

Legal Update

**Recent Court rulings under
“The Securitisation and Reconstruction of Financial Assets and
Enforcement of Security Interest Act 2002” (SARFAESI Act):**

*Compiled by Sanchaita Saha
sanchaita@vinodkothari.com
Vinod Kothari & Company*

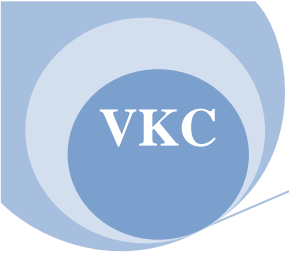
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- ✓ The Delhi High court in the case of *Neelima Bagaria vs. GNCT of Delhi & Ors*, propounded that a bank or a financial institution is not required to be registered under SARFAESI Act to buy and sell debts. Commenting on the applicability of section 5 of the Indian Stamp Act 1899 on transaction of assignment the learned judge commented that “where a creditor holding various debts assigns the same to a single assignee, it would be one transaction and thus Section 5 would have no applicability.” (Ref: LPA No.827/2011, judgment dated: February 06, 2012).

- ✓ In the case of *M/S Goenka Agencies vs. The State bank of India*, the Patna High court has commented that certificate or decree is not prepared under the SARFAESI Act because “SARFESI proceeding itself is a mechanism of secured creditor for recovery from secured assets and not by any court or authority” whereas in case of proceeding under the DRT Act the Court or Tribunal passes certificate which is equal to a decree. (Ref: Civil Writ Jurisdiction Case No.5056 of 2011, judgment dated: February 28, 2012).

- ✓ The Gujarat High Court in the case of *Mansa Synthetic Pvt. Ltd vs. Union of India*, has propounded the following:-
 - That section 14 of the SARFAESI Act is intra vires.

 - The District Magistrate or Chief Metropolitan Magistrate would be obligated to assist the secured creditor in taking possession of the secured assets.

 - That the District Magistrate or Chief Metropolitan Magistrate has not been granted the power to decide the “question of legality and propriety” of any actions undertaken by the secured creditor pursuant to section 13(4) of the SARFAESI Act.

 - With respect to questioning the act of District Magistrate or Chief Metropolitan Magistrate in any court or before any authority, the right of judicial review as envisaged in Articles 226 and 227 of the Constitution of India can be exercised only in certain specific cases such as :-
 - where the Magistrate or the Commissioner exceeds his powers vested in him or



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- refuses to exercise his jurisdiction vested him under the law.
 - That Section 14 of the Act cannot be ultra vires the provisions of the Constitution of India just because the Act does not provide for the provision of appeal against the orders of the District Magistrate or Chief Metropolitan Magistrate passed under section 14 of the Act.
- (Ref: Special Civil Application no.1829 of 2012 with Civil Application no.1635 of 2012, dated: 12/03/2012)*
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- ✓ The Madras High Court in the case of *M/s. Sundaram BNP Paribas Home vs. Mr. Mir Ali*, has held that once the secured creditor has proceeded against the mortgaged property which has been offered as security, the secured creditor would not be justified in invoking Section 9 of Arbitration and Conciliation Act. Moreover, in the case where the debt is sufficiently secured by mortgage, the secured creditor cannot invoke garnishee proceedings. Considering the facts of the instant case, wherein the loan amount was secured by both mortgage and promissory note, the learned judge averred that “when the debt is sufficiently secured, Appellant cannot seek for prohibitory order against the garnishee. Appellant is not entitled to any interim measure of protection under Section 9 of Arbitration and Conciliation Act....”(Ref: *O.S.A.NO.109 of 2011, decision dated: 03.01.2012*).