

MOST URGENT

Copy of Order

IN THE DELHI HIGH COURT OF NEW DELHI

No. 13307-X C-1Dt.: 19/4/23

From,

The Registrar General,
High Court of Delhi,
New Delhi.

To,

1. The Principal District & Sessions Judge, (Headquarter), Tis Hazari Courts, Delhi
2. The Principal District & Sessions Judge, East District, Karkardooma Courts, Delhi.
3. The Principal District & Sessions Judge, South-West, Dwarka Court, New Delhi.
4. The Principal District & Sessions Judge, Shahdara District, Karkardooma Courts, Delhi.
5. The Principal District & Sessions Judge, South-East, Saket Court, New Delhi.
6. The Principal District & Sessions Judge, District-West, Tis Hazari Court, Delhi.
7. The Principal District & Sessions Judge, District-New Delhi, Patiala House Court, New Delhi.
8. The Principal District & Sessions Judge, District, North-West, Rohini Courts, Delhi.
9. The Principal District & Sessions Judge, District-North, Rohini Courts, Delhi.
10. The Principal District & Sessions Judge-cum-Special Judge, Rouse Avenue, New Delhi.
11. The Principal District & Sessions Judge, North-East, Karkardooma Courts, Delhi.
12. The Principal District & Sessions Judge, Saket Courts, South District, New Delhi.
13. Ms. Saloni Singh, Additional Chief Metropolitan Magistrate-District Courts Complex, Karkardooma Courts, Delhi.S/C

CMM 555/2023, CMM 556/2023, CMM 557/2023 and CMM 561/2023

Petition under Article 227 of the Constitution of India against the order Dt. 28/03/2023 passed by. Ms. Saloni Singh, Additional Chief Metropolitan Magistrate-District Courts Complex, Karkardooma Courts, Delhi in Transfer Application No. 12/2023

Sir,

I am directed to forward herewith a copy of order dated 10/04/2023 passed by Hon'ble Mr. Justice Tushar Rao Gedela of this court in the aforesaid matter and order dt. 22/10/2021 passed by Hon'ble Mr. Justice Amit Bansal of this court in CMM 716/2021 titled **Cholamandalam Investment and Finance Company Limited Vs. Rajeev Chawla & Anr.** for your kind perusal and necessary compliance.

I am further directed to request your good self to circulate the directions passed in para 13 of the order 22/10/2021 in CMM 716/2021 by which the court has directed the Administrative side of all the District Courts to ensure that the orders passed by the learned CMMs/ACMMs in respect of applications under section 14 of SARFAESI Act, are promptly uploaded so as to enable the counsel as well the parties to have the benefit of those orders.

Please acknowledge receipt.

Yours faithfully

Joint Registrar
For Registrar General

- Encl: 1. Copy of Order dt.10/04/2023
2. Copy of order dt. 22/10/2021 in CMM 716/2021
3. Memo of Parties ACMM I

OFFICE OF THE PR. DISTRICT & SESSIONS JUDGE: ROHINI COURTS

No. 5934-5935 /Genl.I/N-W & N/Rohini/2023

Delhi, Dated 24/4/2023

Copy forwarded for information & necessary action/compliance to:

1. The Chief Metropolitan Magistrate, North-West & North District, Rohini Courts, Delhi.
2. The Add. Chief Metropolitan Magistrate, North-West & North District, Rohini Courts, Delhi.
3. The Dealing Official, R & I Branch, Rohini Court, for uploading the same on LAYERS.
4. The Dealing Official, Computer Branch, Rohini Court, for uploading the same on WEBSITE.

(G. K. MATHUR)

In-charge,

General Branch,

Pr. District & Sessions Judge's Office,
Rohini Courts Complex, Delhi.

IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M.(MAIN) NO. 556 OF 2023

IN THE MATTER OF:

CHOLAMANDALAM INVESTMENT AND

FINANCE COMPANY LIMITED

.....PETITIONER

VERSUS

RAJESH SHARMA & ORS.

