

(1)

Cr.M.A. No.338/2025

Received on : 23.12.2025

Registered on: 23.12.2025

Declared on : 04.05.2026

Duration : YY-MM-DD
: 00 -04 -12

Cr. M. A. No.338/2025

Exhibit -

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, MAHISAGAR AT LUNAWADA.**

Applicant(s)

AU Small Finance Bank Ltd.

(Through its Authorized Officer **Mr. Darshak Kumar P Pandya**)

Branch Address : 404-406, Golden Icon Building,

Oppo. BSNL Office, Race Course Circle, At-Vadodara

Opponents

1. Kachhiya Tusharkumar Nanalal (Borrower)

Age-47 Year,

2. Kachhiya Kokilaben Nanalal (Co-Borrower)

Age-64 Years,

3. Kachhiya Jaykumar Tusharbhai (Co-Borrower)

Age-24 Years,

All are R/o. Chhapaiyadham Society, Vardhari Road,

At Po.-Lunawada, Dist.- Mahisagar.

Appearance :-

Ld. Advocate **Mr. N. M. Soni** for the applicant.

No any notice has been issued to opponents before passing order
as under **Ex-parte**.

**Subject :-Application U/sec.14 of the Securitization and
Reconstruction of Financial Assets and Enforcement of**

Security Interest Act, 2002 taking possession of immovable Property (Secured Assets).

ORDER

- (1) The brief facts of the applicant's application is that the opponents had received the loan of Rs.23,00,000/- while taking loan the opponent had mortgaged his property situated at Moje Lunawada, City Survey No.152 (Old Revenue Survey No.132+132 Paiki 134, 134 Paiki 135, 135 Paiki), Plot No.96 admeasuring 645.60 sq. mts. which immovable property bearing Municipal Property No.428, Old Municipal Property No.428/5/389, with construction situated in Chhapaiyadham Society, Vardhari Road, At Po. & Tal.-Lunawada, Dist.-Mahisagar. Therefore, as per the application, the opponent No.1 mortgaged his property under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred as SARFAESI Act). Moreover, the opponent Nos.2 and 3 are co-borrowers respectively. The applicant further submitted that the opponents failed to make the payment of the aforesaid facility and therefore their account as Non-performing Asset (NPA) on 09/07/2025. On 11/07/2025, Rs.23,94,138/- (NPA) on outstanding liabilities upon opponents with interest and therefore notice under Sec.13 as per the Act was issued even though the notice was served the opponents had not paid any amount therefore for the recovery of Rs.23,94,138/- due on date 11/07/2025. Therefore, the present application filed by the applicant.

- (2) With the application, learned Advocate for the applicant had submitted the list of documents and also filed affidavit and in his argument he stated that the notice served to the opponents as per the Act under Sec.13(2) and even though the possession of the suit- property was not handed over by the opponents. Therefore, the applicant filed the present application under Sec.14 of the Act. “CJM is equally competent to deal with the application moved by the secured creditor under section 14 of the SARFAESI Act, 2002”. The learned Advocate for the applicant further stated in his argument that there is no requirement to hear the opponents for deciding the application under Sec.14 of the Act as the court can directly allow the application of the applicant as per the Act.
- (3) The applicant has filed the affidavit (Mr. Darshak Kumar P Pandya) along with documents which are as under :-

Sr. No.	Particulars
1.	Copy of Resolution passed by Board of Directors in favour of Authorized Officer by Applicant Company/Bank
2.	Copy of Loan Agreement executed by Respondents
3.	Copy of Mortgage Deed of Secured Asset
4.	Copy of notice issued u/s.13(2) of SARFAESI Act along with postal dispatch proof and copy of public notice in news paper
5.	Statement of account
6.	Sale-deed of Secured Asset

(4) In the case of *Equitas Small Finance Bank Limited Through its Authorized Signatory Mr. Suryakant Rawat v/s. The State of Madhya Pradesh Principal Secretary Law and Legislature Affairs Vallabh Bhawan Bhopal Writ Petition No.26176 of 2023* it was held by Hon'ble High Court of MP as well as by the Hon'ble Apex Court that the Chief Judicial Magistrate has to consider two aspects before passing an order u/Sec.14 of the SARFAESI Act :-

- (1) To determine whether secured assets fall within their territorial jurisdiction?
- (2) Whether notice u/Sec.13(2) of the SARFAESI Act has been furnished?

(5) As per the description of the property mentioned by the applicant, it appears that the property situated in the jurisdiction of this Court and so far the notice under Sec.13(2) is concerned, the applicant had published a notice in news paper English & Gujarati edition in 'Financial Express' published on 12/09/2025. He had produced that demand notice copy is sent by registered post RPAD to the opponents. So, above two issues are covered but the Sec.14 of the SARFAESI Act which is required to be considered before passing any order under Sec.14 of the Act which is as under :-

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.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

- (6)** In the Judgment Shipra Hotels Limited And Anther vs. State of U.P. and 3 Others. Hon'ble Court held that "The CMM/DM/Authorized Officer under Section 14 is only an extended hand of the secured creditor to help the secured creditor in taking physical possession of the secured asset being administrative authorities. Clauses (a) and (b) of sub-section (1) of Section 14 make it clear that the Authorized Officer/CMM/DM while invoking its jurisdiction is required to take possession of such asset and forward it to the secured creditor." Moreover, in same judgment in para-15 are as under :- "It was held in V. Noble Kumar (Supra) that since the borrower has no right of hearing when the secured creditor takes possession under Section 13(4), no hearing can be demanded by a borrower when by his action in resisting possession being gained over by the authorized officer of the secured creditor or refusing to deliver possession on his own, he

compels such officer to seek assistance of the Authorized Officers under Section 14. The right to approach the tribunal is conferred on a borrower in terms of Section 17, post possession, whether it is symbolic possession under Section 13(4) or physical possession under Section 14 of the Act, 2002. The scheme of SARFAESI Act' 2002, thus, does not admit of any requirement of complying with natural justice by putting the borrower on notice while an application under Section 14 is under consideration. In view of the efficacious mechanism under the Act being in place, the borrower cannot seek a right of hearing at an intermediary stage.”

- (7) The authorized person of the applicant Mr. Darshak Kumar P Pandya has filed an affidavit and in his affidavit he has stated that the aggregate amount of financial assistance granted is Rs.23,00,000/- to the borrowers by the secured creditor and the total claim of the applicant Bank is as on 11/07/2025 towards the borrowers is Rs.23,94,138/-. It was also stated that they had fixed the notice under Sec.13(2) SARFAESI Act even though the borrowers have not paid the amount. On relying the affidavit of the Authorized Officer of the applicant and documents produced along with application this Court has only to perform the administrative act. So far the provision of the SARFAESI Act is applicable and as discussed above the present case to applicant is entitled to get assistance. Therefore, final order accordingly.

ORDER

- (1) The present application of the applicant is hereby allowed.
- (2) Mr. R. D. Chauhan, Head Clerk, Principal Senior Civil Court, Lunawada is appointed as a Court Commissioner for assistance to the applicant for taking the possession from the borrowers of the secured property under Section 14(1A) of the SARFAESI Act.
- (3) The applicant is directed to deposit the cost of Rs.15,000/- (Rupees Fifteen Thousand Only) as Court Commissioner's fees within 30 days from this order.
- (4) No order as to cost.
- (5) Criminal Misc. Application is dispose off accordingly.

Signed and pronounced in the open court today on this
04th Day of May, 2026.

Date : 04-05-2026

Lunawada.

(P. C. Soni)

Add.Chief Judicial Magistrate,

Mahisagar @ Lunawada.

{GJ00848}

DKumar