2014 PLRonline 005
PUNJAB AND HARYANA HIGH COURT
Before : Mr. Justice Hemant Gupta
And Mr. Justice Hari Pal Verma
**PUNJAB & SIND BANK**
**…Petitioner**
**Versus**
**THE DISTRICT MAGISTRATE, MOHALI & others …Respondents**
CWP No.13068 of 2014 (O&M)
22.12.2014

**(i) Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (54 of 2002), Section 14 - Civil suit - Interim order - Bank is not a party to such suit - Not binding - Interim order passed by the Civil Court relates to running of the plaintiff- M/s Eclat Institute of Hospitality Management in the premises of the Hotel Marc Royale (borrower) . The stand of the borrower is that the said Institute was given permission to run hospitality management on leave and license basis - The plaintiff-Institute in the said suit has claimed limited relief against forcible dispossession in respect of premises in its possession for carrying on the Hospitality Management Institute - The Bank is not a party to such suit - The order of status quo passed in the said suit does not affect the rights of the mortgagee to take possession of the property mortgaged - The rights of the person in possession is subject to the rights of the owner to be adjudicated upon in accordance with law - But the said order of status quo cannot be made a shield to deny the right of recovery of possession to the Bank being a secured creditor - Therefore, the order of status quo has been wrongly made basis by the Additional District Magistrate to deny the right of possession to the Bank - The Bank is entitled to the possession of the mortgaged property subject to the rights of the plaintiff in the suit. [Para 9]**

**(ii) Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (54 of 2002), Section 14 - Income Tax Act, 1961, Section 222 - Attachment by the Tax department - The Income Tax Act does not create first charge on the property of the defaulter - Dues of the Income Tax Department, will have preference amongst only the unsecured creditors, but the Bank as a secured creditor has a priority over the assets of the borrower. [Para 12, 16]**

Held,

Section 281 of the Act makes the lease and/or mortgage of the land of the defaulter ineffective qua the rights of the Income Tax Department. However, the first proviso contemplates that such charge or transfer shall not be void if it is made for adequate consideration and without notice of the pendency of such proceedings or, as the case may be, without notice of such tax or other sum payable by the assessee. The first condition for mortgage not to be void is that it should be for consideration. Admittedly, the petitioner has advanced huge loan to the respondent No.2. Thus the mortgage is for consideration. In respect of second condition that such mortgage should be without notice of the pendency of the recovery proceedings, suffice to say that the recovery proceedings are in personam i.e. where the demand raised for recovery of dues is served upon the defaulter i.e. assessee only. Such notices are not notice to public at large. Admittedly, the notice of demand was not publicized nor disclosed by the borrower to the Bank. In the absence of any public notice or non-disclosure of such demand by the borrower or by the Income Tax Department, the Bank cannot be deemed to have notice of the pendency of the proceedings. [Para 13]

**(iii) Stamp Act, Section 35 - Affidavit – Forgery – Fixation of stamp - Record of the Additional District Magistrate shows that an application, supported by a document titled as affidavit, for taking possession was filed by the Bank under Section 14 of the SARFAESI Act - However, it appears that such document was not on a stamp paper - Therefore, to make up the deficiency of stamp duty on the said document, the adhesive stamps were supplied by the stamp vendor - Affixing of stamp on such a document is not an act of forgery - It is the deficiency in the stamp duty,**

**which has been made good in terms of Section 35 of the Stamp Act - Therefore, mere fact that the document was not sufficient stamped, when originally filed, but stamped subsequently will not make an act of forgery. It has not been so found by the Additional District Magistrate as well. [Para 18]**

**(iv) Affidavit – Attestation - Not attested - Presented alongwith an application before the District magistrate - Is not attested by a notary public or an Oath Commissioner - It is verified by the executants of the document - Is not an act of forgery, but a case of curable irregularity. [Para 18]**

Mr. B.P.S.Dhaliwal, Advocate, for the petitioner.Mr. Manoj Bajaj, Addl. AG, Punjab, for respondent No.1. Mr. I.S.Ratta, Advocate, for respondent No.2.Mr. Rajesh Sethi, Advocate, for respondent No.3.

