, as the case may be, is bound to assist the secured creditor in taking possession of the secured assets and is not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor under Section 13(4) of the Act.

Though Section 14 of the Act provides that no act of the Chief Metropolitan Magistrate or District Magistrate done in pursuance of Section 14 shall be called in question in any Court or before any authority, the right of judicial review under Articles 226 and 227 of the Constitution of India cannot be taken away, but that power can be exercised only in cases where the concerned Magistrate or the Commissioner, as the case may be, exceeds his power or refuses to exercise his jurisdiction vested in him under the law.

Absence of an appeal does not necessarily render the legislation unreasonable as only because no appeal is provided under the Act against the order passed under Section 14 of the Act will not render Section 14 ultra vires the provisions of the Constitution of India.

**[3]** Now, so far as the challenge to the order passed by the Chief Metropolitan Magistrate, Ahmedabad, below Exh.1 in the application filed by the Bank under Section 14 of the Act, 2002 is concerned, we may only say that the petitioner has an alternative efficacious remedy under the Act, 2002, in the form of an appeal, as provided under the provisions of Section 17 of the Act, 2002. The record reveals that on 18th January, 2011, the Division Bench of this Court passed the following order:-

"2. We have heard learned counsel appearing for the petitioner on interim relief since it is contended by the learned counsel for the petitioner that the petitioner may be dispossessed anytime pursuant to the impugned order.

3. It appears that it is not the case of the petitioner that the loan is not taken or the amount is not recoverable. It further appears from the order of the Ld. Magistrate that the amount of Rs.3,50,32,281/- [Rupees three crore fifty lac thirty two thousand two hundred eighty one only] is to be recovered by the bank. If the petitioner is to enjoy the interim relief, it must deposit the aforesaid amount with the bank subject to further orders of this Court, failing which the bank should be at liberty to take possession, but subject to further orders of this Court.

4. Hence, by ad-interim order, it is directed that there shall be stay against execution of the order of the Ld. Magistrate under section 14 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, on condition that the petitioner deposits the amount of Rs.3,50,32,281/- [Rupees three crore fifty lac thirty two thousand two hundred eighty one only] with the respondent bank within a period of one week from today.

5. It is also observed and clarified that if there is failure to comply with the condition to deposit the amount of Rs.3,50,32,281/- [Rupees three crore fifty lac thirty two thousand two hundred eighty one only], the ad-interim order shall automatically stand vacated and the bank shall be at the liberty to take possession of the property in question as per the impugned order of the Ld. Magistrate, but such action of the bank for taking up possession shall be subject to further order of this Court.

6. It is also clarified that as the time of one week to deposit the amount is granted, the petitioner shall also not transfer or alienate the property in question. "

**[4]** It appears that the petitioner has failed to avail of the benefit of an ad-interim order, which was passed earlier, as the petitioner failed to deposit the amount of Rs. 3,50,32,281/- (Rupees three crore fifty lac thirty two thousand two hundred eighty one only). In any view of the matter, we do not propose to go into the merit of the order passed by the learned Chief Metropolitan Magistrate, Ahmedabad, as there being an efficacious alternative remedy available to the petitioner to challenge the same by filing an appeal under Section 17 of the Act, 2002.

**[5]** We would like to rely upon the observations made by the Division Bench of this Court in the case of [Analkumar Rajkishore Mishra & ors. Vs. Dena Bank](#), 2011 AIR(Guj) 187 (to which one of us, J.B. Pardiwala, J. is a party) on the question of alternative remedy. The observations made in paragraph 9 are as under:-

"9. From the aforesaid provisions of law, it will be evident that the notice for possession, preparation of panchnama of such possession, notice to sell the property, to take assistance of District Magistrate/Chief Metropolitan

Magistrate/Chief Judicial Magistrate for taking over possession, one or other step as referred to above, amounts to measures taken u/Sub-sec.(4) of Sec.13 of the SARFAESI Act, and therefore, an appeal u/Sec.17 of the said Act against such measures is maintainable, if the action is against the Act or Rules framed thereunder. In this background, we are of the view that it was not open to the Debt Recovery Tribunal to reject the appeal u/Sec.17 of the Act on the ground that it was premature or not maintainable."

**[6]** In the above view of the matter, we do not find any merit in this petition, and the same is accordingly, rejected. Notice is discharged. However, in the facts and circumstances of the case, there shall be no order as to costs.

