KABG020005942026

IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND C.J.M. AT BELAGAVI.

-: Present :-

Shri. Rachoti Mahagundappa Shirur
B.A. L.L.M., P.G.D. in F.D.R.
III Additional Senior Civil Judge
and C.J.M. Belagavi

Dated : This the 28th day of February, 2026

CRIMINAL MISCELLANEOUS No.107/2026

BETWEEN:

1. Canara Bank,
Nippani Branch,
Belagavi, represented by its authorized
Mr.K.G.Perumal.

... **Petitioner.**

(By Shri. M.P.Dharmoji., Advocate.)

AND:

1. Shri.Ramdas Sadashiv Narayankar
(Proprietor) H.No.2007, Dhor Galli,
Jatratves, Nippani, Belagavi-590016.

2. Shri.Tulasidas Sadashiv Narayankar
(Guarantor) H.No.2007, Dhor Galli,
Jatratves, Nippani, Belagavi-590016.

3. Shri.Chabutai Bandu Narayankar
(Guarantor) H.No.2007, Dhor Galli,
Jatratves, Nippani, Belagavi-590016.

4. Shri.Sadasiv Bandu Narayankar
(Guarantor) H.No.2007, Dhor Galli,
Jatratves, Nippani, Belagavi-590016.

5. Smt.Laxmi Sadasiv Narayankar
(Daughter of Guarantor) H.No.2007, Dhor Galli,
Jatratves, Nippani, Belagavi-590016.

6. Smt.Mahadevi Ashok Hutagikar,
(Daughter of Guarantor) H.No.2007, Dhor Galli,
Anand Vihar 2D Room 004, Bhavani Chouwk
Ambarnath East Thane-421501.

… **Respondents .**

ORDER UNDER SECTION 14 OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

This Petition is filed under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called as SARFAESI Act, 2002).

2 **Brief facts of the case are as under**:-

The petitioner is a 'secured creditor' and ‘Bank’ within the meaning of Sections 2(1)(c)(i) and 2(1)(zd) of SARFAESI Act.

3 Petitioner-Bank is represented by its authorized officer- Mr.K.G.Perumal.

4 Petitioner submitted that respondents approached Petitioner-Bank for working capital loan facility. Petitioner after perusal of all the documents, sanctioned loan under loan of Rs.10,00,000/- in favour of respondents under loan No.1395285003179 on 08.07.2015. Respondents executed necessary documents in favour of petitioner-Bank to secure the loan. Respondents created

equitable mortgage on petition schedule properties i.e., house properties bearing (1) house No.2007, property I.D. 06-01-08-37 and (2) House No.2011, property I.D. 06-01-08-45 both situated at Jatratves, Nippani Dist. Belagavi and executed the mortgage deed in favour of petitioner.

5 But, respondents failed to repay the equated monthly installments to petitioner-Bank. The said loan account of respondents classified as Non Performing Assets on 30.11.2019 as per directives and guidelines of R.B.I. Respondents are due of Rs.10,79,470/- as on 07.01.2020.

6 Petitioner issued Demand Notice on 07.01.2020 to respondents as per Section 13(2) of SARFAESI Act, 2002. The Demand Notice is duly served on respondents. Respondents failed to repay the said loan amount within 60 days of the said Notice.

7 Petitioner-Bank has issued possession notice dated 16.12.2020. Petitioner-Bank also published the Possession Notice in two daily news papers namely Deccan Herald and Prajawani dated 17.12.2020. Even then respondents have not repaid the loan amount or approached petitioner. Hence, petitioner-Bank filed this petition.

8 Petitioner-Bank also submitted that respondents have not delivered the physical possession of the petition schedule property in its favour. Hence, for

realization of debt petitioner-Bank has right under Section 13(4) of SARFAESI Act.

9 Petition schedule property is situated within the jurisdiction of this Court and this Court is having jurisdiction to decide the case and delivered the physical possession of the property under Section 14 of SARFAESI Act.

10 Hence, petitioner prays to allow the petition and to take physical possession of the mortgaged petition schedule property under Section 14 of SARFAESI Act and deliver the same for disposal in favour of petitioner-Bank for recovery of dues of the respondents.

11 The said authorized officer of petitioner-Bank also filed affidavit under Section 14(1) of SARFAESI Act, 2002 and disclosed as to compliance of the conditions stated in it and reiterated the contents of petition.

