

GJJM020012692026



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**IN THE COURT OF 3RD ADDITIONAL CHIEF JUDICIAL  
MAGISTRATE, AT: JAMNAGAR.**

**Criminal Misc. Application No. 389 of 2026**

**Exh : 9**

**Assets Care and Reconstruction Enterprise Ltd.,**

Through its Authorized Officer

**Mr. Shyamal Soni**

**Having its Registered Office at:**

Unit No.502, 5th Floor, C - Wing, One BKC Building,

Plot No. C-66, G Block, Bandra Kurla Complex,

Bandra, Mumbai - Maharashtra.

**...Applicant**

**V E R S U S**

- 1) **New Rupali Dresses (Borrower)**  
**Add:** Near New School, Nr. Hawaii Chowk,  
Os. Khambhalia Gate, Opp. 4 Digvijay Plot,  
Police Choki Road, Jamnagar.
  - 2) **Darshit Chandrakantbhai Shah (Co-Borrower)**
  - 3) **Piyush Maheshchandra Shah (Co-Borrower)**  
**Add.:** Nr. Central Bank, Chandi Bazar, Taal Fali,  
Jamnagar.
  - 4) **Tejal D Shah (Co-Borrower)**
  - 5) **Sarojben Chandrakantbhai Shah (Co-Borrower)**  
**No.2, 4 & 5 Add.:** 105, Shashanam Apartment,  
Mahalaxmi Chowk, Pandya Fali,  
Jamnagar.
- Also at:**  
**New Rupali Dresses**

**Add:** Near New School, Nr. Hawaii Chowk,  
Os. Khambhalia Gate, Opp. 4 Digvijay Plot,  
Police Choki Road, Jamnagar.

**...Opponents**

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**Sub:- Application u/Sec. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.**  
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**Appearance :-**

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Learned Advocate Mr. S. H. Savaliya for the Applicant.  
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**:-: J U D G M E N T :-:**

1. The brief facts of the present application are as follows:
  - 1.1. The Applicant is a Company incorporated under the under the provisions of the Companies Act, 1956 and is registered as an Asset Reconstruction Company with Reserve Bank of India under Section 3 of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as "*the Act*"), having its office at the address mentioned in case title. The Applicant states that the financial assets in question were originally granted by YES BANK LTD. (hereinafter referred to as the "*Original Lender*"). Subsequently, pursuant to a valid Assignment Agreement, the said financial assets were assigned in favour of JC Flowers Asset Reconstruction Pvt Ltd., (hereinafter referred to as the "*Assignor*"). The Applicant further submits that thereafter, by virtue of a duly executed

Assignment Agreement, the Applicant has acquired the said financial assets along with all underlying securities, rights, title and interest from the Assignor, thereby stepping into the shoes of the Original Lender/Assignor.

2. The Applicant respectfully submits that, in exercise of powers conferred under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Mamlatdar and Executive Magistrate, after due consideration of the application filed by the Applicant under Section 14 of the Act, has been pleased to pass an order directing the concerned authority to take possession of the secured asset and to hand over the same to the Applicant Bank. Pursuant to the said order, the applicant is entitled to obtain physical possession of the secured property with the assistance of the concerned authorities, in accordance with.
3. That the applicant, by way of present application, seeks to invoke the jurisdiction of this Hon'ble Court in respect of the security interest created in its favour, the particulars whereof are set out herein below. That, the applicant has taken over the debt due and payable by the opponents to the "Assignor" pursuant to a valid and subsisting Deed of Assignment of Debt Agreement dated 11/04/2025, in its capacity as **Trustee of ACRE-166-Trust**, in accordance with the provisions of Section 5 of the SARFAESI Act, 2002. That, pursuant to the aforesaid assignment, the

Applicant has stepped into the shoes of the Assignor in respect of the financial assets pertaining to the loan accounts of the opponents and has consequently become entitled to recover the entire dues from the opponent by enforcing all securities, including the mortgaged property. That, the present application is being preferred for and on behalf of the Applicant through its Authorized Officer, who has been duly authorized and empowered by the applicant to institute the present proceedings. The Authorized Officer is well conversant with the facts and circumstances of the present case, ab borne out from the records maintained by the Applicant, and is therefore competent to file and prosecute the present application on behalf of the applicant.

