Registered on	26	05	2026
Filing on	26	05	2026
Disposed on	02	06	2026
Duration	<u>Y</u>	<u>M</u>	<u>D</u>
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IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE & ADDL. CHIEF JUDI. MAGI., JHALOD, DIST. DAHOD

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<u>CRMA. No. 223/2026</u>

<u>Exh.</u>

<u>In the matter of :</u>

AU Small Finance Bank

A Company registered under the

Companies Act, 1956.

Branch Office At:

404 - 406, Golden Icon Building,

Opp. BSNL Office, Race Course

Circle, Vadodara. Ta. & Dist.

Vadodara.

Through its Authorized Officer

Mr. Manmohan S. Kshatriya

...Applicant

<u>Versus</u>

1. **Smt. Jigishaben W/o Late Shri Devendrabhai Tekchandbhai Kalal**

2. **Tekchand Nyalchand Kalal**

(Both are Co-Borrowers and Legal Heirs of Late Shri Devendrabhai Tekchandbhai Kalal)

Residing At: Balaiya,Ta. Fatepura, Dist.: Dahod - 389190.

...Opponents

Ld. Advocate For the Applicant: Mr. D.K.Chauhan

Ld. Advocate for the opponents : --

SUB: An application U/s.1 4 of the Securi-tization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT) for taking Possession of Immovable Property(Secured Assets)

-:ORDER:-

(1) The applicant has preferred the present application under Section- 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as "the SARFAESI Act, 2002" for convenience) for taking possession of secured assets.

(2) The brief facts of the application are that :

i. The Applicant AU Small Finance Bank Limited (Formerly known as AU Financiers (India) Limited), a Banking Company Registered Under the Company Act 1956, working under the National Housing Bank as par Act 1987 and having its Reg. Office 19-A, Dhuleswar Garden, Ajmer Road, Jaipur- 302001, Rajasthan and branch office at 404-406, Golden Icon Building, Opp. BSNL Office, Race Course Circle, Vadodara, Ta. Dist. Vadodara, Gujarat.

ii. Mr. Manmohan S. Kshatriya, the Authorised Officer of AU Small Finance Bank Limited - Vadodara Branch having been authorised to exercise the powers of secured creditors under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act).

iii. It is submitted that (1) **Smt. Jigishaben W/o Late Devendrabhai Tekchandbhai Kalal** (Co-Borrower), (2) **Tekchand Nyalchand Kalal** (Co-Borrower) had availed home Loan facilities from applicant AU Small Finance Bank Ltd. from their branch aggregating to Rs. 10,00,000/- (Rs. Ten Lakhs Only) under Loan Account No. L9001060123558110 on dated 26/02/2021.

iv. That the opponents committed default in repayment of the Financial Assistance and the borrowers failed and neglected to operate the accounts and failed to pay the interest as and when accrued due, the dues were not paid, the repayment was irregular and the credit facilities account was not in order. The applicant has classified the account of the borrowers as "Non-Performing Asset" on dtd. 08/09/2025 under loan Account: L9001060123558110.

v. That in pursuance of provisions of the said Act, the authorized officer has proceeded for action under the SARFAESI Act, 2002 and thereafter Original Lender has issued demand notice dated 25/02/2026 to the borrowers under Section- 13(2) of the SARFAESI Act, 2002 in spite of such notice, the borrowers have failed to repay and discharge their liabilities to the Bank in full. The total dues payable by the respondents to the Bank is Rs. 07,31,610/- under Loan Account No. L9001060123558110 as on 25/02/2026 under all loan account together with further interest on the outstanding amount mentioned above, except Additional Interest and Incidental Charges, Cost, Charges, Expenses etc. Calling upon with further interest thereon at a contractual rate as per the loan agreement till the date of actual payment within the statutory period of 60 days from the date of the said notice. However, opponents failed to comply and discharge the liability in full within the period specified in section 13(2) of the SARFESI Act, 2002 i.e. within 60 days.

vi. The Applicant intends to take possession of the secured assets for effecting sale, transfer of the said secured assets to recover its secured debt. Hence, the present application is made under section 14 of SARFESI Act, 2002 by the applicant bank. Thus, the applicant has filed the present application and prayed to pass an order and appoint subordinate officer to take the possession of the property described in Para 5 of the application, as per the provision of section 14 & 14(1-A) of SARFESI Act, 2002 and to deliver the possession to the applicant for the purpose of enforcing the security interest and to realise the secured debt or part thereof by effecting the sale of the secured assets and take all necessary steps including breaking open the lock and to use cause to be used such police force as this subordinate officer to break, open the lock or fix the door and apply its lock.