.....RESPONDENTS

MEMO OF PARTIES

CHOLAMANDALAM INVESTMENT AND FINANCE
COMPANY LIMITEDRegistered Office at:1st Floor, 'Dare House', No. 2,
N.S.C. Bose Road, Chennai-600001Branch Office at:6, Pusa Road,
Karol Bagh,
New DelhiThrough its Authorised Officer:

MR. SIDHARTHA RASTOGI

...PETITIONER

Versus

1. RAJESH SHARMA

65-A, F/F KISHAN KUNJ EXTN. PART-1,
LAXMI NAGAR,

NEW DELHI-110092

EMAIL: rajesh.68@hotmail.com

(M): 9310008887

....RESPONDENT NO.1

2. **RAJNI SHARMA**

65-A, KISHAN KUNJ EXTN. PART-1,

LAXMI NAGAR,

NEW DELHI-110092

EMAIL: rajesh.68@hotmail.com

(M): 9310008887

...RESPONDENT NO.2

3. **M/S J M DIESEL**

D-9/208A, GROUND FLOOR,

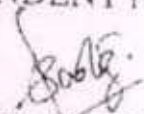
LAXMI NAGAR, DELHI,

NEW DELHI-110092

EMAIL: rajesh.68@hotmail.com

(M): 9310008887

...RESPONDENT NO.3


PETITIONER
CHOLAMANDALAM INVESTMENT &
FINANCE COMPANY LIMITED

Through


SUSHANT BALI

Advocate for the Petitioner

Chamber No.612, Lawyers' Chambers, Block-III,

Delhi High Court, New Delhi-110003

(M):-+91-8447242406

e-mail ID: sushantbali.advocate@gmail.com

NEW DELHI

05.04.2023

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 555/2023**

**CHOLAMANDALAM INVESTMENT AND
FINANCE COMPANY LIMITED**

..... Petitioner

Through: Mr. Sanjeev Bhandari, Mr. Sushant
Bali, Mr. Deepak Kandpal, Mr. Kunal
Mittal, Mr. Saurabh Tanwar and Mr.
Naman Aggarwal, Advocates

versus

GEETA DEVI & ANR

..... Respondent

Through: None

+ **CM(M) 556/2023**

**CHOLAMANDALAM INVESTMENT AND
FINANCE COMPANY LIMITED**

..... Petitioner

Through: Mr. Sanjeev Bhandari, Mr. Sushant
Bali, Mr. Deepak Kandpal, Mr. Kunal
Mittal, Mr. Saurabh Tanwar and Mr.
Naman Aggarwal, Advocates

versus

RAJESH SHARMA & ORS

..... Respondent

Through: None

+ **CM(M) 557/2023**

**CHOLAMANDALAM INVESTMENT AND
FINANCE COMPANY LIMITED**

..... Petitioner

Through: Mr. Sanjeev Bhandari, Mr. Sushant

Bali, Mr. Deepak Kandpal, Mr. Kunal
Mittal, Mr. Saurabh Tanwar and Mr.
Naman Aggarwal, Advocates

versus

TAJINDER MOHAN SAPRA & ORS

..... Respondent

Through: None

+ **CM(M) 561/2023**

CHOLAMANDALAM INVESTMENT AND
FINANCE COMPANY LIMITED

..... Petitioner

Through: Mr. Sanjeev Bhandari, Mr. Sushant
Bali, Mr. Deepak Kandpal, Mr. Kunal
Mittal, Mr. Saurabh Tanwar and Mr.
Naman Aggarwal, Advocates

versus

SUNIL K & ORS

..... Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER
10.04.2023

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[The proceeding has been conducted through Hybrid mode]

**CM APPL. 16780/2023, CM APPL. 16781/2023, CM APPL. 16784/2023
& CM APPL. 16811/2023**

1. These are applications seeking exemption from filing certified copies of the annexures/documents.
2. Exemptions are allowed, subject to all just exceptions.

