GJPM040004632026

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Decided on : 13.08.2026

Duration : Y-00 M-05 D-05

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IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE, PANCHMAHAL AT HALOL.

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Exh.5

Criminal Misc. Application No.87 of 2026

Applicant
HDFC Bank Limited,
Having its Branch Office at :-
HDFC House, Trident, Race Course, Vadodara.
Through its authorized officer :-
Mr. Miteshkumar Khakhkhar,
Age : 32 Years.

VERSUS

Opponents:

1. Mr. Baria Arvindbhai Abhesinh (Borrower)

Address : SE Power Limited, Survey No 54/B, Pratapnagar, Jarod Savli Road, Samlaya, Vadodara.

Also Resi. At : 139, Baria Faliyu, Guneli, Meroni M, Guneli (Meroni Muvadi) Panchmahal-389350.

2. Mrs. Bariya Niruben (Co-Borrower).

Resi. At : 492/G, Baria Faliyu, Guneli, Guneli Panchmahal-389350.

Both opponents are also Resi. At : Unit 133/B, Vrishti Residency, Opp. Ramnagar, Behind Nishtha Vidhya Mandir, Godhra Bypass Road, Ta Halol, Dist Panchmahals.

Appearance :
LA. for the applicant : Mr. P. J. Soni.

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

J U D G E M E N T

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 have approached the applicant for availing the home loan facility. The applicant-bank has sanctioned the said facility total to the tune of Rs.11,00,000/-. Opponents had mortgaged the property as mentioned in Schedule of the the present application.

2. The applicant has submitted that opponents have failed to make the repayment of the dues therefore, account of the opponents has been classified as NPA on 03/09/2025.

3. The applicant issued public demand notices U/s. 13(2) of the SARFAESI Act against both the opponents in two local news papers on date 02.10.2025. That by way of the said notices the opponents were called upon to pay total outstanding due amount of Rs.10,55,902/- 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 notices, is due as outstanding. Thereafter, the applicant bank also issued possession notice U/s. 13(4) of the SARFAESI in two local newspapers on date 27.12.2025. Moreover, the employee of the applicant bank has also pasted the said possession notice over the property in

question.

4. Moreover, Hon'ble Madhya Pradesh High has held in case of **Uco Bank, Gwalior V/s Giriraj Ware House and Ors.** reported in AIR 2025 MP 91 that ; **Taking Possession of Secured Assets - Opportunity of hearing to borrower - Requirement** ; Ss. 13 and 14 of the act are interlinked. S.13 deals with enforcement of security interest and involves adjudication of rights, including issuance of notice to borrower. Therefore, once proceedings under S.13 are completed, there is no requirement for borrower to be heard again under S.14.

5. Perused the records of the case. Applicant has filed this application u/s 14 (1) of Sarfaesi Act which reads as under :

> *Section 14(1) reads as under: "Where the possession of any secured assets is required to be taken by the Secured Creditor.......xxxx Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or Chief Metropolitan Magistrate, as the case may be shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets [within a period of thirty days from the date of application] xxx*

6. In view of the Judgment of the Hon'ble Gujarat High Court as decided in ***SPECIAL CIVIL APPLICATION No. 215 OF 2011 IN case of IDBI BANK LTD VS. DISTRICT MAGISTRATE AND OTHERS Para No. 8 (xi)*** *it is held that :-*

(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."

7. Upon perusal of the Judgment of the Hon'ble High Court of Gujarat, the Chief Metropolitan Magistrate has very limited scope with respect to the cases U/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT). Hence, this Court cannot go into the merits of the claim. Further, it is also incumbent to take note of the judgment of Hon'ble Supreme Court between

M/s. R. D. Jain and Co. vs. Capital First Ltd. & Ors. in Civil Appeal No.175 of 2022 decided on dtd.27.07.202 wherein the question was related to that whether the District and Chief Metropolitan Magistrate referred in Section 14 of the said Act are *persona designata*. In para 12 the Hon'ble Supreme Court has stated that the District Magistrate and Chief Metropolitan Magistrate is not persona designata for the purpose of Section 14 of the SARFAESI Act. Thus, the expression "District Magistrate" and "Chief Metropolitan Magistrate" as per Section 14 shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purpose of Section 14 of the SARFAESI. So applying said ratio in the instant case, since the property in question lies in jurisdiction of this Court, so this Court being ACJM is equally competent to pass order under Section 14 of the said Act. So this Court firmly believes that as per above referred two citations of the Hon'ble Supreme Court, it possesses jurisdiction to deal with the application under Section 14 of the SARFAESI Act, 2002.

8. Accordingly, 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 opponents have not paid the outstanding amount. Hence, considering the above facts of the application and in view of the above Judgments, this Court has no power to adjudicate the

dispute between the parties. But as the opponents have not paid the dues against the mortgaged property to the applicant therefore as per Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, applicant is entitled to get the possession of the secured asset with the help of Court and Police Assistance. Hence, I passed the following order :-

O R D E R

1. The application of the applicant is hereby allowed.

2. I authorize, K. K. Thakarda Bailiff, of this Court as a 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 the property as mentioned in Schedule of the the present application.

All that piece and parcel of property being : Unit 133/B, Vrishti Residency, Survey No.1638, Opp. Ramnagar, Behind Nishtha Vidhya Mandir, Godhra Bypass Road, Ta Halol, Dist Panchmahals 389350. The said property is bounded as under:-

North	:	Plot No.133 A's land.
South	:	Plot No.134 A's land.
East	:	6.00 Mtrs. wide road.
West	:	Plot No.130 A's land.

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 he 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. The concerned Police Inspector of the concerned police station under whose Jurisdiction, the aforesaid Secured Assets is situated, shall provide necessary police Assistance / protection to the Court Commissioner on the date appointed by the Court Commissioner for taking possession of the secured assets, as per the **Circular of Home Department, Bearing No SB-II, GNH/112017/998-PART FILE Dated 3rd December 2020. As per said circular when the question of giving police protection under the SARFAESI Act, arise, at that time, the police authority shall not record any statement of any person nor should call any person to police station for recording the statement and police shall provide the police assistant to the secured creditor. On production of the copy of this order before the concerned police station. The police inspector of the concerned Police Station, shall provide police protection within 30 days from the receipt of the copy of this Court order.** The applicant bank shall complete the necessary formalities for seeking police protection and also bear the expenses thereof. The Court Commissioner 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. Copy of this Order be sent to the concerned Police Station.

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.15,000/- (Rupees Fifteen Thousand Only) towards the expenses and remuneration of Court Commissioner, within one month from the date of this Order. 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 13/08/2026.

Date : 13.08.2026.
Place: Halol.

[Rajeshkumar Batuklal Joshi]
Additional Chief Judicial Magistrate,
Panchmahals at Halol.
(Code No.GJ00952)

V. T. Desai