(3) Heard learned advocate for the applicant. Perused the record of the case.

(4) Having perusal of the record of the case, it transpires that the present application has been preferred under Section- 14 of the SARFAESI Act, 2002 for taking possession of Secured Assets,

more particularly stated in Para 15 of the application i.e. **"PROPERTY SITUATED AT - GRAM PANCHAYAT MILKAT NO. 445, OLD MILKAT NO. 359, 260.22 SQ.MTRS, PAIKI NORTH SIDE 65.05 SQ.MTRS, KHATA NO. 14, SURVEY NO. 124 PAIKI, POST - BALAIYA, TEHSIL - FATEPURA, DIST. - DAHOD, GUJARAT."**

and bounded as under:

East : Balaiya Santrampur Highway,

West : Land of Labana Isvarbhai,

North : Land of Labana Isvarbhai,

South : Remaining Milkat After Milkat No. 359.

At this juncture, I would like to reproduce Section-14 of the SARFAESI Act, 2002 which is as under:

"Section-14. 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.

1.a take possession of such asset and documents relating thereto; and

1.b forward such asset 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."

Thus, considering the Section- 14 of SARFAESI Act, 2002, the Chief Judicial Magistrate is empowered to take possession of such asset and documents relating thereto and forward such asset and documents to the secured creditor.

(5) The Hon'ble Supreme Court in the case of The Authorised Officer, Indian Bank V/s. D Visalakshi and another, Civil Appeal No.6295/2015 has held that "*Chief Judicial Magistrate is equally competent to deal with the application moved by the secured creditor U/s. 14 of the SARFAESI Act, 2002*".

i *Hon'ble Gujarat High Court in the case of IDBI Bank Limited V/s. District Magistrate and another, Special Civil Application No.215/2011 has held in para 5 that "The Chief Metropolitan Magistrate and the District Magistrate, under Section-14 of the Securitisation Act are not empowered to decide the question or legality and property 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." Further it is held in para 8 that "All such determination is to be made by the Debts Recovery Tribunal including the question whether the asset is a secured asset or not and the Chief Metropolitan Magistrate or the District Magistrate has not been empowered to adjudicate such dispute, but is directed only to assist the secured creditor in taking possession of the secured asset. If they are not empowered to adjudicate the dispute, they cannot also call for the secured creditor to produce any document to decide whether the asset is secured asset or not, which will be futile exercise in absence of power to adjudicate such issues."*

ii *Moreover, the Hon'ble Supreme Court in the case of Standard Chartered Bank versus V. Noble Kumar and others, Criminal Appeal No.1218/2013 (arising out of Special Leave Petition (Criminal) No.2038/2011 in para 25 has held that "However, the Bombay High Court in the case of TradeWell v. Indian Bank [2007 CriLJ 2544].*

(6) Having considered Section-14 as well as the decisions of the Hon'ble Supreme Court and Hon'ble High Court of Gujarat, what is required is that the application by the secured creditor shall be accompanied by affidavit duly affirmed by the authorized officer of the secured creditor and notice under Section-13(2) of the SARFAESI Act, 2002 is to be issued. If both the conditions satisfy then order can be passed under Section-14 of the SARFAESI Act, 2002.

i Now looking to the record of the case, it transpires that the applicant is a secured creditor, and it also transpires that the affidavit has also been appended with the application.

ii Moreover, looking to the secured asset, which is mentioned more particularly in Para 15 of the Application, it appears that it is within the jurisdiction of this Court. Therefore, this Court is empowered to assist the secured creditor (applicant) for taking possession of secured asset mentioned in Para 15 of the Application.

