MHNS030054142026	**CRIMINAL MISC. APPLICATION NO.937/2026** **ORDER BELOW EXHIBIT NO. 01** Bajaj Housing Finance Ltd. V/s. Ramkrushna Bhagwandas Sonawane + 1. **Efiling Number:** AMH20210050631C202600045

1. Due to default of the respondents borrowers in repayment of secured debt through installments, the loan of the respondents has been classified by the applicant, a secured creditor, as non-performing asset.

2. Exercising the powers under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'), the applicant has initiated action for enforcement of security interest created through a verified copy of registered deed of equitable mortgage (Exh.07) in respect of the scheduled property. The copy of CERSAI certificate is also produced along with affidavit on record.

3. For that purpose, the applicant states that it has given a notice dated 18/07/2025 by RPAD under Section 13(2) of the SARFAESI Act (Exh.09) requiring the borrowers – respondents to discharge in full their liability towards the applicant within 60 days. There has been no successful representation or objection raised by the respondents before the secured creditor within 60 days of service of notice over respondents.

4. The applicant then proceeded to take action as provided in Section 13(4) of the SARFAESI Act for which it required possession of the secured asset of the respondent. For this purpose, as per the provisions of Section 14 of the SARFAESI Act, this application is filed

with a request to provide assistance for taking possession of the secured asset. The application is supported with affidavit. Heard Ld. Advocate Shri. R. S. Katkar for the applicant.

5. As per the decision of the Hon'ble Supreme Court in **Authorized Officer, Indian Bank V/s. Visa Lakshi reported in (2019)20 SCC 47**, now the application under Section 14 of the SARFAESI Act can be filed even before the Chief Judicial Magistrate.

6. Section 14 of the SARFAESI Act provides that where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him— (*a*) take possession of such asset and documents relating thereto; and (*b*) forward such asset and documents to the secured creditor.

7. The proviso of Section 14 requires compliance of few things. Those are -

i) The application shall be accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor.

ii) The affidavit shall declare the aggregate amount of financial assistance and the total claim of the Bank as on the date of filing of the application.

iii) The affidavit shall further declare that the borrower created security interest over properties and the Bank or financial institution is holding valid and subsisting security interest over such property.

iv) There must be a declaration in the affidavit that claim of the Bank or Financial Institution is within the limitation period.

v) Details of the properties over which security interest is created must be supplied.

vi) There must be default committed by the borrower in repayment of the financial assistance and the account of the borrower must be classified as a non-performing asset.

vii) Notice under section 13(2) of the SARFAESI Act must have been issued and served on the borrower.

viii) The affidavit must further declare that objection or representation in reply if any to the notice has been duly considered and reasons for non-acceptance of such objection or representation has been communicated to the borrower.

ix) The borrower must have failed to make repayment of the financial assistance in spite of the notice under section 13(2) of the SARFAESI Act and therefore, the bank or financial institution must be entitled to take possession of the secured assets.

8. The provisions in Section 14 requires that the DM or CMM (CJM) shall pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days or in case of reasons beyond control, within next sixty days. Due to heavy workload, it is not possible for me to decide the application within limitation.

9. The Hon'ble Supreme Court in **C. Bright Vs. District Magistrate (2021) 2 SCC 392** held that the provision of the SARFAESI Act empowering District Magistrates/CMM to take possession of secured assets of defaulting borrowers within 60 days period for handing them over to the lending financial institutions is “directory” and not “mandatory” in nature as banks cannot be made to suffer for the delay on the part of the government officers. It is held that inability to take

possession within time limit does not render the District Magistrate/CMM "Functus Officio". Therefore, irrespective of there being some delay caused due to unavoidable situations, this authority is not powerless to provide assistance as required under section 14 of the SARFAESI Act.

10. I have gone through the contents of the application, affidavit (Exh.04) as required by the proviso to Section 14 and the entire record produced with the application. On perusal of all documents which are filed on record through e-filling it appears that the applicant duly complied with the requirements as referred above.

11. I am satisfied that the respondents are borrowers of the applicant and have created security interest in the property mentioned in the application. I am further satisfied that the applicant is holding valid and subsisting security interest over the property. The claim of the applicant is within the limitation period. The borrower is seen to have committed default in repayment of the financial assistance and the account of the borrower has been classified as a non-performing asset.

12. Notice under Section 13(2) of the SARFAESI Act has been issued by the applicant and is served on the borrower. It can be seen that even after the service of notice, the borrower neither raised any objection to the notice nor has repaid the financial assistance. Thus, the applicant is now entitled to take possession of the secured assets.

13. As per Section 14(1-A) of the SARFAESI Act, the District Magistrate or the Chief Metropolitan Magistrate may authorize any officer subordinate to him- (*i*) to take possession of such assets and documents relating thereto; and (*ii*) to forward such assets and

documents to the secured creditor. The provisions in Section 14(2) further provides that the Chief Metropolitan Magistrate (CJM) or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

14. Learned advocate representing the applicant requested to appoint commissioner or receiver for the purpose of assisting to take possession of the secured assets. As per the provision of Section 14 of the SARFAESI Act, 2002, any subordinate officer can be appointed for the purpose of assisting the applicant for delivery of possession of the secured asset. The property being secured asset is situated at Nashik, Taluka & District- Nashik which is reportedly coming under Panchwati Police Station. Thus, the Assistant Superintendent attached to the Court having jurisdiction of Panchavati Police Station, Nashik, Dist. Nashik can accordingly be appointed for the purpose of completing the task as required by the Section 14 of the Act. In view of the above referred situation, I pass the following order :

:: **ORDER** ::

I) Application is allowed.

II) The Assistant Superintendent attached to the Respected Court, having jurisdiction of Panchwati Police Station, Nashik, Dist. Nashik is hereby appointed as a Court Commissioner to take possession of the secured asset **All that piece and parcel of property bearing Survey No.80/2/2A/10 Plot No.9 area admeasuring 204 Sq.Mtrs out of area admeasuring 102 Sq.Mtrs towards East side, and Survey No.80/2/2A/11 Plot No.10 area admeasuring 204 Sq.Mtrs out of area admeasuring 102 Sq. Mtrs towards South side along with construction thereon situated within area of village**

Nashik, Taluka and District Nashik which is bounded as per approved building plan as mentioned in application and affidavit, by taking such steps and using such force including breaking open the lock thereof or taking assistance of Police of Panchavati Police Station, if required, at the expenses of the applicant and shall deliver possession thereof along with documents/articles, if any, found therein to the authorized officer of the applicant after preparing panchnama and taking inventory of the secured asset.

III) Issue writ of commission accordingly on payment of P.F. and Rs.7,000/- (Rs. Seven Thousand only) towards the commission fees within three months from today, which shall be credited to the government.

JITENDRA VIJAYKUMARJI PALIWAL
Digitally signed by JITENDRA VIJAYKUMARJI PALIWAL
Date: 2026.08.07 17:28:06 +0530

(Dr. J.V. Paliwal)
Additional Chief Judicial Magistrate,
(Court No.05), Nashik.

Date : 07.08.2026