

	Received on	23.12.2025
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	Decided on	11.03.2026
	Duration	00 Year 02 Months 16 Days

Exhibit :- _____

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AND
ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT SANAND, AHMEDABAD (RURAL)

Criminal Misc. Application No. 857 of 2025

Bank of Baroda

Having its Registered Office at
Baroda Bhavan, Alkapuri, RC Dutt Road,
Mandvi, Baroda - 390 007, Gujarat AND
Having its Branch Office situated at
Regional Stressed Assets Recovery Branch,
2nd Floor, Law Garden, Ellisbridge,
Ahmedabad - 380 009.

Through its Authorized Officer
Mr. Abdul Khalik Chaudhary

...

Applicant

VERSUS

1. Vipulkumar Rameshchandra Mistry
Residing at 211, Sector-2,
Nr. Goras Dairy Shak Market,
Chanakyapuri, Ghatlodia,
Ahmedabad - 380 061.

2. Bina Bimalbhai Mistry
Residing at B-32, Parvatinandan,
Near Ujala Circle, Sarkhej,
Ahmedabad - 382 210.

... Opponents

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Appearance:-

Ld. Advocate Mr. Dharmesh M. Desai for the applicant Bank

**Subject:- Application filed under Section 14 of the SARFAESI Act,
2002 for taking physical possession**

:- J U D G M E N T :-

[1] The present application has been filed by the Applicant against the opponents u/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”) for taking possession of secured assets as defined in Section 2(1)(zc) of the SARFAESI Act mentioned in the application and forward it to the applicant. The concise statement of the applicant's case is that, the applicant is secured creditor as defined in Section 2(1)(zd) of the SARFAESI Act and the opponents are borrowers as defined under Section 2(1)(f) of the SARFAESI Act. It is averred in the application that the applicant has satisfied all the requirement of Section 14 of the SARFAESI Act and the applicant's authorized officer has submitted his affidavit to that effect. Hence, the present application.

In the present case, the opponents have availed financial assistance to the tune of Rs.8,10,000/- with an interest & other charges as per Loan Agreement dtd. 12-05-2015 as well as other than loan documents and for the due payment of credit facility of housing loan availed, they have created security interest with applicant Bank over the property being all that piece and parcels of land bearing Property No.1169, Flat No.406 admeasuring 62.71 Sq. Mtrs. located at 4th Floor in Block “A” Ratnatrayi Near Village

Lake Godhavi, Taluka Sanand, District Ahmedabad belonging to opponent No.1 by equitable mortgage. The applicant has submitted that, opponents have failed to make the repayment of the dues therefore, the account of the opponents has been classified as Non-Performing Asset i.e. NPA on 17.12.2018. The applicant Bank has issued notice to the opponents under Section 13(2) on 13-09-2019 through Registered Post A.D., which was duly served to the opponents-borrowers. Hence, the applicant Bank required police assistance for taking over the physical possession of the property owned by opponents.

EVIDENCE OF APPLICANT

- [2] The applicant has submitted his affidavit along with the application as is required by the first Proviso to Section 14(1) of the SARFAESI Act and has submitted following documents vide mark 3/1 to 3/5 in support of his application;-

Serial No.	List of documents
1.	Copy of Notarized power of attorney dated 25.10.2023
2.	Copy of Sanction Letter dated 29.04.2015 as well as Loan Application Form and Loan Agreement dtd. 12.05.2015
3.	Copy of Instrument relating to Deposit of Title Deeds dated 20.06.2015, Agreement to sale dtd. 10.04.2015
4.	Copy of demand notice dtd. 13-09-2019 issued under Section 13(2) of the SARFAESI Act, 2002 along with postal receipt and service proof
5.	Copy of Possession Notice as well as Panchnama drawn at the time of taking symbolic possession of the property, Photographs and paper publication of possession notice, postal track report
6.	Statement of account

Submissions on behalf of the applicant

- [3] The Ld. Advocate on behalf of the applicant has argued as per the averment made in the application.
- [4] Following points are framed for determination of this case:-

ISSUES

Sr. No.	Points for determination
1)	Whether the applicant Bank is entitled to get the relief as claimed in the application ?
2)	What order ?

- [5] My findings for the above issues are as under :-

Sr. No.	Findings
1)	In Affirmative.
2)	As per final order.

Reasons for the Decision

- [6] Before determination of this case, it would be necessary refer some of the pronouncements governing the determination of an application filed under Section 14 of the SARFAESI Act, 2002. The Hon'ble Supreme Court in "**Standard Chartered Bank v. V. Noble Kumar**" reported in (2013) 9 SCC 620 has held as under;

21. *Under the scheme of Section 14, a secured creditor who desires to seek the assistance of the State's coercive power for obtaining possession of the secured asset is required to make a request in writing to the Chief Metropolitan Magistrate or District Magistrate within whose jurisdiction, the secured asset is located praying that the secured asset and other documents relating thereto may be taken possession thereof. The language of Section 14 originally enacted purportedly obliged the Magistrate receiving a request under Section 14 to take possession of the secured assets and documents, if any,*

related thereto in terms of the request received by him without any further scrutiny of the matter.

