



APAC NEWSLETTER

Legal, Compliance and ESG

11th November 2022

Dear Readers, we bring to your reading and attention following topics:

- A. *The Concept of Patta (In Property)*----- 2**
- B. *Case Law update on Arbitration and Conciliation, 1996* ----- 4**
- C. *Case Law on Section 14 of SARFAESI Act, 2001* ----- 6**
- D. *Case laws on Section 138 of Negotiable Instruments Act, 1881.* ----- 8**

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A. The Concept of Patta (In Property)

Kiran Thakur, Legal Manager & J.P Trivedi, Senior Manager, Legal

Meaning of Patta:

A Patta is a legal ownership document which is issued by the Government/RHB/UIT/Nagar Nigam/Gram Panchayat etc. in the name of the actual owner of a particular plot of land. It can also be issued for lands having buildings or individual houses etc. constructed on them. The Patta can be obtained from the Tehsildar's office/RHB/UIT/Nagar Nigam/Gram Panchayat etc. in the concerned administrative district. If there are several owners for a single property, separate Pattas will not be issued. In such cases, there will be one Patta with the name of all the co-owners mentioned clearly.. The details of the owner or owners, with possession proof, as the case may be, must be enclosed along with the documents that pertain to the plot in question.

Process of obtain a Patta

- The normal procedure is to apply to the concerned Tehsildar or any appropriate administrative authority in a format prescribed by the Revenue Department.
- The details of the owner or owners as the case may be, must be enclosed along with the documents that pertain to the plot in question.
- An interview might be sought by the Tehsildar or any appropriate authority with the applicant if needed. Or if the Tehsildar or authority is so convinced, an on-site visit is also possible.

Importance of Patta

Patta is an important record of ownership. Transactions involving the land in question require a Patta. It can also be used to establish the right of ownership in a court of law. Compensation from land acquired by the Government is a major problem. But it can be easily solved if the owner of the property has a Patta in her/his name. In some cases, Patta can be transferred from one person to the other. These are usually special situations where, for example, if any person died intestate then their next kin apply for their name transfer called mutation entry in record.

A convenient feature of Patta is the fact that it need not to be renewed from time-to-time. A renewal must be done only after a transaction or transfer of ownership has taken place with respect to the property.

Patta is a must-have in cases of vacant plots of the lands. It establishes the lawful possession of the property. Patta is a primary document even in building structures that confirms your legal

possession on the ground. Patta is an essential document as it also includes the measurement and dimensions of the property.

Rajasthan land lease (Patta) rules:

- I. Under the Panchayati Raj Rules 1996, the Government of Rajasthan has made rules for regulation of houses built on Abadi land and issuing leases till the year 1996 under Rule 157.
- II. Many such families in the villages of Rajasthan state who do not have any land or house. And those people have built a hut or a kutcha house on populated land till the year 2003. So those people will be provided land up to 300 square yards free of cost under Rule 157-(2). And its Patta will be issued in the name of the female head of the family. And later the land registry will be done in his name.
- III. Under Rule 158 of the Rajasthan Panchayati Raj Act 1996 – Up to 300 square yards of land at concessional rates (Rs. 2 to Rs. 10 per square meter) on behalf of the Panchayat to the families of weaker sections of rural areas of the state. basis will be provided.
- IV. Under the Panchayati Act 158-(2), the Government of Rajasthan has given the right to free distribution of land to the families living below the poverty line. Earlier this right was vested in the State Government.

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B. Case Law update on Arbitration and Conciliation Act, 1996

- **Jayesh Gupta, Legal Manager**

Case Details:

Essar House Private Limited v. Arcelor Mittal Nippon Steel India Limited

Decided by the Hon'ble Supreme Court of India on 14th September 2022

Civil Appeal of 2022 in SLP (C) No. 3351 of 2021

Finding:

The Hon'ble Supreme Court held that while deciding a petition under Section 9 of the Arbitration and Conciliation Act, 1996, the Court cannot ignore the basic principles of the Code of Civil Procedure, 1908. However, the Power of the Court to grant relief cannot be curtailed by the rigours of every procedural provision in the Code of Civil Procedure, 1908.

