I. Case Reference

Case Citation	:	(2020) ibclaw.in 38 SC
Case Name	:	C. Bright Vs. The District Collector & Ors
Appeal No.	:	Civil Appeal No. 3441 of 2020 (Arising out of SLP (Civil) No. 12381 of 2020
Judgment Date	:	05-Nov-20
Court/Bench	:	Supreme Court of India
Act	:	SARFAESI Act 2002
Justice	:	Mr. Justice L. Nageswara Rao
Justice	:	Mr. Justice Hemant Gupta
Justice	:	Mr. Justice Ajay Rastogi

II. Brief about the decision

The challenge in the present appeal is to an order passed by the Division Bench of the Kerala High Court of 19.7.2019, whereby it was held that Section 14 of the SARFAESI Act, 2002 mandating the District Magistrate to deliver possession of a secured asset within 30 days, extendable to an aggregate of 60 days upon reasons recorded in writing, is a directory provision.

Relevant portion of the Section 14 of the Act as amended as under:

> *"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.- (1)*
>
> *xx xx xx*
>
> *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 asset within a period of thirty days from the date of application:*
>
> *Provided also 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 period not exceeding in the aggregate sixty days."*

Recently, Hon'ble Supreme Court in ***Hindon Forge Private Limited & Anr. [2018] ibclaw.in 59 SC*** noticed the objects and reasons for amending the Act in 2014 and held that the Magistrate takes possession of the asset and "forwards" such asset to the secured creditor under Section 14(1); the management of the business of a borrower can actually be taken over under Section 15 of the Act and that Section 13(4) must be read in the light of Sections 14 and 15. These are separate and distinct modes of exercise of powers by a secured creditor under the Act.

Section 14 of the Act, as originally enacted, empowered the Chief Metropolitan Magistrate or the District Magistrate to take possession of such assets and documents relating to secured assets. Later, by the Central Act No. 1 of 2013, which came into force on 15.1.2013, a proviso to sub-section (1) of Section 14 of the Act was inserted contemplating that upon filing of an affidavit, in the format mentioned therein, by an Authorised Officer of the secured creditor, the District Magistrate or the Chief Metropolitan Magistrate shall pass suitable orders for the purpose of taking possession of the secured assets. It is, thereafter, the Act was amended vide Central Act 44 of 2016, which came into force on 1.9.2016.

A well settled rule of interpretation of the statutes is that the use of the word "shall" in a statute, does not necessarily mean that in every case it is mandatory that unless the words of the statute are literally followed, the proceeding or the outcome of the proceeding, would be invalid. It is not always correct to say that if the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid((State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912)) and that when a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully at-tending to the whole scope of the statute((State of U.P. & Ors. v. Babu Ram Upadhya, AIR 1961 SC 751)). The principle of literal construction of the statute alone in all circumstances without examining the context and scheme of the statute may not serve the purpose of the statute((Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. & Ors. , (1987) 1 SCC 424)).

Even though, this Court in ***United Bank of India*** v. ***Satyawati Tondon & Ors.(((2010) 8 SCC 110))*** held that in cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which will ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. ***Hindon Forge Private Limited*** has held that the remedy of an aggrieved person by a secured creditor under the Act is by way of an application before the Debts Recovery Tribunal, however, borrowers and other aggrieved persons are invoking the jurisdiction of the High Court under Articles 226 or 227 of the Constitution of India without availing the alternative statutory remedy. The Hon'ble High Courts are well aware of the limitations in exercising their jurisdiction when affective alternative remedies are available, but a word of caution would be still necessary for the High Courts that interim orders should generally not be passed without hearing the secured creditor as interim orders defeat the very purpose of expeditious recovery of public money.

Thus, we do not find any error in the order passed by the High Court. Consequently, the appeal is dismissed.

III. Full text of the judgement

JUDGMENT

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order passed by the Division Bench of the Kerala High Court

of 19.7.2019, whereby it was held that Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002((For short "the Act")) mandating the District Magistrate to deliver possession of a secured asset within 30 days, extendable to an aggregate of 60 days upon reasons recorded in writing, is a directory provision.