(7) Moreover, in the case of Chandramohan and other V/s. Chief Metropolitan Magistrate, Egmore, Chennai, 2015 (3) D.C.R., the Hon'ble High Court has held that;

"As per Section- 14 of the Act, the secured creditor can approach the Chief Metropolitan Magistrate/District Magistrate to take possession of the assets and documents of the secured creditor. Chief Metropolitan Magistrate, instead of personally visiting the spot to take possession of assets and documents, can very well appoint the Advocate Commissioner to visit on his behalf, as in the case of issuing of commissions under the Civil Procedure Code, as it is not possible for the Chief Metropolitan Magistrate/District Magistrate to visit personally to take possession."

(8) Moreover, the Hon'ble Gujarat High Court in the case of Kotak Mahindra Bank Limited V/s. S.B.I. and another, Special Criminal Application No.6631/2016 has held that;

"Having heard the learned counsel appearing for the parties and having gone through the material on record, I find substance to a limited extent in the submission of the learned counsel appearing for the applicant bank. In the impugned order, I have notice that, the learned Magistrate has not authorized to appoint an officer subordinate to him to access the secured creditor in taking over the possession of the secured assets."

(9) Considering the principles laid down in the aforesaid judgments and Section-14(1)(a) of the SARFAESI Act, 2002, it is very much clear that the Chief Metropolitan Magistrate shall not personally visit the spot for taking possession of assets and documents and can very well appoint the commissioner to visit on his behalf. Thus, commissioner is required to be appointed.

(10) In view of the foregoing discussion, I am of the opinion that the present application having merits, is required to be allowed. Hence, the following order.

-:: <u>O R D E R</u> ::-

1 The Application of the applicant is hereby allowed.

2 Under Section-14(1)(a) of the SARFAESI Act, 2002, **Mr. M.S.Muniya**, Bench Clerk Gr. III, Addl. Sr. Civil Court, Jhalod is hereby appointed as Commissioner for taking possession of secured assets i.e. **Property Described as:- "PROPERTY SITUATED AT - GRAM PANCHAYAT MILKAT NO. 445, OLD MILKAT NO. 359, 260.22 SQ.MTRS, PAIKI NORTH SIDE 65.05 SQ.MTRS, KHATA NO. 14, SURVEY NO. 124 PAIKI, POST - BALAIYA, TEHSIL - FATEPURA, DIST. - DAHOD, GUJARAT."**

and bounded as under:

East : Balaiya Santrampur Highway,

West : Land of Labana Isvarbhai,

North : Land of Labana Isvarbhai,

South : Remaining Milkat After Milkat No. 359.

3 Court commissioner is hereby directed to draw necessary panchnama in presence of impartial and independent panchs and handover the possession of the said property to the authorized person of the applicant.

4 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.

5 After taking the possession of the secured assets, 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.

6 The concerned Police Inspector of the concerned police station under whose Jurisdiction, the aforesaid Secured Assets is situated, shall provide necessary Police Assistance/protection to the Court Commissioner on the date appointed by the Court Commissioner for taking possession of the secured assets, as per the **Circular of Home Department, Bearing No. SB-II, GNH/112017/998-PART FILE Dated 03rd December 2020. As per said circular when the question of giving police protection under the SARFAESI Act, arise, at that time, the police authority shall not record any statement of any person nor should call any person to police station for recording the statement and police shall provide the police assistant to the secured creditor. On production of the copy of this order before the concerned police station. The police inspector of the concerned Police Station, shall provide police protection within 30 days from the receipt of the copy of this Court order.** The

Applicant Bank shall complete the necessary formalities for seeking police protection and also bear the expenses thereof. The Court Commissioner 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. Copy of this Order be sent to the concerned Police Station.

7 Applicant shall bear the expenses in accordance with 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 Court Commissioner is directed to complete the said procedure within 60 days or within the time limit extended by the court and submit the compliance report of completion of proceedings.

9 The court commissioner shall carry out the said proceedings on public holidays or except court working hours.

Signed and Pronounced in the open court, today, on this **02nd** day of **June**, **2026** at Jhalod, Dist. Dahod.

Date : 02/06/2026 **(Bharatkumar Vitthalbhai Parmar)**
Place: Jhalod Addl. Chief Judicial Magistrate,
Jhalod
Judge Code No. GJ 00939

D.M.Aswani