***

**Hemant Gupta, J.**

1. Challenge in CWP No.13068 of 2014 is to an order passed by respondent No.1 – Additional District Magistrate, Mohali on 08.05.2014 (Annexure P-1) holding that the dues of Income Tax Department, being crown debt, shall get priority over other debts in the matter of recovery relying upon the judgment of Hon'ble Supreme Court in Dena Bank Vs. Bhikhan Bhai Pradhudas Parekh & Co. & others 247 ITR 167.

2. The borrower – M/s Ashiana Inn Limited has also filed an application under Section 340 of the Code of Criminal Procedure (for short 'the Code') for initiating criminal proceedings against the officials of the Punjab & Sind Bank in preparing and pursuing CWP No.13068 of 2014 having committed perjury.

3. The brief facts leading to the present set of petitions are that the petitioner in CWP No.13068 of 2014, a Public Sector Bank, advanced loan/credit limit to respondent No.2 against the security/mortgage of secured assets. The total due amount as on 31.01.2013 was said to be Rs.26,59,02,097.64. The petitioner initiated proceedings under the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'). It is also alleged that the borrower is politically well connected and has been threatening the Bank officials though Section 32 of the SARFAESI Act bars any proceedings in respect of anything done or omitted to be done in good faith under the said Act. Before taking physical possession, the petitioner-Bank approached the District Magistrate, Mohali on 14.05.2013, however, the District Magistrate, Mohali kept the matter pending for a long period. Ultimately, on 08.05.2014, the District Magistrate declined the claim of the petitioner, inter alia, on the ground that there is an order of status quo regarding possession of the disputed property by the Civil Court and that in terms of Section 14 of the SARFAESI Act, the District Magistrate is not empowered to decide the question of legality and propriety of any action taken by the secured creditor though in terms of Section 13(4) of the SARFAESI Act, the District Magistrate is bound to assist the secured creditors. The order (Annexure P-1) addressed to the Tehsildar, Derabassi, on an application filed by the petitioner, refers to an order passed by the Civil Judge (Junior Division), Derabassi, whereby the parties were directed to maintain status quo and also a notice from the Income Tax Department to the effect that the property in question stands attached for recovery of a sum of Rs.1,62,92,047/- as dues of income tax from the year 2000-01 to 2004-05. It was thus held that the property attached by the Income Tax Department, cannot be attached for the recovery of the dues of the Bank.

4. In a written statement filed on behalf of respondent No.3 - Income Tax Department, the stand is that the assessment for the years 2000-01 and 2001-02 was completed on 29.03.2006 creating demands of Rs.38,07,093/- and Rs.1,71,75,965/- respectively. Thereafter, demand notices were served upon on 31.03.2006. Since respon-

dent No.2 (assessee) failed to deposit the demand, the Tax Recovery Officer issued the recovery certificate on 11.09.2006. In the meantime, respondent No.2 went to Settlement Commission, New Delhi for settlement of the assessment years 2000-01 to 2004-05. The Settlement Commission vide its order dated 28.01.2013 created demand of Rs.1,62,92,047/-. Pursuant thereto, The Tax Recovery Officer issued recovery certificates for the assessment years 2000-01 to 2004-05 for Rs.1,62,92,047/- on 14.05.2013 and the immovable property of respondent No.2 was attached by the Tax Recovery Officer on 03.06.2013 and a receiver was appointed on 30.09.2013 for management of affairs/business. It is also pointed out that the property belonging to the respondent No.2 have been referred to the valuation cell and the report from the valuation cell is still awaited, as the assessee is not cooperating in the valuation of the property. Reliance was placed upon Section 222 of the Income Tax Act, 1961 (for short 'the Act'), so that the Bank may also be able to take action. It is also pointed out that the assessee mortgaged the said property to the Bank only on 14.01.2009 much after the demand was created by the Department under Section 222 on 11.09.2006, therefore, the Tax Recovery Officer has proceeded to recover the dues of the Department in accordance with law.