3. The applications stand disposed of.

CM(M) 555-557/2023 & 561/2023

4. The petitioner challenges the order dated 28.03.2023 whereby the learned ACMM has not exercised the powers conferred upon it under Section 14 of SARFAESI Act, 2002 and had dismissed the application under Section 410 of the Cr.P.C., 1973 as not maintainable. The prayers of the petitioner are as under:-

“(i) Allow the present petition;

(ii) Set aside Impugned Order dated 28.03.2023 passed by Ms. Saloni, Ld. ACMM (East District), Karkardooma Courts, Delhi in Transfer Application No.13 of 2023 titled as "Cholamandalam Investment and Finance Company Ltd. vs. Geeta Devi & Ors.";

(iii) Pass an order(s) to Ld. ACMM (East District), Karkardooma Courts, Delhi to dispose of Misc. Crl. No.34 of 2023 titled as Cholamandalam Investment and Finance Company Limited vs. Geeta Devi & Ors. pending disposal before the Court of Ld. CMM, East District, Karkardooma Courts, Delhi in terms of the judgment of Hon'ble Apex Court in R.D. Jain & Co. vs. Capital First Ltd., (2023) 1 SCC 675;

(iv) Pass direction(s) to the concerned official / registry of the Ld. CMM (East District), Karkardooma Courts, Delhi, to list the applications under Section 14 SARFAESI Act, 2002 before the Court of Ld. ACMM (East District), Karkardooma Courts, Delhi Court till the Court of Ld. CMM is lying vacant as per law;

(v) Pass appropriate directions to the Ld. ACMM (East District), Karkardooma Courts, Delhi to upload the orders passed in the matters pertaining to Section-14 of the SARFAESI Act, 2002 in terms of decisions in the matter of

Cholamandalam Investment and Finance Company Limited vs. Rajeev Chawla, CM(Main) No.716 of2021:

(vi) Pass appropriate directions to the Courts of Ld. CMM to various districts of New Delhi to follow uniform procedure while adjudicating Applications under Section-14 SARFAESI Act, 2002; in terms of Section 14 of SARFAESI Act, 2002; ...”

5. Mr. Sanjeev Bhandari, learned counsel for the petitioner submits that as of now the petitioner would be satisfied in case a direction is passed to the learned ACMM to dispose of the application under Section 14 of SARFAESI Act, 2002 within the stipulated time in accordance with law.

6. Mr. Bhandari also submits that a general direction to all the learned ACMMs and CMMs in Delhi be passed in respect of the orders passed under Section 14 of SARFAESI Act, 2002 to be uploaded forthwith so as to ensure that the financial institutions like the present petitioner, do not suffer on account of not having the benefit of the orders passed under Section 14 in their hands.

7. Learned counsel also refers to the orders passed in the petitioner's own case in CM(M) 716/2021 whereby this Court vide the order dated 22.10.2021, particularly in para-13, had passed directions of the said nature.

8. This Court has heard Mr. Bhandari, learned counsel appearing for the petitioner and *prima facie*, is of the view, that keeping in view the nature and the urgency of an application filed under Section 14 of SARFAESI Act, 2002 as also keeping in view the time stipulated by the legislature, which also appears to be taking into consideration the urgency in such matters of economic nature, the Courts must act in accordance therewith in all earnest.

9. Accordingly, the learned ACMM is directed to take up these

applications under Section 14 of SARFAESI Act, 2002 filed by the petitioner on or by 18.04.2023 and endeavour to expeditiously dispose of the same before 30.04.2023 or soon thereafter.

10. So far as the second direction is concerned, as already directed vide order dated 22.10.2021 in CM(M) 716/2021, this Court reiterates the directions of para-13 of the said order and would direct the Administrative side of all the District Courts to ensure that the orders passed by the learned CMMs/ACMMs in respect of applications under Section 14 of SARFAESI Act, are promptly uploaded so as to enable the counsel as well the parties to have the benefit of those orders.

11. The Registrar General of this Court is also directed to ensure that this order is forwarded to the Principal District and Sessions Judges in Delhi for their perusal as also implementation.

12. So far as the prayers (iv) and (vi) are concerned, list on 29.05.2023 for passing appropriate directions after examining the relevant judgments placed on record by the petitioner.


TUSHAR RAO GEDELA, J

APRIL 10, 2023

Aj

TRUE COPY

EXAMINER

IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M.(MAIN) NO. 716 OF 2021

CHOLAMANDALAM INVESTMENT AND
FINANCE COMPANY LIMITED

....PETITIONER

VERSUS

RAJEEV CHAWLA & ANR.

