

GJPM020000212026



IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, GODHRA.
DIST.PANCHMAHAL.

CRMA No.05 of 2026

EXHIBIT NO.

Applicant:

AU SMALL FINANCE BANK

A Company registered under the Companies Act 1956,

Branch Office at:

404-406, Golden Icon Building,

Opp.BSNL Office, Rase Course Circle, At-Vadodara.

Through its Authorized Officer

Shri Viralkumar K.Patel, Age 39 years.

VERSUS

Opponents:

1) Baria Arjunsinh Shankarbhai, Age 56 years (Borrower)

2) Baria Lilaben Arjunsinh, Age 55 years (Co-Borrower)

Both are Residing at : House No.116/ Kasudi Railway Station

Faliya, At Jafrabad, Ta.Godhra,

Dist.Panchmahal-389001

Property Situated at:

House No.116 admeasuring 1117.00 sq.ft. Plot area along with

present and future construction lies in the gamtal limit of village

Jafrabad, Ta. Godhra, Dist.Panchmahal.

Appearance :

(1)Learned Advocate for the Applicant : **Mr.Nilesh M.Soni**

(2)Learned Advocate for the Opponents: **N.A**

Sub: Application U/s. 14 of the Securitization and Recons truction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT)

ORDER

1. Present Application is submitted by the applicant U/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT) on the ground that, Opponents approached the Applicant for availing the Mortgage Loan. The applicants has sanctioned the said facility to the tune of Rs.5,00,000/- (Rupees Five Lac Only) for loan agreement No.19660000108729. Opponents had mortgaged the property as mentioned in the present application.
2. The applicant has submitted that opponent has failed to make the repayment of the dues therefore, account of the opponents were/have been classified as NPA on 08/09/2023.
3. The applicant issued notice U/s. 13(2) of the SARFAESI on 31/07/2024. The said notice was duly served upon the opponent. That by way of the said notice the opponent was called upon to pay Rs.4,87,139/- (Rupees Four Lac Eighty Seven Thousand One Hundred Thirty Nine Only) for the above mentioned loan account

number as on 31/07/2024. With further interest and charges till the date of realization of payment within the statutory period of 60 days from the date of the said notice, is due as outstanding. However, the borrower has failed to repay the same.

4. Learned Advocate for the Applicant remained present. Perused the Record.
5. Looking to the application which is filed by authorized person of applicant with affidavit. There is also produced the Track Consignment, so it is clearly show that the notice is issued by the applicant and that is served on address. The applicant has also support that fact from his application with affidavit such as completely followed procedure.
6. Further More herein also required to note that in such application no required to issue notice the respondent as well as also not necessary to hear the such parties. Hon'ble Bombay High court has also held that no required to hear respondent for convenient read out this order that para is put here as under.

**Jaibharat Synthetics Limited Versus State Bank Of India,
A Government Of India Undertaking**

10. Looking to the scheme of the Act; the non-obstante clauses introduced to give overriding effect to the provisions of the Act in the interest of a healthy and growth oriented economy in India, as also the fact that civil Court under Section 34 of the Act is barred from entertaining any suit or

to grant injunction in respect of matters which are required to be determined by the Debts Recovery Tribunal or the Appellate Tribunal constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In our view, therefore, power under the extra-ordinary writ jurisdiction under Article 226 of the Constitution of India can be exercised sparingly and in exceptionally deserving cases, wherein the petitioner has made out a case that the secured creditor has failed to abide and follow any express legal provision, rule or regulation which is binding upon him, for which the petitioner is otherwise remediless. While the secured creditor, after the expiry of the notice period under Section 13(2) of the Act, is expected to take measures under Section 13(4) within a reasonable time, depending upon the facts of the case, after having considered the objections raised or the representation made, if any, by the borrower in view of Section 13(3A) of the Act and after communicating non-acceptance thereof to the borrower, the secured creditor (Banks or financial institutions, as the case may be) shall be enabled by machinery of law to overcome the problems arising from the asset liability mismatch, difficulties in the way of recovery of non-performing assets or to realise long term assets by managing problems of liquidity. Therefore, Section 14 of the Act provides for an assistance which the secured creditor may seek from the Chief Metropolitan Magistrate or the District Magistrate having jurisdiction over the local area where the secured assets are situated. In order