12 I went through **Mrs. Sunanda Kumari and another V/s Standard Charted Finance Company, 2006 SCC OnLine Kar 227: (2007) 2 Kant LJ 386: ILR 2007 Kar 16** wherein Hon'ble High Court of Karnataka held that:

> **"6. Regarding the question whether the Magistrate is required to issue notice to the borrower before passing an order under Section 14, we are of the view that, in the absence of any provision in the Act or the Rules framed thereunder requiring such notice, the Magistrate is not required to issue any notice to the borrower before passing an order under Section 14.**

Learned Counsel for the petitioners contended that even though there is no specific provision in the Act or the Rules requiring such notice, principles of natural justice require that a notice should be issued by the Magistrate before passing an order under Section 14. We are not inclined to agree with the above contention. The borrower is given a notice under Sub-section (2) of Section 13 which specifically says that if the liabilities are not discharged in full within 60 days from the date of notice the secured creditor shall be entitled to all or any of the rights as mentioned in Sub-section (4) of Section 13 of the Act. Again the borrower is given a reply under Sub-section (3A) stating why his representation or objection against the notice under Sub-section (2) is not acceptable and untenable. Thus the borrower has sufficient notice regarding the steps being initiated, the amount sought to be recovered and the consequences of not discharging the liability within the period stipulated in the notice under Sub-Section (2). In other words, the borrower is informed in advance that if the liabilities are not discharged within the stipulated period, the secured creditor will be resorting to any of the remedies available under Sub-section (4) of Section 13 of the Act and may file an application under Section 14 and the Magistrate may pass an order under Section 14. In our view, the above safeguards satisfy the principles of natural

> **justice and no further notice by the Magistrate is required before passing an order under Section 14.”**

13 Hence, in view of said decision of Hon’ble High Court of Karnataka and looking at facts and nature of petition the Notice on the petition is not issued to respondents as they already received Notices under Sections 13(2) and 13(4) of SARFAESI Act, 2002 and published the notice in said two daily news papers.

14 Petitioner produced the original documents relating to loan transaction.

15 I heard Shri.M.P.D. Advocate for petitioner Bank.

16 On the basis of contents of petition and after hearing Shri.M.P.D., Advocate for petitioner Bank, following points arise for my determination.

<u>POINTS</u>

1. Whether the Petitioner-Bank is entitled for taking possession of the secured asset which is described in the petition schedule?
2. What order?

17 I perused contents of petition, affidavit filed under Section 14(1) of SARFAESI Act, 2002 and all the materials placed on record and my findings on the above points are as under:

Point No.1 : In Affirmative.
Point No.2 : As per final order for the following:

REASONS

18 **Point No.1** :- I went through **Authorised Officer, Indian Finance Company V/s D. Visalakhi and Another, (2019) 20 SCC 47** wherein Hon'ble Supreme Court of India held that :

> **"52. Applying the principle underlying this decision, it must follow that substitution of functionaries (CMM as CJM) qua the administrative and executive or so to say non-judicial functions discharged by them in light of the provisions of Cr.P.C., would not be inconsistent with Section 14 of the 2002 Act; nay, it would be a permissible approach in the matter of interpretation thereof and would further the legislative intent having regard to the subject and object of the enactment. That would be a meaningful, purposive and contextual construction of Section 14 of the 2002 Act, to include CJM as being competent to assist the secured creditor to take possession of the secured asset.**
>
> **54. To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad**

> **and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (Banks).”**

19 In view of *ratio* laid down in the said case this Court is having jurisdiction to deal with and to pass appropriate orders on application filed under Section 14 of SARFAESI Act.

20 As per materials placed on record the petition schedule property i.e., secured asset is situated at Jatratves, Nippani, Dist. Belagavi. Hence, this Court is having jurisdiction to entertain and decide the petition.

21 As per Section 14 of SARFAESI Act, 2002 the Magistrate is not required to assess and evaluate the materials produced before him, but he has to satisfy himself on an affidavit filed under Section 14 (1) proviso of SARFAESI Act, 2002 as to passing suitable orders for the purpose of taking possession of secured asset.

22 Hence, as per clauses (i) to (ix) of first proviso to Sub-Section (1) of Section 14 of SARFAESI Act, 2002 the authorised officer of Financial Institution/Bank shall disclose the amount and other details in his affidavit. I perused the affidavit filed by the Mr.K.G.Perumal

authorized officer and representative of petitioner-Bank and he reiterated the contents of petition and fulfillment of provisions of Section 14 of SARFAESI Act, 2002.

23 Petitioner-Bank produced the original and photocopies of documents of loan transaction in support of his petition. Petitioner-Bank produced the authorization letter, Application Form for loan, Sanction Letter dated 08.07.2015, simple mortgage deed dated 30.06.2015, Deed of reconveyance of mortgage deed dated 03.02.2015, Demand Notice dated 07.01.2020, The Hindu and Vijayawani daily news paper dated 28.01.2020, Possession Notice dated 16.12.2020, The Deccan Herald and Vijayawani daily news papers dated 17.12.2020, Postal acknowledgments, Statement of Account and other connected loan documents.