22 *However, the Bombay High Court in Trade Well v.Indian Bank [2007 Cri LJ 2544 (Bom)] opined:*

“2. ... CMM/DM acting under Section 14 of the NPA Act is not required to give notice either to the borrower or to the third party.

3. He has to only verify from the bank or financial institution whether notice under Section 13(2) of the NPA Act is given or not and whether the secured assets fall within his jurisdiction. There is no adjudication of any kind at this stage.

4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under Section 14 of the NPA Act by recording that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under Section 14.”(emphasis supplied)

The said judgment was followed by the Madras High Court in Indian Overseas Bank v. Sree Aravindh Steels Ltd. [AIR 2009 Mad 10] Subsequently, Parliament inserted a proviso to Section 14(1) [“Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—(i) the aggregate amount of financial assistance granted and the total claim of the bank as on the date of filing the application; (ii) the borrower has created security interest over various properties and that the bank or financial institution is holding a valid and subsisting security interest over such properties and the claim of the bank or financial institution is within the limitation period; (iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above; (iv) the borrower has committed default in repayment of the financial assistance granted aggregating

the specified amount; (v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non- performing asset; (vi) affirming that the period of sixty days' notice as required by the provisions of sub-section (2) of Section 13, demanding payment of the defaulted financial assistance has been served on the borrower; (vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance representation had of been such objection communicated to or the borrower; (viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the authorised officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of Section 13 read with Section 14 of the principal Act; (ix) that the provisions of this Act and the rules made thereunder had been complied with: Provided further that on receipt of the affidavit from the authorised officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets. Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.”] and also sub-section (1-A) “14. (1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorise 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. (2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate 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.(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.”] by Act 1 of 2013.

25. *The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset.*

[7] The Hon'ble High Court of Gujarat has in case of **"IDBI Bank Ltd. through Authorized Officer v. District Magistrate"** reported at **2011 SCC Online Gujarat 1280** held as under;-

5. *So far as the first principal contention of the petitioner is concerned, the same merits consideration because the Chief Metropolitan Magistrate and the District Magistrate, under Section 14 of the Securitisation Act are not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor under Section 13(4), which can be assailed under Section 17 of the Securitisation Act by the aggrieved person. Under sub-section (3) of Section 14, the act of the Chief Metropolitan Magistrate or District Magistrate done in pursuance of the said section cannot be called in question in any court or before any authority. From the aforesaid provisions of law, it is evident that Chief Metropolitan Magistrate or District Magistrate is bound to assist the secured creditor in taking possession of the secured assets.*

6. *The Authority who is called upon to act under Section 14 of the Securitisation Act can only assist, nay, is bound to assist the secured creditor in taking possession of the secured asset. As the Chief Metropolitan Magistrate and District Magistrate under Section 14 is not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor under Section 13(4), which may be assailed under Section 17 of the Act by the aggrieved person, under sub-section (3) of Section 14 of the Securitisation Act, the act of the Chief Metropolitan Magistrate or District Magistrate done in pursuance of said Section cannot be called in question in any court or before any authority. It is evident from the provisions of law that, the District Magistrate while bound to assist the secured creditor in taking possession of the secured assets and to take the possession of the documents relating thereto and forward such assets and documents to the secured creditor, he is not empowered to decide the question of genuinity or propriety of such documents, including the document signed or agreed between the borrower and the secured creditor.*

[8] Further, the Hon'ble Supreme Court has in **Indian Bank v. D. Visalakshi** reported in **(2019) 20 SCC 47** held as under;

52. *Applying the principle underlying this decision, it must follow that substitution of functionaries (CMM as CJM) qua the administrative and executive or so to say non-judicial functions discharged by them in light of the provisions of the Code of Criminal Procedure, would not be inconsistent with Section 14 of the 2002 Act; nay, it would be a permissible approach in the matter of interpretation thereof and would further the legislative intent having regard to the subject and object of the enactment. That would be a meaningful, purposive and contextual construction of Section 14 of the 2002 Act, to include CJM as being competent to assist the secured creditor to take possession of the secured asset.*

54. *To sum-up, we hold that Chief Judicial Magistrate is equally competent to deal with the application moved by the secured creditor under Section 14 of the Act.*

[9] The Hon'ble Bombay High Court in **CA. Manisha Mehta and ors. vs. The Board of Directors of Represented by its Managing Director of ICICI Bank and Ors.** reported in **AIRONLINE 2022 BOM 1846** held as under;