to take possession of assets and documents, the provisions under Section 14 enables the secured creditor to request the Chief Metropolitan Magistrate or the District Magistrate having jurisdiction in the local limits of the area to take requisite steps, including using or causing necessary force to be used for taking possession of the secured assets and documents and forwarding them to the secured creditor. The said provision is intended to ensure that the proceedings initiated under Section 13(2) of the Act are carried to its logical outcome. The provision do not contemplate judicial process or work as it does not involve any adjudicatory process and as such, therefore, the principles of natural justice are not attracted. In view of the observations by the Supreme Court (in para 56) of its decision in *M/s. Transcore V/s. Union of India* (supra), if a borrower is dispossessed unlawfully or not in accordance with the provisions of the Act, then the Debts Recovery Tribunal is entitled to put the clock back by restoring the status quo ante. Therefore, it cannot be said that if possession is taken before the confirmation of sale, the rights of the borrower to get the dispute adjudicated upon is defeated by the authorised officer taking possession. In view of the non-adjudicatory process under Section 14, it would be erroneous to say that the rights of the borrower would stand defeated without adjudication.

7. In view of the Judgment of the Hon'ble Supreme Court **M/S R.D Jain and Co. Versus Capital First Ltd & Ors** *it is held that :-*

“ 8.1 However, for taking physical possession of the secured assets in terms of [Section 14\(1\)](#) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under [Section 14\(1\)](#) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in [Section 14\(1\)](#) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. As mandated by [Section 14](#) of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment. As observed and held by this Court in the case of [NKGSB Cooperative Bank Ltd.](#) (supra), the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the advocate commissioner who is considered as an officer of his/her court. [Section 14](#) does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. Thus, we reiterate that the step to be taken by the CMM/DM under [Section 14](#) of the SARFAESI Act,

is a ministerial step. While disposing of the application under [Section 14](#) of the SARFAESI Act, no element of quasjudicial function or application of mind would require. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, [Section 14](#) does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets.”

8. Upon perusal of record, I am satisfied that the contents of the affidavit are fully supported by the documents produced. That apart, sufficient time has been given by the applicant to the opponents to make repayment of the outstanding dues but opponent has not paid the outstanding amount. Hence, considering the above facts of the application and in view of the above Judgments of the Hon'ble Supreme Court and the Hon'ble High court, this court has no power to adjudicate the dispute between the parties. Hence, passed the following order :

ORDER

- 1) The Application of the applicant is hereby allowed.
- 2) I authorize, Ms. Alka C. Bilwal as Court Commissioner U/s. 14 (1-A), Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. (In short SARFAESI ACT).
- 3) Court Commissioner is directed to take possession of properties mentioned in the present application. The description of the properties are as under:-

All that Piece and Parcel of House No.116 admeasuring 1117.00 sq.ft. Plot area along with present and future construction lies in the gamtal limit of village Jafrabad, Ta. Godhra, Dist.Panchmahal owned by Baria Arjunsinh Shankarbhai.

Property Bounded as under:

East : House of Rajubhai Arjunsinh

West : Road & Open Farm

North : House of Bharatbhai Shankarbhai

South : House of Juvanbhai Shankarbhai

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 she 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) Hereby directed to Superintendent of police as well as the concerned Police Inspector of the concerned police station under whose Jurisdiction, the aforesaid Secured Assets is situated, shall provide necessary police Assistance / protection as per rule to the Court Commissioner on the date appointed by the Court Commissioner for taking possession of the secured assets.

- 7) Applicant shall bear the expenses 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) Applicant is hereby directed at present to deposit lump sum amount of Rs.10,000/- towards the remuneration of Court Commissioner, within One Month from the date of Order, if not paid. On depositing the above said amount in the court, the Court Commissioner is directed to complete the said procedure within 90 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.

Pronounced in the open court today on 13th March, 2026

Date: 13/03/2026
Place: Godhra

[K.P.Thakor]
Chief Judicial Magistrate,
Godhra,Panchmahal
Code No. GJ01168.