24 Hence, looking at said documents, it *prima facie* appears that respondents borrowed the said amount on petition schedule property and furnished as a security for repayment of debt and it is a secured asset. Hence, the borrower/respondents have not repaid the said debt even after due service of Demand Notice dated 07.01.2020 and Symbolic Possession Notice dated 16.12.2020 under Sections 13(2) and 13(4) of SARFAESI Act respectively. Petitioner-Bank also published the demand notice and possession notice in The Hindu and Vijaywani daily news papers dated 28.01.2020 and Deccan Herald and

Prajawani daily news papers dated 17.12.2020 respectively for having issued the demand notice and taken the symbolic possession of the secured asset. Hence, petitioner-Bank having no other way approached this Court for enforcement of his rights against the secured asset for recovery of said debt. Hence, looking at the said affidavit and documents placed on record, petitioner-Bank has secured interest in the said secured asset for recovery of the said debt and it complied all the directions and guidelines issued under SARFAESI Act for obtaining the possession of the secured asset.

25 I went through **Balakrishna Rama Tarle (deceased) through L.Rs and Another V/s Phoenix Arc Pvt. Ltd., and Others, (2023) 1 SCC 662**, wherein Hon'ble Supreme Court of India held that:

> **16. 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 observed and held by this Court in the case of NKGSB Cooperative Bank Limited Vs. Subir Chakravarty & Ors., (2022) 10 SCC 286 the aforesaid act is a ministerial act. It cannot brook delay. Time is of the essence and this is the spirit of the special enactment.

17. In the recent decision in the case of M/s R.D. Jain and Co. Vs. Capital First Ltd. & Ors., (2023) 1 SCC 675 this Court had an occasion to consider the powers exercisable by District Magistrate/Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act. After considering the object and purpose of Section 14 of the SARFAESI Act and the Scheme of the Act under Section-14, it is observed and held in paragraphs 18 to 26 ….

18. Thus, the powers exercisable by CMM/DM under Section-14 of the SARFAESI Act are ministerial step and Section-14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section-14 of the SARFAESI Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as

> **the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act, before Debts Recovery Tribunal."**

26 I also went through **Kanaiyalal Lalchand Sachdev and others V/s State of Maharashtra and others, (2011) 2 SCC 782,** wherein the Hon'ble Supreme Court of India held that:

> **"14. Having bestowed our anxious consideration to the facts at hand, we are of the opinion that the appeals are utterly misconceived.**
>
> **15. Section 13 of the Act deals with enforcement of security interest, providing that notwithstanding anything contained in Sections 69 or 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the court's intervention, by such creditor in accordance with the provisions of the Act. Section 13(2) of the Act provides that**

when a borrower, who is under a liability to a secured creditor, makes any default in repayment of secured debt, and his account in respect of such debt is classified as non- performing asset, then the secured creditor may require the borrower, by notice in writing, to discharge his liabilities within sixty days from the date of the notice, failing which the secured creditor shall be entitled to exercise all or any of the rights given in Section 13(4) of the Act. Section 13(3) of the Act provides that the notice under Section 13(2) of the Act shall give details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the bank.

16. Section 13(3-A) of the Act was inserted by Act 30 of 2004 after the decision of this Court in Mardia Chemicals, (2014) 4 SCC 311, provides for a last opportunity for the borrower to make a representation to the secured creditor against the classification of his account as a non-performing asset. The secured creditor is required to consider the representation of the borrowers, and if the secured creditor comes to the conclusion that the representation is not tenable or acceptable, then he must communicate, within one week of the receipt of the communication by the borrower, the reasons for rejecting the same.

17. Section 13(4) of the Act provides that if the borrower fails to discharge his

liability within the period specified in Section 13(2), then the secured creditor, may take recourse to any of the following actions, to recover his debt,…

18. Section 14 of the Act provides that the secured creditor can file an application before the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction, the secured asset or other documents relating thereto are found for taking possession thereof. If any such request is made, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, is obliged to take possession of such asset or document and forward the same to the secured creditor. (See: United Bank of India Vs. Satyawati Tondon, (2010) 8 SCC 110). Therefore, it follows that a secured creditor may, in order to enforce his rights under Section 13(4), in particular Section 13(4)(a), may take recourse to Section 14 of the Act.

25. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate etc. are involved, an efficacious statutory remedy of appeal under Section 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to

> **exercise its jurisdiction under Articles 226 and 227 of the Constitution.**
>
> **26. For the foregoing reasons, the impugned judgments cannot be flawed, warranting interference by this Court. Accordingly, the appeals, being devoid of any merit, are dismissed with costs, quantified at 20,000/-."**

27 Hence, in view of said decisions and as per Sections 13(2), 13(4), 14 and 17 of SARFAESI Act and Rules 8 and 9 of said Act the secured creditor/Petitioner-Bank issued Demand Notice on 07.01.2020 and waited for more than 60 days and then issued Symbolic Possession Notice on 16.12.2020 and then published the demand notice and possession notice in The Hindu and Vijaywani daily news papers dated 28.01.2020 and Deccan Herald and Prajawani daily news papers dated 17.12.2020 respectively. Hence, the borrower i.e., respondents even after issuing the said notices and taking steps did not care to repay the debt and being no other way the petitioner approached this Court for taking possession of secured asset for recovery of due debt. Hence, under all these circumstance in my opinion, petitioner is entitled for the possession of the secured asset.