5. On behalf of the Additional District Magistrate, the reply has been filed by the Tehsildar pointing out that on 14.06.2013, the Additional District Magistrate, SAS Nagar directed the Tehsildar, Dera Bassi to take over the assets as mentioned in the application and hand over the same to the secured creditor, but the same was referred back to the Additional District Magistrate by the Tehsildar in view of the fact that there is a status quo on the said property. The Tehsildar also noticed that there is a demand of Income Tax Department to the tune of Rs.1,62,92,047/-. Thereafter, on an application filed by the Bank, notice was issued to the respondent No.2 in view of the fact that the property, which was sought to be taken over by the Bank was already under attachment by the Income Tax Department and that there is a status quo order. Therefore, the possession could not be delivered to the borrower.

6. On behalf of the respondent No. 2, a voluminous reply has been filed raising preliminary objection that the petitioner has played fraud with the office of the District Magistrate and also guilt of forging and fabricating an affidavit filed in support of an application under Section 14 of the SARFAESI Act. It is also pointed out that the Bank has concealed all the relevant facts such as an affidavit attached with the application, is antedated and is unattested. The same was prepared on a stamp paper of Rs.25/- purchased on 03.06.2013 yet it was shown to have been prepared on an earlier date i.e. 14.05.2013. If the affidavit was prepared on 03.06.2013, the Bank could not have concealed the fact of attachment order dated 03.06.2013 passed by the Tax Recovery Officer. On merits, it is stated that the company has purchased land measuring 5 bigha 10 biswas situated at Village Dhakoli, District Mohali having availed term loan/cash credit facilities from the Oriental Bank of Commerce and set up Hotel Marc Royale in the year 2001. Another land measuring 6 bigha 12 biswas adjoining to the said Hotel was purchased in the year 2000. In the year 2007, respondent No.2 intend to expand the existing Hotel and set up another Hotel consisting of 150 to 200 guest rooms on the aforesaid additional land. It is pointed out that the Bank has shown its inclination in taking over the existing loan from the Oriental Bank of Commerce and funding the new project. It is pointed out that the petitioner Bank has promised to advance more loan, but without disbursement got the charge under Section 125 of the Companies Act in respect of over draft facility of Rs.17.50 crores though only Rs.1 crore was released as on 04.03.2008. It is also pleaded that the borrower company has constructed another three storey building adjoining the existing Hotel building, where Avtar Singh, Director of the Company, has set up a Hospitality College. Since he was unable to manage the same on his own, he handed over the man-

agement of the said College to a firm namely M/s Eclat Institute of Hospitality Management on Leave and license basis in pursuance of Memorandum of Arrangement dated 04.06.2008. Respondent No.2 further states that as against the over draft limit of Rs.17.50 crores and term loan of Rs.15.75 crores, the bank has released only Rs.9.81 crores up to 31.03.2010. There is detail of various demands raised for release of the loan etc. After referring to the recovery proceedings initiated by the Tax Recovery Officer, it is also pointed that the borrower approached Ombudsman, RBI, who on 25.11.2013 observed that the account was not doubtful yet action under the SARFAESI Act had been taken by the Bank wrongfully. Reference is also made to a complaint lodged by the borrower with the Senior Superintendent of Police, Mohali against the Bank Officers for forgery/ fabrication of affidavit. Since no action was taken, a complaint under Section 156(3) read with Section 200 of the Criminal Procedure Code 1973 was filed. In the said complaint, the police was directed to investigate the matter. After considering the report of the Investigating Officer dated 07.02.2014, the Chief Judicial Magistrate, Mohali has taken cognizance of the complaint against three Officers namely Surinder Pal Singh Rana, AGM; S.K.Behl, Chief Manager and J.S.Bhalla, Chief Manager of the Petitioner Bank under Sections 420, 467, 468, 471, 120-B IPC. It is also pointed out that the Bank has concealed not only the summoning order, but also the facts that the application for anticipatory bail was filed before the District & Sessions Judge, Mohali as well as a quashing petition was filed by the Bank officials before this Court. The said averments are reiterated by respondent No.2 in its separate application i.e. CRM-M No.37377 of 2014 filed under Section 340 of the Code.