4. The Applicant states that the opponent had applied for financial assistance by way of credit facilities to the Assignor, and that the Assignor, relying upon the representations made by the opponent, sanctioned credit facilities of Total amount Rs. 54,94,490/- being Rs. 47,94,490/- vide Loan Account No. MOR053300790987 and Rs.7,00,000/- vide Loan Account No. MOR053300816744 in favour of the opponents on certain terms and conditions. The opponents herein approached the Applicant for availing a loan facility. Accordingly, the Applicant sanctioned and disbursed a loan amount of **Rs. 54,94,490/-** being **Rs. 47,94,490/- vide Loan Account No.**

**MOR053300790987** and **Rs.7,00,000/- vide Loan Account No. MOR053300816744**. The Applicant submits that, at the time of availing the aforesaid loan facility, the opponents executed the necessary loan documents in favour of the Applicant. Thus, all the opponents are jointly and severally liable as Borrower / Co-Borrower / Guarantor/Mortgagor for repayment of the outstanding amount in the said loan account. The Applicant further submits that, in order to secure repayment of the aforesaid credit facility, the borrower/opponent created a valid mortgage in favour of the Applicant over the property owned by the opponents herein, more particularly described hereunder (hereinafter referred to as the "*the said property*") by executing a Deed of Mortgage.

**All that piece and parcel of the Immovable Property bearing Shop No. 1, Adm. 13.02 Sq. Mtrs., together with Commercial Godown adm. 14.86 Sq. Mtrs., Total Adm. 27.88 Sq. Mtrs., bearing Old City Survey No. 395/H/2 and New City Survey No. 1273, of Sheet No. 405 of Ward No. 14, located Near New English School, Outside Khambhaliya Gate, Jamnagar.**

5. The opponents had agreed to repay the loan amount by way of equated monthly installments. However, owing to the defaults committed by the opponents in discharging their repayment obligations, the loan account of the opponents was classified as a **Non-Performing Assets i.e.**

**NPA as on 14/11/2021**, in accordance with the guidelines issued by the Reserve Bank of India. The Assignor Bank, thereafter, initiated proceedings under the provisions of the SARFAESI Act, 2002, and issued a Demand Notice dated **14/12/2021** u/Sec. 13(2) of the SARFAESI Act, calling upon the opponents to pay a sum of **Rs. 58,82,913.18/-** due and payable as on 09/12/2021, alongwith further interest, charges, and costs as specified in the said notice, within a period of 60 days from the date of receipt thereof. The said Demand Notice was duly served upon the opponents by Registered Post and, in addition, by affixed at the mortgaged property and by way of paper publication, in accordance with law. That by virtue of the said Demand Notice, the opponents were called upon to pay the entire outstanding dues within a period of 60 days. All the requirements as contemplated u/Sec. 13(2) of the SARFAESI Act were duly complied with. Despite receipt of the said notice, the opponents failed and neglected to pay the outstanding dues till date. The opponents were further informed that, in the event of failure to repay the outstanding dues, the security interest would be enforced by taking possession of the secured property. As the opponents failed to comply with the Demand Notice and did not discharge and liabilities in full within the period specified u/Sec. 13(2) of the SARFAESI Act, the Assignor Bank/Applicant became entitled to enforce the security interest in the property mentioned hereinabove.

6. That accordingly, the Assignor Bank / Applicant became entitled to take possession of the secured assets of the opponents, namely the said property, and further acquired the right to transfer the same by way of lease, assignment, or sale, and to exercise all other remedies available u/Sec. 13(4) of the SARFAESI Act for the purpose of realization of the secured debt. That thereafter, the Assignor Bank / Applicant, in exercise of the powers conferred u/Sec. 13(4) of the SARFAESI Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002, took symbolic possession of the secured property on 02/03/2022. The symbolic possession notice was duly affixed on the said property in accordance with the requirements of law. The Assignor Bank/Applicant apprehend that upon failure of opponent to hand over the peaceful possession of the secured asset, the applicants on their own may not be able to secure the peaceful possession. The Applicant submits that Section 14 of the SARFAESI Act specifically empowers the Additional Chief Judicial Magistrate or District Magistrate, within whose jurisdiction the secured asset or documents relating thereto are situated or found, to take possession of such secured asset upon a request made by the secured creditor. Hence, the present application is filed seeking possession of the secured asset and the documents relating thereto under the provision of the SARFAESI Act.