....RESPONDENTS

MEMO OF PARTIES

CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY
LIMITED

Registered Office at:

1st Floor, 'Dare House', No. 2,
N.S.C. Bose Road, Chennai-600001

Branch Office at:

6, Pusa Road,
Karol Bagh,
New Delhi

Through its Authorised Officer:

MR. SUDHIR TOMAR

Email: sudhirt@chola.murugappa.com
(M)9818460101

...PETITIONER

Versus

1. RAJEEV CHAWLA

H. No. E-53, 2nd Floor,

Kirti Nagar,

New Delhi-110015

....RESPONDENT NO. 1

Email:rajeevchawla@gmail.com, (M)9811177472

2. ANJANA CHAWLA

H. No. E-53, 2nd Floor,

Kirti Nagar.

Email:rajeevchawla@gmail.com, (M)9811177472

New Delhi-110015

...RESPONDENT NO. 2

11.10.2021

CHOLAMANDALAM INVESTMENT &
FINANCE COMPANY LIMITED

Through

SUSHANT BALI

Advocate for the Petitioner

Chamber No. 378, Lawyers' Chambers, Block-II,

Delhi High Court, New Delhi-110003

(M):+91-8447242406

e-mail ID: sushantbali.advocate@gmail.com

S-13 & 17

* IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) 716/2021

CHOLAMANDALAM INVESTMENT AND FINANCE
COMPANY LIMITED

..... Petitioner

Through: Mr. Sanjeev Bhandari along with Mr.
Sushant Bali, Advocates.

versus

RAJEEV CHAWLA & ANR.

..... Respondents

Through: None.

CM(M) 721/2021

CHOLAMANDALAM INVESTMENT AND FINANCE
COMPANY LIMITED

..... Petitioner

Through: Mr. Sanjeev Bhandari along with Mr.
Sushant Bali, Advocates.

versus

ROSHANARA ABDUR RUB & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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22.10.2021

[VIA VIDEO CONFERENCING]

CM No. 36706/2021 (for exemption) in CM(M) 716/2021

CM No. 36858/2021 (for exemption) in CM(M) 721/2021

1. Allowed, subject to all just exceptions.

2. The applications are disposed of.

CM(M) 716/2021 & CM(M) 721/2021

3. The present petitions under Article 227 of the Constitution of India

Signature valid

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By: AMIT BANSAL
Reason: I am 25/10/2021
10:30:21

CM(M) 716/2021 and CM(M) 721/2021

Page 1 of 8

have been filed, pressing for the following reliefs:

- (i) Setting aside of Order dated 25.09.2021 passed by Chief Metropolitan Magistrate (CMM) (West District), Tis Hazari Courts, Delhi in Case No. ID No. 758 of 2021 and Case No. ID No. 759 of 2021;
- (ii) Direction to the CMM to pass an order appointing the Receiver to take the physical possession of the secured assets;
- (iii) Passing of appropriate directions to the CMM to upload the orders passed in the matters pertaining to Section- 14 of the SARFAESI Act, 2002 (Act) in terms of decisions in the matter of *Sanser Pal Singh Vs. Union of India & Ors.* bearing W.P.(C) No.1983 of 2021; and
- (iv) Passing of appropriate directions to the Courts of CMM to various districts of New Delhi to follow uniform procedure while adjudicating Applications under Section-14 of the Act, in terms of Section 14 of the Act.

4. Brief facts leading to the filing of the present petition are as follows:

- (i) The respondents, who are borrowers within the meaning of Section 2(f) of the Act, availed financial assistance from the petitioner and created security interest under Section 2(zb) of the Act by way of equitable mortgage in relation to immovable properties.
- (ii) Consequent to defaults in repayment of dues by the respondents, the accounts of the respondents were declared Non-Performing Assets (NPA) within the meaning of Section 2(o) of the Act.
- (iii) Thereafter, on 5th October, 2020, the petitioner issued Demand

Signature valid

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By: AMR PAL
Signing Date: 25.10.2021
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CM(M) 716/2021 and CM(M) 721/2021

Page 2 of 8

Notices under Section 13(2) of the Act whereby the petitioner demanded the total outstanding amounts in the loan account as well as the details of the secured assets. The said Demand Notices were sent to the respondents on 10th October, 2020.

