KA14020008372026

IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE & CJM, AT SHIVAMOGGA.

DATED THIS THE 4th DAY OF AUGUST, 2026

Present: SMT.NAGAMANI.V,
B.A.L, LL.B.,LL.M.,

Prl. Senior Civil Judge & CJM,
Shivamogga.

Crl.Misc.191/2026

Petitioner : IDFC First Bank Limited, Formerly Known as IDFC Bank, Ltd, having its registered office at KRM Tower, 7th Floor, No.1 Harrington road, Chetpet, Chennai-600031 and its Branch office at kahta No.3598, Assessment No.314, Ward No.5, Ground Floor, Beside Shaneshwara Temple, Durgigudi, Shivamogga, Karnataka 577201, Represented by its authorized officer Mr. Magesh U S/o Udhayan, Aged 31 years.

(By Sri. Raju M., Advocate)

-Vs-

Respondents:

1. Mr. Basavarajappa Hiriyappa Hindinamane, S/o Hiriyappa, age:31 years,
E-property No.152400403200200333, VPC No.69/22, Near Govt. School, At Konasogi, Tq: Shikaripura, District:Shivamogga, Karnataka-577433.
Also at
Mr. Basavarajappa Hiriyappa Hindinamane,
S/o Hiriyappa, age:31 years,
At Konasogi, Tq:Shikaripura,
District:Shivamogga, Karnataka

2. Mrs. Shanthamma H
W/o Hiriyappa,age:53 years,
E-property No.152400403200200333,
VPC No.69/22, Near Govt. School,
At Konasogi, Tq:Shikaripura, District:Shivamogga, Karnataka-577433.

Also at
Mrs. Shanthamma H
W/o Hiriyappa,age:53 years,
At Konasogi, Tq:Shikaripura,
District:Shivamogga, Karnataka-577433.

(Exparte)

ORDER

The IDFC First Bank Limited., has filed present petition ***Under Section 14 of SARFAESI Act*** prays to permit to take possession of petition schedule property.

THE FACTS OF THE PETITION AS FOLLOWS:

2. It is forthcoming in the petition averments that, the respondent No.1 is being the Principal Borrower and Respondent No.2 is being Guarantor have approached the petitioner bank/Financial Institution at Shivamogga branch, for loan facility and sanctioned for a sum of ***Rs.5,00,000/-*** on ***29.04.2022*** under the loan account No.72844463 as a Loan Against Property Loan**.** They have executed loan agreement and mortgaging the schedule property by way of Identure of Mortgage without possession.

3. After availing the loan by respondents, they have failed to make repayment of loan as per the terms and conditions of the loan agreement. Thus, the loan account of the respondents has became ***'Non-Performing Asset'*** on ***31.08.2025.*** Thereafter, petitioner bank has issued noticed under section 13(2) of said Act on ***23.09.2025*** calling upon the respondents to pay the outstanding dues of ***Rs.4,24,272.70/-*** **as on 23.09.2025.** The said notice was sent to the respondents through registered post acknowledgment due and granted 60 days time for discharging the said due amount**.** The said notice was duly served on 03.10.2025. Thereafter, paper publication was made. By publishing the said notice, in new "***Kannada Prabh" and "The New Indian Express"*** on ***16.10.2025***. Even after publishing the said demand notice the respondents have failed to discharge the loan amount.

4. Thereafter, the petitioner bank had taken symbolic possession of petition schedule property and issued **possession** notice on ***16.01.2026*** *under* ***Sec.13(4) of SARFAESI Act/Rule.8(1) of SARFAESI Act*** calling upon the respondents to discharge their liabilities by repaying the due amount. The respondents jointly and severally liable to pay the said amount within 60 days and the said possession notice was served to the respondents and also published in leading news papers like "***Kannada Prabh" and "The New Indian Express"*** **11.01.2026**. Thereafter, applicant bank has tried to take the physical possession of schedule property, but it is apprehension that, the respondents will restrain the same. Hence, having no other alternative, filed the instant petition, by knocking the door of this court, for proper redressal.

5. After registration of the case, heard the argument of the learned counsel for the petitioner and received the relevant documents for determination of the present petition.

6. On the basis of pleadings of the party, point that would arise for consideration is as follows:

<u>P O I N T S</u>

1. ***Whether the petitioner has made out sufficient grounds, to consider the claim, as sought in the petition?***

2. ***What order?***

7. On appreciation of the available materials on record, my finding to the above point is as follows:

Point No.1: In the Affirmative.

Point No.2: As per final order for the following;

<u>R E A S O N S</u>

<u>POINT NO.1</u>:-

8. The IDFC First Bank Limited., has filed present petition ***U/ Sec.14 of SARFAESI Act, with a prayer to permit the bank*** to take possession of the petition schedule property, to take action through due process of law, to recover the due amount, to be payable by the respondents.