8. *Pertinently, Section 14 of the SARFAESI Act was amended twice, once in 2013 and then again in 2016. If it were the intention of the legislature to extend opportunity of hearing to a borrower before the District Magistrate/Chief Metropolitan Magistrate, as the case may be, it was free to do so. Advisedly, the legislature did not do so, for, it would have militated against the scheme of the SARFAESI Act and more particularly, Section 13 thereof. It is implicit in the scheme of the SARFAESI Act that natural justice, only to a limited extent, is available and not beyond what is expressly provided. There seems to be little merit in the argument advanced by Mr. Nedumpara and we hold that the language of **Section 14 is too clear and unambiguous, and does not admit of any requirement of complying with natural justice by putting the borrower on notice while an application thereunder is under consideration.***

[10] The Hon'ble High Court of Gujarat in **Devani Jagdishbhai Dahyabhai (Third Party) v. District Magistrate Surat** reported in **LAWS(GJH)-2018-12-26** held as under:-

“27. *I do not find any merit in the contention that the District Magistrate should have provided an opportunity of hearing to the writ applicant in the proceedings under Section 14 of the SARFAESI Act. The Supreme Court in the case of Harshad Govardhan Sondagar (supra) and Vishal N. Kalsaria vs. Bank of*

India [(2016) 3 SCC 762] has not laid down the law that the borrower or any aggrieved person may also be extended an opportunity of hearing in the proceedings under Section 14 of the SARFAESI Act.”

[11] As per the recent judgment of Hon'ble Supreme Court of India in case of **M/s R.D. Jain vs. Capital First Ltd.** dtd. 27.07.2022, this Court being Additional Chief Judicial Magistrate is also covered under provision of SARFAESI Act, in terms of "Chief Judicial Magistrate". Therefore, this Court has been empowered by the said judgment.

[12] Considering the material produced by the applicant Bank and perusing the affidavit submitted by the authorized officer of the applicant, it transpires to this Court that, the applicant has satisfied the requirement of Section 14 of the SARFAESI Act so as to entitle it to have assistance of this Court. The secured asset has been situated within the jurisdiction of this court. As per the pronouncement of Hon'ble Supreme Court in **Indian Bank (supra)**, the Additional Chief Judicial Magistrate is also empowered to entertain the application filed under Section 14 of the SARFAESI Act. So, in view of the aforesaid reasons and discussion, my finding on **Issue No.1** is in **“Affirmative.”** So far as Issue No.2 is concerned, I hereby pass the following final order in the interest of justice;-

:- FINAL ORDER :-

- 1) The present application of applicant is hereby **allowed**.
- 2) I authorize Mr. P.V. Raval, Superintendent/Assistant to act as the Court Commissioner under Section 14(1-A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

- 3) Court Commissioner is directed to take possession of asset and forward such asset to the secured creditor. The description of such asset is as under:-

DESCRIPTION OF MORTGAGED SECURED ASSETS

All that piece and parcels of land bearing Property No.1169, Flat No.406 admeasuring 62.71 Sq. Mtrs. located at 4th Floor in Block “A” Ratnatrayi Near Village Lake Godhavi, Taluka Sanand, District Ahmedabad.

If the secured assets is found in closed condition, the Court Commissioner may take possession of this secured assets by breaking /opening the lock OR may take any other steps he may think fit.

After taking the possession of the secured assets, the Court Commissioner shall prepare the inventory of any item, documents relating to the assets if found in secured assets and handover the same to the applicant.

- 4) Copy of this order be sent to the concerned Police Station. The Police Inspector of the concerned police station under whose Jurisdiction, the aforesaid secured assets is situated, shall provide necessary police assistance/protection to Court Commissioner on the date appointed by the Court Commissioner for taking possession of the secured assets.
- 5) The Applicant shall complete all the necessary formalities for seeking police protection and also bear the expenses thereof.
- 6) The Court Commissioner may take or cause to be taken such steps and use or cause to be used such force, as may, in her opinion be necessary.

- 7) The Applicant shall bear the expenses incurred in taking possession of the secured assets and shall provide all necessary assistance to the Court Commissioner in taking possession of the secured assets.
- 8) The Applicant is hereby directed at present to deposit lump-sum amount of **Rs.20,000/-** (Rs. Twenty Thousand only) towards the expenses and remuneration of Court Commissioner, within 01 month from the date of order. If this amount is not deposited within 15 days, this order shall be deemed to be canceled automatically. On depositing the above amount in the Court, the Court Commissioner is directed to complete the said procedure within **90 days or within** the time limit extended by the Court and submit the compliance report of completion of proceedings.

The Court Commissioner shall carry-out the said proceedings on public holiday or except Court working hours.

Pronounced & signed in the open Court today on this 11th day of March, 2026 at Sanand.

Date: 11-03-2026

Place: Sanand.

(Ronakben Saurabhbhai Shah)
Additional Chief Judicial Magistrate,
Sanand, Ahmedabad (Rural).
Code No.GJ 00941.