

Criminal Misc. Application No. 108/2026

Order Below Exh.1

- [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 **IDFC First Bank Ltd.** is a Banking Company within the meaning of Sec. 2 (1) (c) of SARFAESI Act. The Applicant company is a “Secured Creditor” within the meaning of Section-2(1)(zd) of the SARFAESI Act, 2002 and vested with all the powers, authorities, right and title to pursue proceedings under the provisions of the SARFAESI Act, 2002 in order to realise the dues outstanding in the said Loan Accounts.
 - (ii). That the Opponents applied for Credit Facilities against assets, more particularly described in application and had executed all requisite documents for the same and availed in financial assistance from the Applicant.

- (iii). That Original Lender has sanctioned Credit Facility to the opponents.
- (iv). That the opponents committed default in repayment of the Credit Facilities and failed to make payment of outstanding amounts due and payable as per terms and conditions of the Loan Agreement. Thus, this account is declared as N.P. account.
- (v). That in pursuance of provisions of the said Act, the authorised officer has proceeded for action under the SARFAESI Act, 2002 and thereafter, Original Lender has issued demand **Notice dated 17/09/2025 to the Opponents under Section-13(2) of the SARFAESI Act, 2002**, calling upon them to make payment within period of 60 days from the date of the said notice. However, opponents failed to comply and discharge the liability within the period of 60 days. Therefore, Symbolic Possession of Secured Assets more particularly described in application, was taken by the Authorised Officer of the Original Lender and published the Symbolic Possession Notice under Section-13(4) of the SARFAESI Act, 2002 in local newspapers both in English and Gujarati.

- (vi). That the Opponents have interested in denying the recovery proceeding initiated by the Applicant under the SARFAESI Act, 2002. Thus, the Applicant has filed the present Application and prayed to pass an Order and appoint sub-ordinate Officer to take over physical possession of the Secured Assets mentioned in application, through police force, if necessary and direct the sub-ordinate Officer to hand over the possession of above mentioned Secured Assets to the Applicant company and also allowed the sub-ordinate officer to break, open the lock or fix the door and apply its lock.
- [3]. Heard Ld. 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 application i.e. ***“That all piece and parcel of residential property bearing City Survey No. 1082, area admeasuring 36.17 Sq. Mtrs. and City Survey No. 1081, area admeasuring 26.52 Sq. Mtrs. Village Authority Property No. 1983 and 1985, total area admeasuring of both property is 62.69 Sq. Mtrs., situated at Bhathiji Temple Area, Moje-Uttarsanda,***

Tal: Nadiad, Dist: Kheda."

[5]. 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-*

(a) take possession of such asset and documents relating thereto; and

(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.

[6]. 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] 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.
 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.”

[7]. 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 authorised 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, they published a public notice in Daily Newspaper, which is appended herewith 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 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 application.

- [8]. 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.”*
- [9]. 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 authorised to appoint an officer subordinate to him to access the secured creditor in taking over the possession of the secured assets.”

- [10]. 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.
- [11]. 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.

-:: ORDER ::-

- (1). The present application stands **ALLOWED**.
- (2). Under Section-14(1)(a) of the SARFAESI Act, 2002, **Mr. P. G. Makwana, Bailiff, Civil Court, Nadiad** is hereby appointed as Commissioner for taking possession of secured asset i.e. ***“That all piece and parcel of residential property bearing City Survey No. 1082, area admeasuring 36.17 Sq. Mtrs. and City Survey No. 1081, area admeasuring 26.52 Sq. Mtrs. Village Authority Property No. 1983 and 1985, total area admeasuring of both property is 62.69 Sq. Mtrs., situated at Bhathiji Temple Area, Moje-Uttarsanda, Tal: Nadiad, Dist: Kheda”***

- (3). Court Commissioner is hereby directed to draw necessary Panchnama in presence of impartial and independent Panchas and handover the possession of the **said** property to the authorised person of the Applicant.
- (4). The Court Commissioner is also empowered to break or open the lock if any, or to take assistance of the police of the concerned police station, if any.
- (5). The Applicant is hereby directed to deposit **Rs. 15,000/- (Rupees Fifteen Thousand Only)** as remuneration in the Court within **30 days** from the date of order.
- (i). After depositing the remuneration, the Court Commissioner is to proceed for taking the possession **within 1 Month** and submit his report to the Court.
- (ii). The Court Commissioner is entitled to withdraw the said remuneration after completion of the process.
- (iii). The Court Commissioner is directed to proceed the same process on public holiday.
- (iv). Commission Patra be issued in the name of Court Commissioner.

Pronounced in the open court today i.e. 18th day of April, 2026.

Date : 18/04/2026
Place : Nadiad

(J. P. Parmar)
Chief Judicial Magistrate, Nadiad
GJ01017