7. We find that the following three questions are required to be adjudicated upon:

(1) What is the effect of the order of status quo granted by the Civil Judge (Junior Division), Mohali on 15.04.2013 in a civil suit tilted 'M/s Eclat Institute of Hospitality Management & another Vs. Hotel Ashiana & others' for permanent injunction restraining the defendants from interfering in the peaceful running of the plaintiff-institute in the premises of Hotel Marc Royale. The order dated 15.04.2013 reads as under:

> "Counsel for the plaintiff suffered a statement that plaintiff shall not make fresh admission in the garb of the stay order and if any admission is made, it shall not be utilized to agitate grant of interim injunction. Now to come up for filing written statement on 29.04.2013, in the meantime, the parties shall maintain status quo ante regarding the possession over the suit property at the time of filing of suit."

(2) What is the effect of attachment proceedings initiated by the Tax Recovery Officer pursuant to demands of Rs.1,62,92,047/- in terms of the order of the Settlement Commission?

(3) Whether the affidavit in support of application under Section 14 of the SARFAESI Act is a forged and fabricated document?

8. Having heard learned counsel for the parties at length, we find that the interim order passed by the Civil Court on 15.04.2013 relates to running of the plaintiff- M/s Eclat Institute of Hospitality Management in the premises of the Hotel Marc Royale. The stand of the borrower is that the said Institute was given permission to run hospitality management on leave and license basis in pursuance of Memorandum of Arrangement dated 04.06.2008.

9. The plaintiff-Institute in the said suit has claimed limited relief against forcible dispossession in respect of premises in its possession for carrying on the Hospitality Management

Institute. The Bank is not a party to such suit. The order of status quo passed in the said suit does not affect the rights of the mortgagee to take possession of the property mortgaged. The rights of the person in possession is subject to the rights of the owner to be adjudicated upon in accordance with law. But the said order of status quo cannot be made a shield to deny the right of recovery of possession to the Bank being a secured creditor. Therefore, the order of status quo has been wrongly made basis by the Additional District Magistrate to deny the right of possession to the Bank. The Bank is entitled to the possession of the mortgaged property subject to the rights of the plaintiff in the suit.

10. In respect of second question, the learned counsel for the Income Tax Department and that of borrower referred to Section 281 of the Act to contend that the rights of the Revenue are not affected by the act of lease or mortgage after the proceedings in respect of assessment are taken in hand. Section 281 of the Act reads as under:

> "281. (1) Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise;
>
> Provided that such charge or transfer shall not be void if it is made –
>
> (i) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee; or
>
> (ii) with the previous permission of the Assessing Officer.
>
> (2) This section applies to cases where the amount of tax or other sum payable or likely to be payable exceeds five thousand rupees and the assets charged or transferred exceed ten thousand rupees in value."

11. On the other hand, the argument of the learned counsel for the petitioner is that the petitioner is a secured creditor, whereas the dues of the Income Tax Department as crown debt will have preference amongst the unsecured creditors only. Reference is made to the Division Bench judgments of this Court in CWP No.3875 of 2005 titled 'Punjab State Industrial Development Corporation v. Union of India' decided on 30.01.2007 as well as in CWP No.2431 of 2009 titled 'Axis Bank Ltd. v. The Commissioner of Income Tax, Ludhiana & another' decided on 02.12.2011, wherein the judgments of the Hon'ble Supreme Court in UTI Bank Ltd. v. The Deputy Commissioner of Central Excise, Chennai (Writ Petition No.39536 of 2005 decided on 20.12.2006); Union of India & others v. SICOM Ltd. & another (2009) 2 SCC 121 and Central Bank of India v. State of Kerala & others (2009) 4 SCC 94 were referred to. In Central Bank of India's case (supra), the issue examined was, whether the provision of creating first charge on the property of dealer under the State laws is inconsistent with the provisions contained in Recovery of Debts to the Banks and Financial Institutions Act, 1993 and the SARFAESI Act. The Hon'ble Supreme Court upheld the legislative competence of the State Legislature in creating first charge over the property of the dealer. It was also held that the Acts in question do not create first charge of the property. It was held to the following effect:

