



सत्यमेव जयते

Received on	:	30.05.2026
Registered on	:	30.05.2026
Decided on	:	21.07.2026
Duration	:	Day(s) Month(s) Year(s)
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IN THE COURT OF 2nd ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, BHAVNAGAR.

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Criminal Misc. Application No.1188 of 2026

Ex. ____

Applicant(s) :-

Nido Home Finance Ltd.,
Through it's authorized officer
Shree Parth Thakkar,

Having its Branch Office at :
3rd Floor, 3rd Eye Vision Building,
Opp. Shivalik Plaza, Lim - Panjrapole Road,
Ahmedabad - 380015.

Versus

Opponent(s) :-

- 1) **Ashwinbhai Kishorbhai Makwana**
- 2) **Ashaben Ashwinbhai Makwana**

Both Add.: Block No.301, Wing - B,
Plot No.652/2, Gautam Park Apartment,
Deri Road, Bhavnagar - 364001.



Subject: The Application filed under Section 14 of the SARFESI Act, 2002

Appearance:

Mr. N. V. Chauhan, Learned Advocate for the plaintiff.
opponents – absent.

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

1. The present application has been filed by the applicant against the opponents under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "**SARFESI Act**" in short) for taking possession of secured asset as defined in section 2(zc) of the SARFESI Act as 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(zd) of the SARFESI Act and the opponents are borrower / mortgagor as defined under section 2(f) of the SARFESI Act. The applicant has been notified as financial institution for the purpose of the SARFESI Act. It is further averred in the application that the applicant has satisfied all the requirement of section 14 of the SARFESI Act and the applicant's authorised officer has submitted his affidavit to that effect. Hence, the present application.



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 SARFESI Act and has submitted following documents in support of his application.

<u>Documentary Evidence</u>		
Mark 3/1	-	Copy of SARFAESI Notification & Copy of Certificate of Incorporation
Mark 3/2	-	Copy of Board Resolution
Mark 3/3	-	Copy of Loan Documents
Mark 3/4	-	Copy of Loan Agreement
Mark 3/5	-	Copy of Account & Foreclosure Statement
Mark 3/6	-	Copy of Notice u/s 13(2)
Mark 3/7	-	Copy of Notice u/s 13(4)
Mark 3/8	-	Copy of Registered Sale-Deed No.5136/2020
Mark 3/9	-	Copy of Mortgage Deed No.96/2021

SUBMISSIONS ON BEHALF OF THE APPLICANT

3. The Ld. Advocate on behalf of the applicant has argued as per the averments made in the application.



4. Following points are framed for determination of this case:-

1. Whether the applicant is entitled to get the relief as claimed in the application?

2. What Order ?

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

1. Affirmative

2. As per final order.

6. Before determination of this case, it would be necessary to refer some of the pronouncements governing the determination of an application filed under section 14 of the SARFESI 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;

24. 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, 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 asset and documents, if any, related thereto in terms of the request received by him without any further scrutiny of the matter.



25. However, the Bombay High Court in the case of Trade Well v. Indian Bank [2007 CrIJ 2544] 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 3rd party.

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.

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."

25.1 The said judgment was followed by the Madras High Court in the case of Indian Overseas Bank v. M/s. Sri Aravindh Steels Ltd. [AIR 2009 Mad. 10]. Subsequently, Parliament inserted a proviso to section 14(1) and also sub-section 1 A1131 by Act 1 of 2013.

26. We must make it clear that these provisions were not in existence on the date of the order impugned in the instant proceedings. These amendments are made to provide safeguards to the interest of borrower. These provisions stipulate that a secured creditor who is seeking the intervention of the Magistrate under section 14 is required



to file an affidavit furnishing the information contemplated under various sub-clauses (i) to (ix) of the proviso and obligates the Magistrate to pass suitable orders regarding taking of the possession of the secured assets only after being satisfied with the contents of the affidavits.

27. An analysis of the 9 sub-clauses of the proviso which deal with the information that is required to be furnished in the affidavit filed by the secured creditor indicates in substance that (i) there was a loan transaction under which a borrower is liable to repay the loan amount with interest, (ii) there is a security interest created in a secured asset belonging to the borrower, (iii) that the borrower committed default in the repayment, (iv) that a notice Contemplated under section 13.(2) was in fact issued, (v) in spite of such a notice, the borrower did not make the repayment, (vi) the objections of the borrower had in fact been considered and rejected, (vii) the reasons for such rejection had been communicated to the borrower etc.