28 I went through **NKGSB Cooperative Bank Limited Vs. Subir Chakravarty & Ors., (2022) 10 SCC 286:2022 SCC OnLine SC 239,** wherein Hon'ble Supreme Court of India observed that :

“**45. Whereas, applying the “functional subordination” test, we are persuaded to take the view that sub-Section (1A) of Section 14 of the 2002 Act is no impediment for the CMM/DM to engage services of an advocate (an officer of the court) — only for taking possession of secured assets and documents relating thereto and to forward the same to the secured creditor in furtherance of the orders passed by the CMM/DM under Section 14(1) of the 2002 Act in that regard. It does not follow that the advocate so appointed needs to be on the rolls in the Office of the CMM/DM or in public service. There is intrinsic *de jure* functional subordinate relationship between the CMM/DM and the advocate being an officer of the court. The apprehension of the borrowers about improper execution of orders of the CMM/DM passed under Section 14(1) of the 2002 Act by the Advocate Commissioner, is plainly misplaced. Further, being an officer of the court and appointed by the CMM/DM, the acts done by the Advocate Commissioner would receive immunity under Section 14(3) of the 2002 Act — as an officer authorised by the CMM/DM. There is no reason to assume that the advocate so appointed by the CMM/DM would misuse the task entrusted to him/her and that will not be carried out strictly as per law or it would be a case of abuse of power. Rather, going by the institutional faith or**

> **trust reposed on advocates being officers of the court, there must be a presumption that if an advocate is appointed as commissioner for execution of the orders passed by the CMM/DM under Section 14(1) of the 2002 Act, that responsibility and duty will be discharged honestly and in accordance with rules of law.”**

29. Hence, in view of said decision the Advocate can be appointed as Commissioner under SARFAESI Act for the purpose of delivery of physical possession of the secured asset in favour of Petitioner/Financial Institution. Shri.M.P.D. Advocate for petitioner prayed to appoint the Court Bailiff as the Court Commissioner. Hence, if the Court Bailiff is appointed as Court Commissioner, it helps for petitioner to proceed in the matter and take physical possession of the petition schedule property. Further, for the purpose of taking the physical possession of the property from the respondent and to maintain the law and order and to maintain public peace and tranquility it is just and proper to provide police aid to the Court Commissioner *vis-a-vis* petitioner-Financial Institution. In my opinion petitioner made out the case to order for taking physical possession of the said petition schedule property/secured asset in its favour with the help of police aid. Hence, for the

above stated facts, reasons and circumstances I answer point No.1 in the Affirmative.

30. **Point No.2**: For the above stated facts, circumstances, reasons and finding on Point No.1, I proceed to pass the following:

ORDER

The petition filed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is hereby allowed with costs.

Consequently, the Petitioner-Bank is entitled to take the physical possession of petition schedule property-secured asset i.e., house properties bearing
(1) house No.2007, property I.D. 06-01-08-37 and
(2) House No.2011, property I.D. 06-01-08-45
both properties situated at Jatratves, Nippani Dist. Belagavi for the satisfaction of entire debt with upto date interest.

The Court Bailiff is hereby appointed as the Court Commissioner to hand over the possession of the petition schedule property-secured asset in favour of petitioner with the assistance of jurisdictional Police.

The Court Commissioner and the petitioner are at liberty to break open the petition schedule property/secured asset if required and conduct proper inventory.

Office is directed to intimate the concerned Police Inspector of jurisdictional police station to assist the Court Commissioner/Bailiff and petitioner while taking the possession of the petition schedule property-secured asset.

The petitioner shall bear the legal expenses if any of the said Police.

The Court Commissioner shall submit the compliance report to this court regarding delivery of physical possession of the petition schedule property-secured asset to petitioner **within 90 days from the date of this order**.

The petitioner shall furnish true copy of all the documents at office.

Office is hereby directed to return the original documents in favour of petitioner, after due verification and acknowledgment from the petitioner, **only after filing of the compliance report by the Court Commissioner/Bailiff and by receiving the true copies from the petitioner.**

Office to issue Court Commissioner Warrant immediately.

(Dictated to the Stenographer directly on Computer, typed by her, corrected and then pronounced by me in the open court, this the 28th day of February, 2026.)

(Rachoti Mahagundappa Shirur)
III Additional Senior Civil Judge and
C.J.M. Belagavi