> "113. In an apparent bid to overcome the likely difficulty faced by the secured creditor which may include a bank or a financial institution, Parliament incorporated the *non obstante* clause in Section 13 and gave primacy to the right of secured creditor *vis a vis* other mortgagees who could exercise rights under Sections 69 or 69A of the Transfer of Prop-

erty Act. However, this primacy has not been extended to other provisions like Section 38C of the Bombay Act and Section 26B of the Kerala Act by which first charge has been created in favour of the State over the property of the dealer or any person liable to pay the dues of sales tax, etc. Sub-section (7) of Section 13 which envisages application of the money received by the secured creditor by adopting any of the measures specified under sub-section (4) merely regulates distribution of money received by the secured creditor. It does not create first charge in favour of the secured creditor.

xxx xxx

116. The *non obstante* clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitisation Act give overriding effect to the provisions of those Acts only if there is anything inconsistent contained in any other law or instrument having effect by virtue of any other law. In other words, if there is no provision in the other enactments which are inconsistent with the DRT Act or Securitisation Act, the provisions contained in those Acts cannot override other legislations. Section 38C of the Bombay Act and Section 26B of the Kerala Act also contain *non obstante* clauses and give statutory recognition to the priority of State's charge over other debts, which was recognized by Indian High Courts even before 1950. In other words, these sections and similar provisions contained in other State legislations not only create first charge on the property of the dealer or any other person liable to pay sales tax, etc. but also give them overriding effect over other laws.

xxx xxx

128. If the provisions of the DRT Act and Securitisation Act are interpreted keeping in view the background and context in which these legislations were enacted and the purpose sought to be achieved by their enactment, it becomes clear that the two legislations, are intended to create a new dispensation for expeditious recovery of dues of banks, financial institutions and secured creditors and adjudication of the grievance made by any aggrieved person *qua* the procedure adopted by the banks, financial institutions and other secured creditors, but the provisions contained therein cannot be read as creating first charge in favour of banks, etc.

129. If Parliament intended to give priority to the dues of banks, financial institutions and other secured creditors over the first charge created under State legislations then provisions similar to those contained in Section 14A of the Workmen's Compensation Act, 1923, Section 11(2) of the EPF Act, Section 74(1) of the Estate Duty Act, 1953, Section 25(2) of the Mines and Minerals (Development and Regulation) Act, 1957, Section 30 of the Gift- Tax Act, and Section 529A of the Companies Act, 1956 would have been incorporated in the DRT Act and Securitisation Act.

130. Undisputedly, the two enactments do not contain provision similar to Workmen's Compensation Act, etc. In the absence of any specific provision to that effect, it is not possible to read any conflict or inconsistency or overlapping between the provisions of the DRT Act and Securitisation Act on the one hand and Section 38C of the Bombay Act and Section 26B of the Kerala Act on the other and the *non obstante* clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitisation Act cannot be invoked for declaring that the first charge created under the State legislation will not operate *qua* or affect the proceedings initiated by banks, financial institutions and other secured creditors for recovery of their dues or enforcement of security interest, as the case may be.

131. The Court could have given effect to the *non obstante* clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitisation Act *vis a vis* Section 38C of the Bombay Act and Section 26B of the Kerala Act and similar other State legislations only if there was a specific provision in the two enactments creating first charge in favour of the banks, financial institutions and other secured creditors but as the Parlia-

ment has not made any such provision in either of the enactments, the first charge created by the State legislations on the property of the dealer or any other person, liable to pay sales tax etc., cannot be destroyed by implication or inference, notwithstanding the fact that banks, etc. fall in the category of secured creditors.

xxx xxx

158. On the basis of above discussion, we hold that the DRT Act and Securitisation Act do not create first charge in favour of banks, financial institutions and other secured creditors and the provisions contained in Section 38C of the Bombay Act and Section 26B of the Kerala Act are not inconsistent with the provisions of the DRT Act and Securitisation Act so as to attract *non obstante* clauses contained in Section 34(1) of the DRT Act or Section 35 of the Securitisation Act."