In exercise of its powers to grant interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, the Court is not strictly bound by the provisions of the Code of Civil Procedure 1908. The Hon'ble Court also held that if a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration and Conciliation Act, 1996, should not withhold relief on the mere technicality of absence of averments.

Notes: Section 9 of the Arbitration and Conciliation Act 1996: Interim measures, etc., by Court —

(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (ii) for an interim measure of protection in respect of any of the following matters, namely:
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
 - (b) securing the amount in dispute in the arbitration;

- (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.



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C. Caselaw on Section 14 of SARFAESI Act, 2001.

Yogesh Babar, Legal Manager

Case Details:

R.D. Jain and Co V. Capital First Ltd

Decided by the Hon'ble Supreme Court of India on 27th July 2022

Civil Appeal No.175 of 2022

Introduction:

Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act ('SARFAESI Act' or 'Act') provide for judicial assistance to lenders/creditors in enforcing their security interest as given under Section 13 of the Act.

Facts:

The respondent was a secured creditor who instituted proceedings under the SARFAESI Act for recovery of the amount due and payable by the appellant borrower. Under the said proceedings he sought to take possession of the secured asset, which the borrower refused to hand over. The creditor then filed an application under section 14 seeking the Chief Metropolitan Magistrate's assistance in securing possession. The matter was repeatedly adjourned, causing it to last beyond the deadline of 30 days mandated by section 14 (1) for disposal. The creditor filed a fresh application for advancement, which was dismissed this time by the Chief Metropolitan Magistrate, *inter alia* on the ground that it was a fresh application and that many previous applications were pending. Therefore, the creditor filed a writ petition in the Bombay High Court and successfully obtained a direction to the concerned Chief Metropolitan Magistrate to try and dispose of the application under section 14 (1) within the mandated deadline. The Chief Metropolitan Magistrate then brought to the notice of the High Court the inordinate quantum of cases under section 14 of the SARFAESI Act pending before it, also pointing out that as per the orders of the court older cases are to be given first preference in disposal. The High Court then, realising that it would not be practically possible to follow the statutory deadlines under section 14 and in the interest of reducing pendency, interpreted the law to permit filing of the same petition before the Additional Chief Metropolitan Magistrates.

Nature of Powers under Section 14

The purpose of section 14 is to enable the District Magistrate/ Chief Metropolitan Magistrate to obtain possession of the secured asset and document after verifying that the formalities to be complied with are met. Section 13 provides for the right of the creditor to take possession of the secured asset in case of default, while section 14 provides for the District Magistrate/ Chief

Metropolitan Magistrate to assist the creditors in taking over possession upon refusal by the borrower to hand it over. Such possession is to be obtained within the stipulated time under the Act. It could be taken by the District Magistrate/ Chief Metropolitan Magistrate or through any officer subordinate, including the advocate commissioner who is considered to be an officer of the court.

Section 14 does not oblige the District Magistrate/ Chief Metropolitan Magistrate to go personally and take possession of the secured assets and documents relating thereto. Therefore, nature of the powers vested in the District Magistrate/ Chief Metropolitan Magistrate under section 14 of the Act, are ministerial and not adjudicatory. The Magistrate has to adjudicate and determine the correctness of the information given in the application and nothing more while disposing the application. Therefore, section 14 does not involve the issues raised by the borrower against the secured creditor taking possession of secured assets.

Analysis and Conclusions

The verdict is a welcome development that interpreted the Act in furtherance of its conceived objective. The SARFAESI Act was enacted to facilitate quick securitisation of financial assets of banks and financial institutions. The power to take possession of the secured asset is key to this and it was to this end that the maximum 60-day time period was provided. The CMM courts in cities like Mumbai found themselves unable to dispose off such applications within the stipulated time period owing to the classic challenge of pendency. Such a status quo would defeat the purpose of having such a legislation itself. Timely resolution is indispensable, and the intent of the legislature was to ensure just that. This verdict would help relieve some of the load from DMs and CMMs who in any case have a multitude of tasks and obligations to perform under various statutes.

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D. Case laws on Section 138 of Negotiable Instruments Act, 1881.