7. The borrower/opponent has obstructed and failed to hand over the physical possession of the secured assets to the Applicant and/or its authorized officer. Further, there is a reasonable apprehension of breach of law and order while taking possession of the secured asset under the Act. The applicant submits that it had duly intimated the opponents to hand over possession of the secured asset and thereafter made sincere and repeated attempts to obtain the same; however, the opponents have failed and neglected to hand over possession. The applicant is, therefore, constrained to seek necessary orders from this Hon'ble Court for assistance in taking and handing over possession of the said secured asset. The Applicant has also sought assistance of the police force of the concerned police station, as the Applicant apprehends physical resistance and a likelihood of breach of peace by the opponents-borrowers at the time of taking over possession of the secured asset. The applicant has, therefore, prayed for an order directing handing over of physical possession of the secured asset to the applicant. The Applicant further seeks a direction permitting the police authorities and the Authorized Officer nominated by the Applicant to break open the lock, if any, and to dispossess any illegal or unauthorized occupant, with the assistance of the police force, while taking possession of the secured asset, in the interest of justice.

8. The Applicant has, along with the application, produced the documents mentioned in the documentary evidence list, vide Exhibit 3.
9. On perusal of documents produced by Applicant along with the application, it appears that notice u/Sec. 13(2) of the SARFAESI Act was sent by registered post A.D. Applicant has produced copy of Demand Notice u/Sec. 13(2) at page No. 324 to 330. Further, in support of service of notice applicant has produced copy of Postal Department receipts and Track Consignment report vide Page No. 332 to 346. Officer of Applicant has stated in affidavit given in support of application that the period of 60 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 opponents and still he has not made full payment, so also, objection or representation in reply to demand notice is not received from the opponents/borrowers as well as mortgagor. On perusal of description of the property as mentioned in para-2 of affidavit, it appears that the secured asset is situated at - Immovable Property bearing Shop No. 1, Old City Survey No. 395/H/2 and New City Survey No. 1273, Sheet No. 405 of Ward No. 14, Nr. New English School, Outside Khambhaliya Gate, Jamnagar and, therefore, this property is situated within jurisdiction of this Court and, therefore, this Court has jurisdiction to decide this application.

10. That, the Applicant most humbly submits before this Hon'ble Authority that the Applicant had filed an application under Section 14 of the SARFAESI Act, 2002, seeking assistance for taking possession of the mortgaged property against the borrowers/opponents in the above mentioned matter, being DM/SARFAESI Reg. No. 122/2022. That this Hon'ble Authority was pleased to pass an order in favour of the applicant on 18/07/2022 in the said application. However, it is most respectfully submitted that the applicant has subsequently transferred all rights, title, and interest, along with the entire proceedings under the SARFAESI Act, to Assets Care and Reconstruction Enterprise Limited. In view of the above development, the applicant no longer wishes to pursue the present proceedings. The applicant, therefore, humbly prays that this Hon'ble Authority may kindly permit the withdrawal of the present application bearing DM/SARFAESI Reg. No. 122/2022, in the interest of justice.

11. The Hon'ble Gujarat High Court in the case of ***IDBI BANK LTD Vs. DISTRICT MAGISTRATE AND OTHERS*** has held in Para No.8(xi) as under :-

8 (xi). "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 issue.

Under Clauses (a) and (b) of Section 14(1), the Chief Metropolitan Magistrate or the District Magistrate and on request, are bound to take possession of the secured assets as also the documents relating thereto. If the documents are to be obtained by them, the question of asking the secured creditor to produce the document in all cases does not arise. Therefore, they do not have jurisdiction even to call for the documents.

12. Hon'ble Supreme Court has in the case of *Authorised Officer Indian Bank Vs. D. Visa Lakshmi* has held in para 48 as under :

To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly,

it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (Banks).

