MHTH030228402026

ORDER BELOW EXH. 1
(Passed on 25th August 2026)

This is an application under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act).

2. It is the contention of the applicant that the notice under section 13(2) of the SARFAESI Act dated **09.01.2026** has already been served to the non applicants, however they failed to comply it. In the background prayed for allotting the possession of the secured asset.

3. The applicant then proceeded to take action as provided in section 13(4) of the SARFESAEI Act for which it required possession of the secured asset of the respondents. For this purpose as per the provisions of section 14 of the SARFESAEI Act, this application is filed with a request to provide assistance for taking possession of the secured asset.

4. The Hon'ble Supreme Court in **Authorized Officer, Indian Bank Vs. Visa Lakshi reported in 2019 (20) SCC 47,** observed that the application under section 14 of the SARFAESI Act, can be filed even before the Chief Judicial Magistrate. Therefore this court is well within its jurisdiction to entertain the present application.

5. It is necessary to see that the application has been accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor. The affidavit shall declare the aggregate amount of financial assistance and the total claim of the Bank as on the date of filing of the application. The affidavit shall contain the following :

i] The borrower created security interest over properties and the Bank or financial institution is holding a valid and subsisting security interest over such property,

ii] there must be a declaration in the affidavit that the claim of the Bank or Financial Institution is within the limitation period,

iii] details of the properties over which security interest is created must be supplied,

iv] there must be default by the borrower in repayment of the financial assistance and the account of the borrower must be classified as a non performing asset,

v] notice under section 13(2) of the SARFAESI Act must have or representation has been communicated to the borrower,

vi] the affidavit must further declare that objection or representation in reply if any to the notice has been duly considered and reasons for non acceptance of such objection,

vii] the borrower must have failed to make repayment of the financial assistance inspite of the notice under section 13(2) of the SARFAESI Act and therefore, the bank or financial institution must be entitled to take possession of the secured assets.

6. The Hon'ble Supreme Court further in **C. Bright Vs. District Magistrate (2021)2 SCC 392,** has held that "The provision of the SARFAESI Act empowering District Magistrates/CMM to take possession of secured assets of defaulting borrowers within 60 days period for handing them over to the lending financial institutions is 'directory' and not "mandatory"in nature as banks cannot be made to suffer for the delay on the part of the government officers. It is held that inability to take possession within time limit does not render the District Magistrate/CMM 'Functus Officio'. Therefore, irrespective of there being some delay caused due to unavoidable situations, this authority is not powerless to provide assistance as required under section 14 of the SARFAESI Act."

7. Scrutinized and perused the contents of the application, affidavit as required by the proviso to section 14 and the entire record produced with the application. As such the above referred requirements vide section 14 of the SARFAESI ACT, are found duly complied. I am satisfied that the respondents are the borrower of the applicant and have created security interest in the property mentioned in the application in favor of the applicant. I am further satisfied that the applicant is holding a valid and subsisting security interest over the property. The claim of the applicant is within the limitation period. The borrower is seen to have committed default in repayment of the financial assistance and the account of the borrower has been classified as a non performing asset.

8. In the background the applicant is entitled to take possession of the secured assets. As per the provision of section 14 of the SARFAESI Act, 2002 any subordinate officer can be appointed for the purpose of assisting the applicant for delivery of possession of the secured asset. The property is secured asset and is situated within the local limits of this court. The Advocate can accordingly be appointed for the purpose of a completing the task as required by the section 14 of the Act. Hence, considering the submissions of the learned advocate for the applicant, the following order.

ORDER

1) Application is allowed.

2) Advocate **Vishal Jain** is appointed as a "Court Commissioner" to take possession of the secured assets, viz., **" All that peace and parcel of property bearing Flat no.305, 3rd Floor, A Wing SPM Dreamcity Phase 1 Survey No.52 Hissa No. 4/5 Village – Pale Ta. Ambernath Badlapur – Katai Road Ambernath East Near Precious Empire Behind Anandsagar Water Resort 421501 Kalyan Thane Maharashtra. East- Property of survey no.52, Hissa no.4/2 & hissa no.5, West – Property pof survey no.45, North- Property of survey no.52, Hissa No.4/1 Hissa no.6, South – Remaining Part of survey no.52, Hissa no.4/5."** as mentioned in the schedule of property, by taking such steps and using such force including breaking open the lock thereof or taking assistance of concerned Police Station, if required, at the expenses of the applicant and shall deliver possession thereof along with documents/articles, if any, found therein to the authorized officer of the applicant after preparing panchnama and taking inventory of the secured asset.

3) Issue writ of commission accordingly on payment of P.F. and Rs.15,000/- (Rupees fifteen thousand only) inclusive of traveling expenses towards the commission fee directly to the Court Commissioner within 15 days from the date of order. Court Commissioner to file the compliance report within 45 days from the date of receipt of the Writ.

4) Applicant to give contact details of authorized person within 10 days with whom Court Commissioner to cordinate.

SACHIN BHAGWAT SHIRSATH
Digitally signed by SACHIN BHAGWAT SHIRSATH
Date: 2026.08.25 15:23:23 +0530

Place : Thane
Date : 25/08/2026

(S.B. Shirsath)
ACJM, Thane
(Court No.11)