E-filing **Cri.M.A.No.1511/2025**
Canara Bank ~~Vs~~
Rahul Tapadiya

ORDER BELOW EXH.1.

This application is filed by the authorized officer of the applicant bank (For short, “Secured Creditor”) under Section 14 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [For short, “SARFAESI Act”], requiring this Court to assist it for taking possession of the scheduled property as elaborated in the application.

2. On going through the application filed U/s.14 of the SARFAESI Act, affidavit of the authorized officer of the applicant Bank, namely Shri. Ripan Madan and supporting documents attached with the list of documents, it is revealed that the applicant bank granted a Housing Loan of Rs.29,70,000/- (Rs. Twenty Nine Lacs Seventy Thousand only) against the scheduled property.

3. In order to secure the loan, the non-applicant executed an equitable mortgage by depositing title deeds of the scheduled property whereby, security interest is created in favour of the applicant bank. As a corollary, the scheduled property situated at Nagpur is a secured asset, (For short, “secured asset”).

4. Schedule of the property (Secured Assets):

Sr.No	Immovable Property	Name of Title Holder
1.	All that R.C.C. Superstructure bearing Flat No. 301, covering a built-up of 45.20 Sq. Mtrs., on the third floor of the scheme known as “Sai-Apartment-15” constructed on All that piece and parcel of property bearing plot No.B-33 having admeasuring Area 185.7240 Sq.Mtrs.(1998.95 Sq.Ft.) as per regularization letter issued by Nagpur Improvement Trust which part of Kh. No.27, 28, 29, 33, 34, 35, 36/1, 36/2 and 36/3 situated at Mouza Hajaripahad, in the lay out of Krushak Mahila Co-op. Housing Society Ltd., Nagpur bearing City Survey No.51, Sheet No.40, Patwari Halka No.7 and within the limits of the Nagpur Municipal Corporation and Nagpur Improvement Trust, Nagpur in Tahsil and District Nagpur and Bounded as under: **East** : Plot No. B-34 **West** : Plot No. B-32 **North** : Plot No. B-09 **South** : Road	Mr. Shubham Purushottam Tapdiya

5. It is further revealed that as the non-applicant has failed to make the repayment of the loan amount due and payable by him, the said debt came to be classified as the Non-Performing Asset (NPA) on 05/11/2024. Thereafter, notice under Section 13 (2) of the SARFAESI Act was issued to the non-applicant by registered post demanding payment of Rs.29,85,576.84/- (Rs. Twenty Nine Lakhs

Eighty Five Thousand Five Hundred Seventy Six and Eighty Four Paise only), which was due as on 07.11.2024 within sixty days from the date of notice. It was also informed that on failure of compliance of the notice, action would be taken under Section 13(4) of SARFAESI Act against them.

6. The applicant bank states that the non-applicant was served with the aforesaid notice. The applicant bank also issued a proclamation by issuing a public notice in a daily newspaper. In spite of service of the notice, the non-applicant has not taken any objection to the said notice and has not satisfied the claim of the applicant bank.

7. Based on such default, a cause arose to make the present application to take physical possession of the secured asset, with the assistance of this Court. The contents of the affidavit of the authorized officer of the applicant bank are in tune with the supporting documents and Section 14 of the SARFAESI Act.

8. Already objection of the non-applicant Exh.   has been decided by my ld. Predecessor, however, the non applicant again raised the objection on following grounds and I take in to account the same while deciding the present application. The non-applicants contended that the application filed by the Bank under Section 14 of the SARFAESI Act is not maintainable. It is not filed by the

authorised officer, no authority letter is annexed, and even the officer’s name is not mentioned. The alleged mortgage itself is unenforceable in law and the loan account was wrongly classified as NPA without granting an opportunity of restructuring or hearing, thereby violating RBI guidelines. The non-applicants, being ready to redeem the secured asset, have been deprived of that right. The demand notice dated 07.11.2024 was issued without furnishing loan documents or bifurcation of dues, and though objections were submitted on 06.01.2025, no reasoned reply has been communicated as mandated under Section 13(3A). Hence, the present application is premature and contrary to law, as held in ***Mardia Chemicals v. ICICI Bank*** and subsequent decisions of Hon’ble Supreme Court. The learned advocate for the non-applicant has submitted that she has moved application before the Hon’ble District and Sessions Judge for transfer of connected proceeding before this Court and application is uploaded. It is to be noted here that considering the submission that another proceeding pending before the another Court in respect of the same subject matter i.e. Flat No.301 on the third floor of Sai Apartment and both matters needs to be decided by taking into account documents, needs no consideration. No prejudice will cause to objector if the present application is allowed. The objector will avail opportunity after transfer of another proceeding or he can produce the copy of this order before the concern Court for pointing out his objection. Therefore, I decided not to consider objection at this stage.

9. Further, the Bank has not taken symbolic possession under Section 13(4) before invoking Section 14, and has also filed another application (Cri. M.A. 3179/2025) regarding the same property, which attracts the bar of res judicata. The Bank has failed to file original title documents and relied only on photocopies, raising doubts as to the genuineness of the alleged security interest. Moreover, Flat No. 301 is mortgaged with the Applicant Bank and the adjoining Flat No. 302 with Federal Bank, both being merged and inseparable; possession cannot be taken in isolation without violating Section 13(9) and Rule 8(6). For all these reasons, it is contended that the application under Section 14 is premature, misconceived, and liable to be dismissed in the interest of justice. However, I found that above objections have been raised only with the intention to delay the order in the proceeding. Already the objection of the non applicant was decided by my predecessor and in such circumstances considering the nature of proceeding and settled position of law I am not inclined to consider the above objections.

10. In view of the aforesaid discussion, and considering documents placed on record I hold that the provisions of SARFAESI Act and the rules made thereunder have been complied by the applicant bank. Therefore, the applicant bank i.e. secured creditor is entitled to take possession of the secured asset as per the schedule of the property (secured assets) under the provisions of sub-section (4) of section 13 read with section 14 of the SARFAESI Act. Therefore, I proceed to pass following order.

ORDER

1] The Application is allowed, as under.

2] Head bailiff of the Civil Court, Nagpur is directed to depute a bailiff with authority to take physical possession of the secured asset as mentioned in the schedule of the property situated in District Nagpur, by taking such steps and using such force as may be required including liberty to break open the lock thereof (if need be) and to forthwith deliver the physical possession of the said secured asset to the applicant Bank.

3] The Police Officer in charge of the concerned Police Station is directed to provide necessary police protection or assistance, if required for the execution of the aforesaid possession warrant at the cost of the applicant bank.

4] The applicant bank shall have to bear the requisite charges of special bailiff, as well as police aid as per rule.

5] The applicant to report to this Court about the compliance of the order within sixty days from the date of order.

6] The proceeding is accordingly disposed of.

Digitally signed by ANAND MANOHAR SAMANT
Date: 2025.09.18 16:09:31 +0530

Nagpur. (A.M.Samant)
Dated : 16/09/2025. Addl.CJM Nagpur.