(iv) Upon receiving no objection or representation in reply to the aforesaid Demand Notices, the petitioner filed applications under Section 14 of the Act on 15th June, 2021 in order to enforce the security interest and take physical possession of the properties in question.

5. Vide impugned orders dated 25th September, 2021 passed in the applications filed under Section 14 of the Act, the CMM, while directing the petitioner to file an affidavit regarding the current status of the possession of the properties in question, observed/held that (i) the petitioner was required to disclose on affidavit whether the properties in question were in possession of a tenant or a third party other than the respondents/borrowers in light of the judgment of the Supreme Court in *Harshad Govardhan Sondagar vs International Assets Reconstruction Co. Ltd. & Ors* (2014) 6 SCC 1; (ii) even after the amendment to the Act, the petitioners approaching the Court under Section 14 of the Act are not absolved from disclosing the status of possession of the secured assets; (iii) the purpose of the amendment to the Act is to safeguard the rights of lawful tenants; (iv) principles of natural justice dictate that a party must not be condemned unheard and hence, the petitioner should have issued notices under Section 13(4) of the Act in order to take symbolic possession of the properties in question; (v) the affidavit dated 17th September, 2021 filed by the petitioner only talks about a valuation report and does not state whether the properties in question were in

possession of the respondents at the time of creation of the mortgage or the current status of the properties in question after issuance of Demand Notices by the petitioner; and (vi) the petitioner has not inspected the properties in question to find out as to who is in possession of the properties in question at the time of institution of the applications under Section 14 of the Act.

6. The counsel appearing on behalf of the petitioner has impugned the orders passed by the CMM on the following grounds:-

- (i) the CMM had no jurisdiction to decide on the question of tenancy or possession of any lessee or third party in respect of the properties in question as the jurisdiction to decide these issues vested in the DRT;
- (ii) the impugned orders have wrongly placed reliance on the judgment of the Supreme Court in *Harshad Govardhan Sondagar* supra as the said judgment was in the context of protection to be afforded to a *bonafide* tenant in occupation of the property in question;
- (iii) the said judgment in *Harshad Govardhan Sondagar* supra was delivered in 2013, subsequent to which the Act has been amended on 1st September, 2016 and Section 17(4A) has been added whereby protection has been afforded to a *bonafide* tenant and right has been given to him to approach the DRT;
- (iv) there cannot be any requirement of the secured creditor to inspect the properties in question after issuance of the notice under Section 13(2) of the Act;
- (v) there was no mandatory requirement to the secured creditor to take symbolic possession under Section 13(4) of the Act before filing any application under Section 14 of the Act;

Signature valid

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By: AMRITA K. SAL
Signing Date: 25.10.2021
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CM(M) 716/2021 and CM(M) 721/2021

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(vi) principles of natural justice have not been violated in the present case as it was for the receiver to be appointed in terms of the order passed by the CMM under Section 14 of the Act to issue a fifteen days' notice to the respondents/borrowers and affix the said notice at a conspicuous part of the properties in question; and

(vii) in terms of the proviso of Section 14 of the Act, the only requirement of the secured creditor is to file an application accompanied by an affidavit affirming (i) to (ix) as provided in the said proviso.

7. Advance copy of the present petition has been served by email to the respondents/borrowers, however none appears on behalf of the respondents/borrowers. Need is not felt to issue notice to the respondents/borrowers in the present case as the impugned orders were also passed in the absence of the respondents/borrowers and there is no legal requirement for the borrower to be heard before the CMM passes an order under Section 14 of the Act as the order passed by the CMM under Section 14 is only a procedural order and no substantive rights of the parties are affected. All rights of the borrower or any aggrieved person are protected under Section 17 of the Act.