12. The Income Tax Act does not create first charge on the property of the defaulter. Therefore, the rule laid down in SICOM Ltd.'s case (supra) followed by this Court in Punjab State Industrial Development Corporation's case (supra) and in Axis Bank's case (Supra) concludes the issue against the Income Tax Department. We may mention a recent three Judges' Bench judgment in Civil Appeal No.4354 of 2003 titled 'The Stock Exchange, Bombay Vs. V.S.Kandalgaonkar & others' decided on 25.09.2014, wherein dealing with the Income Tax Act itself, the Bench has said to the following effect:

"24. The first thing to be noticed is that the Income Tax Act does not provide for any paramountcy of dues by way of income tax. This is why the Court in Dena Bank's case (supra) held that Government dues only have priority over unsecured debts and in so holding the Court referred to a judgment in Giles vs. Grover (1832) (131) English Reports 563 in which it has been held that the Crown has no precedence over a pledgee of goods. In the present case, the common law of England qua Crown debts became applicable by virtue of Article 372 of the Constitution which states that all laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force until altered or repealed by a competent legislature or other competent authority. In fact, in Collector of Aurangabad and Anr. vs. Central Bank of India and Anr. 1967 (3) SCR 855 after referring to various authorities held that the claim of the Government to priority for arrears of income tax dues stems from the English common law doctrine of priority of Crown debts and has been given judicial recognition in British India prior to 1950 and was therefore "law in force" in the territory of India before the Constitution and was continued by Article 372 of the Constitution (at page 861, 862)."

13. Section 281 of the Act makes the lease and/or mortgage of the land of the defaulter ineffective qua the rights of the Income Tax Department. However, the first proviso contemplates that such charge or transfer shall not be void if it is made for adequate consideration and without notice of the pendency of such proceedings or, as the case may be, without notice of such tax or other sum payable by the assessee. The first condition for mortgage not to be void is that it should be for consideration. Admittedly, the petitioner has advanced huge loan to the respondent No.2. Thus the mortgage is for consideration. In respect of second condition that such mortgage should be without notice of the pendency of the recovery proceedings, suffice to say that the recovery proceedings are in personam i.e. where the demand raised for recovery of dues is served upon the defaulter i.e. assessee only. Such notices are not notice to public at large. Admittedly, the notice of demand was not publicized nor disclosed by the borrower to the Bank. In the absence of any public notice or non-disclosure of such demand by the borrower or by the Income Tax Department, the Bank cannot be deemed to have notice of the pendency of the proceedings.

14. The argument raised by Mr. Ratta that in the balance-sheets, the dues of the Income Tax Department were reflected, therefore, the Bank has notice of the dues of the Bank. Even if, it is

true, such fact is not sufficient to conclude that the demand raised or the proceedings pending before the Department were made known to the Bank. The entry in the balance sheet would not show that the demand has been raised by the Tax Recovery Officer in terms of the 2nd Schedule of the Income Tax Department. The Income Tax Department would get preference, to make the mortgage void only if it is before the service of notice under Rule 2 of the 2nd Schedule i.e. by the Tax Recovery Officer. Though such notice was issued in the year 2006, but such notice of the pendency of recovery proceedings was not brought to the notice of the Bank, therefore, the mortgage cannot be said to be void.

15. Reliance of Mr. Ratta on a judgment of Gujarat High Court in Manjudevi R. Somani Vs. Union of India decided on 25.11.2013 is not tenable. In the said case, the borrower challenged an order passed in the proceedings under Section 14 of the SARFAESI Act. It was found that the Chief Metropolitan Magistrate or Additional Chief Metropolitan Magistrate have not been authorized to exercise the powers conferred under Section 14 of the Act.

16. Thus, we find that the dues of the Income Tax Department, in these circumstances, will have preference amongst only the unsecured creditors, but the Bank as a secured creditor has a priority over the assets of the borrower.