The High Court held as under:

> *"18. The primary question in these Writ Petitions, namely, whether the time limits in section 14 of the SARFAESI Act are mandatory or directory should be answered in light of the principles enumerated above. As stated above, the object and purpose of the said time limit is to ensure that such applications are decided expeditiously so as to enable secured creditors to take physical possession quickly and realise their dues. Moreover, as stated earlier, the consequences of non- compliance with the time limit are not specified and the sequitur thereof would be that the district collector/district magistrate concerned would not be divested of jurisdiction upon expiry of the time limit. In this connection, it is also pertinent to bear in mind that if the "consequences of non-compliance" test is applied, the borrower, guarantor or lessee, as the case may be, is not adversely affected or prejudiced, in any manner, whether such applications are decided in 60, 70 or 80 days. On the other hand, the secured creditor is adversely affected if the provision is construed as mandatory and not directory in as much as it would delay the process of taking physical possession of assets instead of expediting such process by entailing the filing of another application for such purpose. For all these reasons, the time limit stipulation in the amended Section 14 of the SARFAESI Act is directory and not mandatory."*

2. The High Court examined Section 14 of the Act as amended, which reads thus:

> *"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.- (1)*
>
> *xx xx xx*
>
> *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 asset within a period of thirty days from the date of application:*
>
> *Provided also 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 period not exceeding in the aggregate sixty days."*

3. The Act was enacted in the year 2002 for reasons that the legal framework relating to commercial transactions had not kept pace with the changing commercial practices. Further, financial sector reforms resulted in a slow pace of recovery of defaulting loans and mounting level of non-performing assets of banking and financial institutions. The objectives behind the Act, recognised that unlike international banks, banks and financial institutions in India, did not have power to take possession of securities and sell them. The provisions of the Act were upheld by this Court except that of sub-section (2) of Section 17 which

provided that the Debt Recovery Tribunal shall not entertain an appeal preferred by a borrower unless seventy-five per cent of the amount claimed has been deposited before it ((Mardia Chemicals Ltd. & Ors. v. Union of India & Ors., (2004) 4 SCC 311)). Thereafter, the question as to whether the withdrawal of an application filed under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ((For short "DRT Act")) is a condition precedent to take recourse to the Act was examined by this Court((Transcore v. Union of India and Another, (2008) 1 SCC 125)). This Court observed that when Civil Courts failed to expeditiously decide suits filed by the banks, the DRT Act was enacted, however it did not provide for assignment of debts to Securitisation companies. The Act which was enacted thereafter in 2002 sought to further empower the banks and facilitate the recovery of debt. It pro-ceeded on the basis that once the liability of a borrower to repay crystallises; it becomes due and that on account of delay, the ac-count of such borrower becomes substandard and non-performing.

4. Recently, this Court noticed the objects and reasons for amending the Act in 2014 and held that the Magistrate takes possession of the asset and "forwards" such asset to the secured creditor under Section 14(1); the management of the business of a borrower can actually be taken over under Section 15 of the Act and that Section 13(4) must be read in the light of Sections 14 and 15. These are separate and distinct modes of exercise of powers by a secured creditor under the Act((Hindon Forge Private Limited & Anr. v. State of Uttar Pradesh through District Magistrate, Ghaziabad & Anr. (2019) 2 SCC 198)).

5. Section 14 of the Act, as originally enacted, empowered the Chief Metropolitan Magistrate or the District Magistrate to take possession of such assets and documents relating to secured assets. Later, by the Central Act No. 1 of 2013, which came into force on 15.1.2013, a proviso to sub-section (1) of Section 14 of the Act was inserted contemplating that upon filing of an affidavit, in the format mentioned therein, by an Authorised Officer of the secured creditor, the District Magistrate or the Chief Metropolitan Magistrate shall pass suitable orders for the purpose of taking possession of the secured assets. It is, thereafter, the Act was amended vide Central Act 44 of 2016, which came into force on 1.9.2016.

6. The argument of Mr. Khan, learned counsel for the appellant, is that the proviso mandating the District Magistrate to record reasons, if the order is not passed within 30 days, in order to avail an extended period of a total 60 days, shows that the provision is mandatory. If the District Magistrate is not able to take decision within 60 days, the secured creditor has to find its remedy else-where and not in terms of Section 14 of the Act. It is contended that the proviso mandates the District Magistrate to pass an order within 30 days as the word "shall" is used in first part of the proviso. Thus, the time limit provided is unambiguous and by corollary the provision is mandatory. Reliance is placed on the judgments of this Court in ***Union of India & Ors.*** v. ***A.K. Pandey(((2009) 10 SCC 552))***, ***Harshad Govardhan Sondagar*** v. ***International Assets Reconstruction Company Limited & Ors.(((2014) 6 SCC 1))***, ***Dipak Babaria & Anr.*** v. ***State of Gujarat & Ors.(((2014) 3 SCC 502))***, in support of his arguments that the use of expression "shall" and the language of the second proviso in fixing the time limit of 60 days after recording of reasons makes the pro-vision mandatory. If the District Magistrate has not been able to take possession, the proceedings before him abates.