13. Upon perusal of the documents it appears that the sufficient opportunity has been given by the Applicant to the Opponent to repay the outstanding amount hence considering the above facts of the application and the judgment of Hon'ble High Court of Gujarat and the judgment of Hon'ble Supreme Court, this Court is empowered to pass the order to take the possession under Section 14(1)-A of the SARFAESI Act.
14. Moreover, Hon'ble Allahabad High Court has held in the judgment of *Shipra Hotels Ltd. and Anr. Vs. State of U.P. Para - 51* that C.M.M. or D.M. is not required to give notice to borrower before passing order u/Sec.14(1) of SARFAESI Act and held that the C.M.M. has to consider only two aspect:
  - (i) Whether the property situated within the local jurisdiction of C.M.M. ?
  - (ii) Whether the provision of notice u/Sec. 13(2) of SARFAESI Act is complied with or not ?

In the case on hand, the secured assets is situated within jurisdiction of this Court and notice u/Sec. 13(2) of the SARFAESI Act has been served upon the Opponent and therefore this Court has not issued notice to the Opponent/borrower.

15. Upon perusal of the documents attached with application it appears that Applicant has given enough opportunity to the Opponents to repay the outstanding amount and notice has been duly served to the Opponents, in spite of that he has failed to repay the outstanding amount of the Applicant. Looking to the ratio laid down by Hon'ble Supreme Court, Hon'ble High Court of Gujarat and Hon'ble Allahabad High Court, this Court is empowered to pass the order to take the possession under Section 14(1)-A of the SARFAESI Act, and therefore, following order is passed in the interest of justice :

**:-: FINAL ORDER :-:**

1. The present application is hereby allowed.
2. **Ms. K. J. Sanchala** (Superintendent) in the Court of 7th Additional Senior Civil Judge, Jamnagar is hereby appointed as Court Commissioner to take the proceedings under Section 14(1-A) of SARFAESI Act.
3. The applicant officer shall remain present during proceedings.
4. The Court Commissioner shall take possession of the Residential Property and hand over to the applicant.

**:-: Description of the Mortgaged Property :-:**

**All that piece and parcel of the Immovable Property bearing Shop No. 1, Adm. 13.02 Sq. Mtrs., together**

**with Commercial Godown Adm. 14.86 Sq. Mtrs., Total Adm. 27.88 Sq. Mtrs., bearing Old City Survey No. 395/H/2 and New City Survey No. 1273 in Sheet No. 405 of Ward No. 14, located Near New English School, Outside Khambhaliya Gate, Jamnagar.**

<b>North</b>	<b>Public Road</b>
<b>South</b>	<b>Passage of Raval Fali</b>
<b>East</b>	<b>Property of Arvind Dhirajlal Jishar</b>
<b>West</b>	<b>Roop Darshan Show Room</b>

5. If the house is found locked, the Court Commissioner shall take possession by breaking / opening the lock or in any other manner and note thereof shall be made in writing.
6. The Court Commissioner is directed to complete the said procedure and for that 15 days notice has to be given to the opponents before taking possession. So, that opponent gets sufficient time to shift his/her goods/movable properties in the secured property to another place and also can create an alternative arrangement for his residential or business. After giving notice to the opponent, possession shall be handed over to the authorized officer of the applicant and submit the compliance report of completion of proceedings.
7. After taking possession, any materials, documents or things if found an inventory of the same shall be prepared and the same shall be handed over to the Applicant.

8. The assistance of the police official of the concerned Police Station in the jurisdiction of which the property is located be made available to the Court Commissioner while taking possession. The Court Commissioner shall be entitled to take necessary action for the purpose.
9. The applicant shall bear the costs of recovering the possession as well as the required assistance shall be provided to the Court Commissioner.
10. The applicant has deposited **Rs. 12,000/-** vide **Register G - 11 on 04/04/2026** towards the expense and remuneration of the Court Commissioner.
11. The said work shall be executed by the Court Commissioner during public holidays or after Court hours.

Signed and pronounced in open Court today on this  
16<sup>th</sup> day of April, 2026.

**Date :** 16/04/2026

**Place:** Jamnagar

**[ Bhadresh Hasmukhlal Gandhi ]**

3<sup>rd</sup> Addl. Chief Judicial Magistrate,  
Jamnagar.

Judge Code: GJ00957