17. Coming to the third question, Mr. Ratta has strongly relied upon an order passed by the Chief Judicial Magistrate summoning the officials of the Bank for the offences under Sections 420, 467, 468, 471, 120-B IPC. Though quashing petition against the said order is stated to be pending, but without prejudice to such proceedings, we have examined the argument raised by Mr. Ratta for the purposes of tenability of the claim of the Bank against the borrower. A perusal of the record of the Additional District Magistrate shows that an application, supported by a document titled as affidavit, for taking possession was filed by the Bank under Section 14 of the SARFAESI Act on 14.05.2013. However, it appears that such document was not on a stamp paper. Therefore, to make up the deficiency of stamp duty on the said document, the adhesive stamps were supplied by the stamp vendor vide entry No.3067 on 03.06.2013. Mr. Ratta has vehemently argued that affixing of stamp on such a document is an act of forgery. The said argument is wholly misconceived. It is the deficiency in the stamp duty, which has been made good in terms of Section 35 of the Stamp Act. Therefore, mere fact that the document was not sufficient stamped, when originally filed, but stamped subsequently will not make an act of forgery. It has not been so found by the Additional District Magistrate as well.

18. However, we find that the said document is not attested by a notary public or an Oath Commissioner. It is verified by the executants of the document i.e. Surinderpal Singh Rana, Assistant General Manager. If the document is not attested, the same could have been rejected by the District Magistrate. But again that is not the ground taken by the Additional District Magistrate to reject the affidavit. Therefore, it is not an act of forgery, but a case of curable irregularity. Thus, we do not find that there is any fraud or forgery committed by the Bank, but it is an irregularity, which can be cured.

19. Large number of judgments has been cited by Mr. Ratta to contend that the petitioner has not come to the Court with clean hands and has made false averments. We do not find that there is any concealment of facts or any false averment made in the writ petition. The false statement is said to be made in respect of non-disclosure of the order passed by the Additional District Magistrate on 14.06.2013 and that of the order of summoning passed by the Chief Judicial Magistrate on a complaint lodged by the Director of the borrower or the pendency of proceedings of anticipatory bail and/or quashing of said order. The order dated 14.06.2013 was returned unexecuted by the Tehsildar for the reason that there is a status quo order, therefore, such order is not enforceable order having been returned by the Tehsildar. In respect of other proceedings, suffice is to say that such proceedings are independent proceedings, therefore, non-disclosure of such proceedings cannot be said to be an act to overreach this Court.

20. Mr. Ratta has further relied upon an order passed by the Ombudsman, RBI, on 25.11.2013 to contend that Ombudsman has found the action of the Bank as unfair. However, we find that the argument is factually incorrect. A perusal of the document Annexure R-19 attached with the reply

of respondent No.2 shows that the Ombudsman has in fact closed the proceedings in view of the proceedings pending under the Debts Recovery Tribunal. The relevant para reads as under:

> "We have received a fax letter No.5170 dated 26.09.2013 from Punjab & Sind Bank, H.O. Chandigarh enclosing therewith the bank's Z.O.'s letter and a letter dated 26.09.2013 of Punjab & Sind Bank, Special Corporate Finance Branch informing that this case has also been filed in DRT II, Chandigarh after the bank. Its hearing was on 25.09.2013. Incidentally, it is submitted that this case being subjudice has been informed by the branch for the Ist time today to this office.
>
> As the complaint is pending at another Court, we may close it under 9(3)(d) of BOS, 2006."

21. The information, if any sought by the Ombudsman during the pendency of proceedings before it cannot be said to be a comment on the working of the Bank.

22. In view of the above, we find that the order of Additional District Magistrate, Mohali dated 08.05.2014 (Annexure P-1) suffers from patent illegality and irregularity causing manifest injustice to the secured creditor. Consequently, while dismissing the application filed by the borrower under Section 340 of the Code, we allow the writ petition filed by the Bank and set aside the order dated 08.05.2014. The District Magistrate or the Additional District Magistrate is directed to issue an order of possession with the help of police forthwith, but subject to the condition that petitioner files a duly executed and attested affidavit before the District Magistrate/Additional District Magistrate.

SS