7. A well settled rule of interpretation of the statutes is that the use of the word "shall" in a statute, does not necessarily mean that in every case it is mandatory that unless the words of the statute are literally

followed, the proceeding or the outcome of the proceeding, would be invalid. It is not always correct to say that if the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid((State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912)) and that when a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully at-tending to the whole scope of the statute((State of U.P. & Ors. v. Babu Ram Upadhya, AIR 1961 SC 751)). The principle of literal construction of the statute alone in all circumstances without examining the context and scheme of the statute may not serve the purpose of the statute((Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. & Ors. , (1987) 1 SCC 424)).

8. The question as to whether, a time limit fixed for a public officer to perform a public duty is directory or mandatory has been examined earlier by the Courts as well. A question arose before the Privy Council in respect of irregularities in the preliminary proceedings for constituting a jury panel. The Municipality was expected to revise the list of qualified persons but the jury was drawn from the old list as the Sheriff neglected to revise the same. It was in these circumstances, the decision of the jury drawn from the old list became the subject matter of consideration by the Privy Council. It was thus held that it would cause greater public inconvenience if it were held that neglecting to observe the provisions of the statute made the verdicts of all juries taken from the list *ipso facto* null and void so that no jury trials could be held until a duly revised list had been prepared((Montreal Street Railway Company v. Normandin, AIR 1917 PC 142)).

9. The Constitution Bench of this Court held that when the provisions of a statute relate to the performance of a public duty and the case is such that to hold acts done in neglect of this duty as null and void, would cause serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, the practice of the courts should be to hold such provisions as directory((Dattatraya Moreshwar Pangarkar v. State of Bombay & Ors., AIR 1952 SC 181)). In a seven Bench judgment, this Court was consid-ering as to whether the power of the Returning Officer to reject ballot papers is mandatory or directory. The Court examined well-recognised rules of construction to observe that a statute should be construed as directory if it relates to the performance of public duties, or if the conditions prescribed therein have to be per- formed by persons other than those on whom the right is con-ferred((Hari Vishnu Kamath v. Ahmad Ishaque & Ors.AIR 1955 SC 233)).

10. In a judgment reported as ***Remington Rand of India Ltd.*** v. ***Workmen((AIR 1968 SC 224))***, Section 17 of the Industrial Disputes Act, 1947 came up for consideration. The argument raised was that the time limit of 30 days of publication of award by the labour court is mandatory. This Court held that though Section 17 is mandatory, the time limit to publish the award within 30 days is directory *inter-alia* for the reason that the non-publication of the award within the period of thirty days does not entail any penalty.

11. In **T.V. Usman** v. **Food Inspector, Tellicherry Municipality, Tellicherry(((1994) 1 SCC 754))**, the time period during which report of the analysis of a sample under Rule 7(3) of the Prevention of Food Adulteration Rules, 1955 was to be given, was held to be directory as there was no time-limit prescribed within which the prosecution had to be instituted. When there was no such limit prescribed then there was no valid reason for holding the period of 45 days as mandatory. Of course, that does not mean that the

Public Analyst can ignore the time-limit prescribed under the rules. He must in all cases try to comply with the time-limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and, on that basis, to hold that even prosecution cannot be launched.

12. This Court distinguished between failure of an individual to act in a given time frame and the time frame provided to a public authority, for the purposes of determining whether a provision was mandatory or directory, when this Court held that it is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified((Nasiruddin & Ors. v. Sita Ram Agarwal, (2003) 2 SCC 577)).

13. In ***P.T. Rajan*** v. ***T.P.M. Sahir & Ors.(((2003) 8 SCC 498))***, this Court examined the affect of non-publication of final electoral rolls before the time of acceptance of nomination papers. The Court held as under:

> *"48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See Shiveshwar Prasad Sinha v. District Magistrate of Monghyr [AIR 1966 Pat 144 : ILR 45 Pat 436 (FB)] , Nomita Chowdhury v. State of W.B. [(1999) 2 Cal LJ 21] and Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana [(1997) 1 CHN 189] .)"*

14. A recent Constitution Bench held that the provisions of the Consumer Protection Act granting 30 days' time to file response by the opposite party or such extended period not exceeding 15 days is mandatory as the object of the statute is for the benefit and protection of the consumer. It observed that such act had been enacted to provide expeditious disposal of consumer disputes. In this case, an individual was called upon to file his written statement in contradiction for a pubic authority to decide the issue before it((New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Private Limited, (2020) 5 SCC 757)).

15. The Full Bench of Patna High Court in ***Shiveshwar Prasad Sinha*** was examining the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 which permitted a Government servant in occupation of a building as a tenant to serve a notice of 15 days on the landlord and the District Magistrate of his intention to vacate the premises. The High Court held that the Government servant to whom the house was allotted had no control over the District Magistrate, therefore, the time limit required by the provision was not mandatory.