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 "**IDBI Bank Ltd through Authorized Signatory Vs. District Magistrate**" reported at 2011 SCC OnLine Guj 1280 held as under;

"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. 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 subsection (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. 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 CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act."

9. Considering the material produced by the applicant and perusing the affidavit submitted by the authorised officer of the applicant, it transpires to this court that the applicant has satisfied the requirement of Section 14 of the SARFESI Act so as to entitle it to have assistance of this Court. The secured asset has been situated within the jurisdiction of this court. The applicant has given notice under Section 13(2) of SARFESI Act to the opponents which was duly served upon them, but as per the say of the applicant, they neither responded nor complied. The applicant has also given symbolic possession notice to the opponents. As per the pronouncement of Hon'ble Supreme Court in Indian Bank Case (*supra*), the Chief Judicial Magistrate is also empowered to entertain the application filed under Section 14 of the SARFESI Act. So, in view of the aforesaid reasons and discussion, my finding on issue No.1 is in affirmative. So far as to issue No.2 is



concerned, I hereby pass following final order in the interest of justice :

:- FINAL ORDER :-

1. The Application of the applicant is hereby allowed.
2. I authorize, **Mr. A. J. Gohil, Deputy Registrar of Principal Senior Civil Court, Bhavnagar**, to act as Court Commissioner/s under section-14(1-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
3. Court Commissioner/s are 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 PROPERTY/SECURED ASSET:

4. ALL THAT THE PIECE AND PARCEL OF IMMOVABLE PROPERTY OF RESIDENTIAL FLAT No. 301 ADMEASURING 52.13 SQ. MTRS BUILT-UP, PLOT NO. 652/2, C.S.T. WARD NO. 5, SHEET NO. 138, SURVEY NO. 5066 PAIKI, SITUATED AT THIRD FLOOR, "GAUTAM PARK", KNOWN AS "KRUSHNANAGAR", DAIRY ROAD, TALUKA & DISTRICT - BHAVNAGAR IN THE STATE OF GUJARAT. Further details of the property are as under:-

East side:-	ENTRANCE PASSAGE & FLAT No. 304
West side:-	MARGIN THEN PLOT No. 649
North side:-	FLAT No. 302, WING - B
South side:-	MARGIN THEN PLOT No. 653



- I. If the secured asset/s are found in closed condition, the Court Commissioner/s may take possession of this secured asset/s by breaking / opening the lock or may take any other steps they may think fit.
- II. After taking the possession of the secured asset/s, The Court Commissioner/s shall prepare the inventory of any item, Documents relating to the asset/s if found in secured Asset/s and handover the same to the applicant.
- III. The concerned Police Inspector (PI) of the concerned Police Station under whose jurisdiction the aforesaid secured assets is situated shall provide necessary Police assistance / protection to the Court Commissioner for taking possession of secured assets as per *the Circular of Ministry of Home Affairs bearing no. SB-II, GNH/112017/998-PART FILE, dated 03-12-2020*. The applicant bank shall complete the necessary formalities for seeking Police protection and also bear the expenses thereof.
- IV. The Applicant shall complete the necessary formalities for seeking police protection and also bear the expenses thereof.
- V. The Court Commissioner/s 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.
- VI. Copy of this Order be sent to the concerned Police Station.
- VII. Applicant shall bear the expenses incurred in taking possession of the secured asset/s and shall provide all necessary assistance to the court commissioner/s in taking possession of the secured assets.
- VIII. Applicant has deposited lump-sum amount of **Rs.20,000/-** towards the expenses and remuneration of court commissioner/s, hence, Commission Statement



be issued accordingly and once the Commission Statement issued, the above said lump-sum amount will not be refunded.

- IX. Any further process regarding the present case, parties has to approach the Court personally and no any telephonic or written correspondence will be entertained.
- X. On issuance of the above said Commission Statement by the registry, the Court Commissioner/s 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.
- XI. The court commissioner/s shall carry out the said proceedings on public holidays or except court working hours.

Pronounced in open court on 21st July, 2026.

B H A V N A G A R. { **MAYURKUMAR D. BRAHMBHATT** }

2nd ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, BHAVNAGAR
UNIQUE ID CODE NO.GJ01008.

DATE : 21.07.2026

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