8. Having heard the counsel for the petitioner, this Court is of the view that the impugned orders passed by the CMM are clearly beyond jurisdiction. There was no basis for the CMM to direct the petitioner to file an affidavit regarding the current status of the occupation of the properties in question.

9. The CMM has wrongly relied upon the judgment of the Supreme Court in *Harshad Govardhan Sondagar* supra which was a judgment passed to protect the interest of the *bonafide* tenant in occupation of the

property in question and cannot come to the aid of a borrower in default. It is noted in the said judgment that the secured creditor has to state in his affidavit accompanying the application under Section 14 of the Act that secured asset is not in possession of a lessee under a valid lease made prior to the creation of the mortgage by the borrower or made in accordance with Section 65A of the Transfer of Property Act prior to receipt of notice under Section 13(2) of the Act. Therefore, in terms of the aforesaid judgment, the person who comes into occupation and possession of the secured asset after creation of mortgage by the borrower or after issuance of notice under Section 13(2) of the Act is not to be provided any legal protection.

10. Further, after passing of the aforesaid judgment in *Harshad Govardhan Sondagar* supra, the Act has been amended and the words 'other aggrieved person' have been inserted in Section 17(3). Therefore, the possession of the secured asset can be restored to any aggrieved person, and not just the borrower. Furthermore, insertion of Section 17(4A) has provided the DRT with powers to decide the claims of tenancy or leasehold rights over a secured asset. As a consequence of the amendments, protection has been afforded to aggrieved persons, which includes *bonafide* tenants.

11. In view of the above, the CMM had no jurisdiction to go into these questions while deciding the applications under Section 14 of the Act, as the said jurisdiction is that of the DRT. Therefore, the direction given to the petitioner to provide the details on affidavit in respect of the current status of the occupation of the properties in question is wholly without jurisdiction. It has also been erroneously held in the impugned orders that principles of natural justice could be violated if a person in lawful possession of the

Signature valid

Digitally Signed
By: AMRABHAI SAL
Signing Date: 23.10.2021
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CM(M) 716/2021 and CM(M) 721/2021

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secured asset is deprived of possession of the said asset. As noted above, orders passed under Section 14 are only a procedural requirement and no substantive rights of the parties are affected. Once a receiver is appointed by the CMM under Section 14 of the Act, a notice is required to be issued and affixed at the secured asset by the receiver pursuant to orders passed under Section 14 of the Act.

12. Accordingly, the impugned orders passed by the CMM are completely without jurisdiction and the same are set aside. The CMM is directed to forthwith decide the applications filed under Section 14 of the Act on behalf of the petitioner without insisting on the affidavit with regard to the current status of possession of the properties. The matters be taken up by the CMM on 1st November, 2021 at 2.00PM on which date the petitioner would appear and appropriate orders on the applications under Section 14 would be passed by the CMM.

13. The counsel appearing on behalf of the petitioner has also pointed out the difficulty faced by the secured creditors on account of the orders being passed by the CMM under Section 14 of the Act not being uploaded in a timely manner. This results in delay in secured creditors taking steps in terms of the said orders or taking legal remedies in respect of the said orders. There is merit in the contention of the counsel for the petitioner. Time is of essence in proceedings initiated under the Act. The purpose behind the Act would be frustrated if there are delays in implementing orders passed under the Act. Accordingly, it would be expedient and in the interest of justice that all CMMs in Delhi ensure that the orders passed by them under Section 14 of the Act are promptly uploaded after the said orders are passed.

14. A copy of this order be also forwarded to the Principal District and

Signature valid

Digitally Signed
By AMR KASAL
Signing Date: 25.11.2021
16:19:42

CM(M) 716/2021 and CM(M) 721/2021

Page 7 of 8


Sessions Judges in Delhi for circulation to all CMMs for compliance in proceedings under Section 14 of the SARFAESI Act, 2002.

15. With the aforesaid directions, the petitions stand disposed of.


AMIT BANSAL, J.

OCTOBER 22, 2021

Sakshi R.


EXAMINED



Signature valid

Digitally Signed
By: AMIT BANSAL
Signing Date: 25.10.2021
16:09:42

CM(M) 716/2021 and CM(M) 721/2021

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