Vivek Ugale, Senior Officer (Legal) & Ritu Uplap, Assistant Manager (Legal)

A) Case Details:

Dashratbhai Tiramani Patel v. Hitesh Mahendrabhai Patel and Ors.

Decided by the Hon'ble Supreme Court of India on 11th October 2022

Criminal Appeal No: 1497/2022

Facts:

One Mr. Hitesh Mahendrabhai Patel (Hereinafter referred to as 'Respondent') had taken a loan of Rs.20 lakhs from Mr. Dashratbhai Trikambhai Patel (Hereinafter referred to as the 'Appellant'). Accordingly, the Respondent issued a cheque to the Appellant in respect of the said loan of Rs.20 Lakhs. In the due course, the Respondent had duly made part payment Rs. 4,09,315/- to the Appellant in respect of the total loan amount. However still the Appellant presented the cheque for Rs. 20 Lakhs, without endorsing the part-payment of Rs. 4,09,315/- therein. Mr. Dashratbhai Patel filed the case u/s 138 of Negotiable Instruments Act, 1881 (hereinafter 'NI Act') against Mr. Hitesh Patel for the amount of Rs. 20 Lakhs. The Trial court passed the judgment against Mr. Dashratbhai Patel. Aggrieved by the judgment passed by the Trial court, Mr. Dashratbhai Patel filed an appeal before the High court of the Gujrat. The high court of the Gujrat upheld the judgment passed by the Trial court. Hence, Mr. Dashratbhai Patel filed an appeal before the Supreme Court.

Issue:

Whether the offence under Section 138 of the Negotiable Instruments Act would deem to be committed if the cheque that is dishonoured does not represent the enforceable debt at the time of encashment.

Finding:

Affirming the Judgment passed by the Gujarat High Court, which approved the acquittal of the accused in the case, a bench comprising of Justices D.Y. Chandrachud and Hima Kohli summarized the finding as follows:

- a) For the commission of an offence under section 138 of the NI Act, the cheque which is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.

- b) If the drawer of the cheque pays a part payment or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque.
- c) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in section 56 of the Negotiable Instruments Act, 1881. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under section 138 of the Negotiable Instruments Act, 1881 will be attracted.

In view of the above, the bench dismissed the appeal filed against the judgment of the Gujrat High Court.

Notes: Section 56 of the Negotiable Instruments Act, 1881: No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which, may then be negotiated for the balance.

B) Case Details:

Gajanand Burange v. Laxmi Chand Goyal

Decided by Hon'ble Supreme Court on 12/08/2022

Criminal Appeal No.1229 of 2022 (Arising out of SLP(Criminal) Nos 1415 of 2019)

Facts:

Notice dated 07/11/2005 was addressed by the respondent to the appellant alleging that the appellant had taken a cash loan of Rs 2.5 lakhs and had furnished a cheque dated 28 October 2005 towards repayment. The said notice was received by the Appellant on 08/11/2005. The notice alleged that the cheque was returned by the bank to the respondent due to insufficiency of funds in the account of the appellant. Thereafter, the respondent instituted a complaint against the appellant under Section 138 of the NI Act on 22/05/2005. Vide order dated 01/02/2011, the Trial Court was pleased to acquit the Appellant. The order of acquittal was challenged before the High Court of Chhattisgarh. By a judgment dated 28/11/2018, the High Court allowed the appeal and convicted the appellant for an offence punishable under Section 138 of the NI Act awarding a sentence of a fine in the amount of Rs 3 lakhs.

The said judgment of the High Court was challenged before the Supreme Court. The Supreme Court set aside the judgment of High Court.

Issues before the Supreme Court:

- i.* Can cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 be taken based on a complaint filed before the expiry of the period of 15 days stipulated in the notice required to be served upon the drawer of the cheque in terms of Section 138(c) of the Act aforementioned? – Answered in Negative.
- ii.* If answer to Question 1 is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired? – Answered in Negative. A fresh complaint has to be filed.

Finding:

Complaint filed before the expiry of 15 days from the date of receipt of notice issued under Section 138(c) is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause.

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