As per section 14 of SARFAESI Act, the Chief Metropolitan Magistrate or District Magistrate to assist

secured creditor in taking possession of secured asset:-1. Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets 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.

9. On the other hand, on the point of maintainability of this petition before this court is concerned, ***in view of Law laid down by our Hon'ble Supreme Court of India in reported case of 2019 Supreme(SC) 1067 between The Authorised Officer, Indian Bank V/s- D. Visalakshi and Another., it was held that, the powers and functions of the CMM and the CJM are equivalent and similar, in relation to matters specified in the criminal procedure code. These expressions (CMM and CJM) are interchangeable and synonymous to each other. Moreover, Section 14 of the 2002 Act, does not explicitly exclude the CJM from dealing with the request of the secured creditor made there under. The power to be exercised under Section 14 of the 2002 Act by the concerned authority is, by its very nature, nonjudicial or State's coercive power.***

10. Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy under Section 17 of the 2002 Act and/or judicial review under Article 226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lessee; nor is it possible to suggest that they are rendered remediless in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any advantage muchless added advantage. Taking totality of all these aspects, there is nothing wrong in giving expansive meaning to the expression "CMM", as inclusive of CJM concerning non - metropolitan area, who is otherwise competent to discharge administrative as well as judicial functions as delineated in the Cr.P.C. on the same terms as CMM. That interpretation would make the provision more meaningful. Such interpretation does not militate against the legislative intent nor it would be a case of allowing an unworthy person or authority to undertake inquiry which is limited to matters specified in Section 14 of the 2002 Act. In view of the above, this Court has got jurisdiction to file the present petition.

11. The petitioner bank herein, in connection with the present petition, had placed following documents for consideration.

1. Letter of Authority

2. Loan application form

3. Loan agreement and sanction Letter

4. E-Swathu/E.C

5. Indenture of Mortgage without possession.

6. Demand Notice and its acknowledgment

7. Paper Publication

8. Possession Notice.

9. Paper Publication of possession Notice.

10. Account Statement.

11. CERSAI

12. On perusal of above documents, it is discloses that, the respondents have approached the applicant bank for borrowing the loan. Accordingly, the petitioner bank had sanctioned the loan of ***Rs.5,00,000/-.*** In this regard, the respondents have executed necessary documents in favour of petitioner bank and the respondents have agreed the terms and conditions of such loan agreement. Further, the respondents have executed mortgage deed by depositing title of petition schedule property in favour of petitioner bank. Further discloses that, the respondents have become chronic defaulter, then the petitioner bank has issued notice as required U/Sec.13(2) of SARFAESI Act. Inspite of such notice, the respondents have not paid the due amount as mentioned in the statement of account.

13. All these documents disclose that, despite of service of demand notice on respondents, they have failed to repay the due amount to the petitioner bank and discloses that before filing present petition the petitioner/bank has issued notice as required U/Sec.13(4) of SARFAESI Act/*Rule.8(1) of SARFAESI Act.* Inspite of such notice, the respondents have not paid the due amount as mentioned in the statement of account and the respondents did not handed over actual possession of petition schedule property, in favour of petitioner bank.

14. Accordingly, the petitioner, being the security creditor is entitled to enforce security interest against the respondents for recovery of due amount to be payable by the respondents. In this regard, filed petition, seeking the assistance of the court, there is no need to issue the notice of main petition to the respondents. Hence, issuance of notice to the respondents is dispensed with.

15. Further, the applicant would like to recover the secured debt due from the respondents, by sale of the secured asset for which the actual possession is to be taken by the applicant Bank, from the respondents, through due process of law. Thus, by looking in to the entire facts and circumstances of the case, along with the recitals of the documents produced by the applicant, the petitioner is entitled the relief sought for in the petition. Hence, I am answering the ***point No.1 in the Affirmative.***

POINT NO.2:-

16. In view of findings and answer in Point No.1 this Court proceeds to pass the following;

O R D E R

The petition filed by the petitioner bank, ***under Section 14 of SARFAESI Act, 2002*** is hereby allowed.

Respondents are hereby directed to surrender the physical possession of the petition schedule property in favour of the petitioner bank.

The jurisdictional police are hereby directed to assist in evicting the occupants of the schedule property, through due process of law, if required to deliver the possession of the property.

Sri. Sachin B.R Advocate, Shivamogga is hereby appointed as Court Commissioner to execute the order.

Court Commissioner fee is fixed at ***Rs.10,000/-.***

Office shall return all original documents to the petitioner bank, through due process of law.

*(Directly dictated to the Steno on computer, typed by her and then pronounced in the open court on this the **4th day of August, 2026**)*

(SMT.NAGAMANI.V)
Prl. Senior Civil Judge & CJM.,
Shivamogga.