16. A Single Bench of Madhya Pradesh High Court((In Manish Makhija v. Central Bank of India & Ors., 2018 SCC OnLine MP 553)) examined the provisions of Section 14 of the Act as amended. The Court held that the second proviso to sub-section (1) of Section 14 was inserted in order to ensure that Chief Metropolitan Magistrate or District Magistrate pass the order within a stipulated time. The Bank/secured creditor has no control over the District Magistrate. After filing an application under sub-section (1) of Section 14, the Bank

had no authority to compel the Chief Metropolitan Magistrate or District Magistrate to pass orders within reasonable time. The legislature, in order to bind the said authorities, inserted the said proviso. Thus, the basic object and purpose was to fix a time limit for the concerned Magistrate to pass an order and not to give a clean chit to an unscrupulous borrower/guarantor, who had not repaid the debts.

17. Now, coming to the Judgments referred to by Mr. Khan. In ***A.K. Pandey***, the respondent was not provided 96 hours of interval time as contemplated by the relevant rules, before commencing a trial by the Court Martial. This Court held that such proceedings were vitiated as the purpose of the time limit was that before the accused is called upon for trial, he must be given adequate time to give a cool thought to the charge or charges for which he is to be tried, decide about his defence and ask the authorities, if necessary, to take reasonable steps in procuring the attendance of his witnesses. He may even decide not to defend the charge(s) but before he decides his line of action, he must be given clear ninety-six hours.

18. Harshad Govardhan Sondagar was a case where the person in possession claimed tenancy rights in the premises as well as a protected tenancy, being a tenant prior to creation of a mortgage. It was held that the remedy of an aggrieved person against a decision of Chief Metropolitan Magistrate or a District Magistrate lay only before the High Court. However, after the aforesaid judgment was rendered on 3.4.2014, the Act had been amended and sub-section 4A was inserted in Section 17 with effect from 1.9.2016. This provided a right to move an application to the Debts Recovery Tribunal by a person who claimed tenancy or leasehold rights.

19. Dipak Babaria was a case wherein agricultural land was sold by an agriculturist to another person for industrial purposes. Permission was to be granted by the Collector for the same. In these circumstances, it was held that when a statute provides for a thing to be done in a particular manner then it should be done in that manner itself. Such proposition does not arise for consideration in the present case.

20. The Act was enacted to provide a machinery for empowering banks and financial institutions, so that they may have the power to take possession of secured assets and to sell them. The DRT Act was first enacted to streamline the recovery of public dues but the proceedings under the said Act have not given desirous re-sults. Therefore, the Act in question was enacted. This Court in ***Mardia Chemical, Transcore*** and ***Hindon Forge Private Limited*** has held that the purpose of the Act pertains to the speedy recovery of dues, by banks and financial institutions. The true in-tention of the Legislature is a determining factor herein. Keeping the objective of the Act in mind, the time limit to take action by the District Magistrate has been fixed to impress upon the author-ity to take possession of the secured assets. However, inability to take possession within time limit does not render the District Mag-istrate *Functus Officio*. The secured creditor has no control over the District Magistrate who is exercising jurisdiction under Section 14 of the Act for public good to facilitate recovery of public dues. Therefore, Section 14 of the Act is not to be interpreted literally without considering the object and purpose of the Act. If any other interpretation is placed upon the language of Section 14, it would be contrary to the purpose of the Act. The time limit is to instill a confidence in creditors that the District Magistrate will make an at-tempt to deliver possession as well as to impose a duty on the Dis-trict Magistrate to make an earnest effort to comply with the man-date of the statute to deliver the possession within 30 days and for reasons to be recorded within 60 days. In this light,

the remedy under Section 14 of the Act is not rendered redundant if the Dis-trict Magistrate is unable to handover the possession. The District Magistrate will still be enjoined upon, the duty to facilitate delivery of possession at the earliest.

21. Even though, this Court in ***United Bank of India*** v. ***Satyawati Tondon & Ors.(((2010) 8 SCC 110))*** held that in cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which will ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. ***Hindon Forge Private Limited*** has held that the remedy of an aggrieved person by a secured creditor under the Act is by way of an application before the Debts Recovery Tribunal, however, borrowers and other aggrieved persons are invoking the jurisdiction of the High Court under Articles 226 or 227 of the Constitution of India without availing the alternative statutory remedy. The Hon'ble High Courts are well aware of the limitations in exercising their jurisdiction when affective alternative remedies are available, but a word of caution would be still necessary for the High Courts that interim orders should generally not be passed without hearing the secured creditor as interim orders defeat the very purpose of expeditious recovery of public money.

22. Thus, we do not find any error in the order passed by the High Court. Consequently, the appeal is dismissed.

.....J.
(L. NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

.....J.
(AJAY RASTOGI)

NEW DELHI;
NOVEMBER 5, 2020.