03-07-2026

ORDERS ON PETITION

Petitioner – M/s Hinduja Housing Finance through its Authorized officer has filed the present petition under Section 14 of the SARFAESI Act, 2002 against respondents.

2. The learned counsel for petitioner has filed affidavit of the authorized officer, Memo with original documents and the same were taken on record.

3. In the decision of our own Hon'ble High Court reported in **2018 SCC Online Kar 2484 : AIR 2019 KAR 37 HDB Financial Services Ltd. Vs. M/s. Remo Software Pvt. Ltd. & Ors.**, it was clearly held that *"No notice is necessary to the respondents U/Sec.14 of the SARFAESI Act 2002".* As such the notice was not issued to respondents.

4. Heard the counsel for petitioner.

5. As per Section 14 of the Act, if the secured creditor files application along with an Affidavit duly affirmed by the Authorized Officer of the secured creditor declaring the facts from (i) to (ix) of the proviso to Section 14 of the Act, after satisfying the contentions of said Affidavit, the court has to pass orders for the purpose of taking possession of the secured asset. It is also the settled law that in the process of taking possession of secured asset, the court shall not decide the rights of parties. Thus, the entire exercise will be for taking possession or control of such secured asset or documents making over the same to the secured creditor.

6. The petitioner has filed this petition under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and sought for the assistance of Court in taking possession of the schedule property. As already stated no notice was sent to the Respondents in view of the decisions cited supra. The authorized officer of petitioner bank has also sworn an affidavit stating similar facts as mentioned in the petition. Further the original loan documents were produced before this court.

7. This court on perusal of the affidavit and documents in the background of petition averments is satisfied that the petitioner is a financial institution as per Section 2(m) of SARFAESI Act. The material on record shows that the respondents availed the credit facility and mortgaged the schedule property and same is secured asset as per Section 2(zc) of the SARFAESI Act. The material on record also shows that the respondents failed to repay the loan and the loan account is classified as non performing asset.

8. On perusal of the available material, I am satisfied that petitioner is secured creditor, respondent is secured debtor and schedule property is secured asset within the meaning of the provisions of said Act. Before filing this petition, the petitioner as secured creditor has given 60 days notice and complied the provisions of Sec.13(2) of the Act and also published the demand notice in two daily newspapers. Despite said notice, respondents have not paid the dues to the petitioner. As such the petitioner appears to have taken symbolic possession of the secured asset and issued possession notice as per Section 13(4) of the Act and published the same in two daily newspapers.

9. I have looked into the above aspects coupled with the material available on record. This court is satisfied that the petitioner being secured creditor is entitled to enforce its right with respect to secured asset against the respondents

for recovery of the loan amount due towards the loan account.

10. It is also profitable to mention the decision of Hon'ble Apex Court reported in **(2022) 13 SCR 437 Balkrishna Rama Tarle Dead Thr. LRs & Anr. V/s Phoenix ARC Private Limited & Ors.**, wherein it is held at paragraph No.5 as under;

> *"5.................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".*

11. On going through the material available on record and keeping in mind the above ratio, the account of

respondents being classified as NPA, all the facts from (i) to (ix) of the proviso to Section 14 of the Act are satisfied. There is material in the petition filed by petitioner under section 14 of the Act, to take possession of the secured asset.

12. As per the demand notice as on 05-08-2025, the Respondents are liable to pay Rs.13,25,411/- along with further interest etc.,. In fact there is no material on record to show that after filing of the petition, the respondents made attempt to make any payment. This attitude of the respondents clearly reveals that he has become chronic defaulters. Thus there is no malafide in filing the petition by petitioner being financier. Therefore the petitioner is at liberty to proceed against Respondents as per the Act. In the result, I proceed to pass the following:

ORDER

Petition is allowed on the following terms.

1. The petitioner is entitled to take possession of the schedule property towards satisfaction of the loan amount due by respondents, in accordance with law.

2. Police Inspector of Jurisdictional Police Station is hereby directed to give necessary assistance to the petitioner while taking possession of the schedule property.

3. Petitioner shall bear the legal expenses if any of the said police.

4. The Petitioner is at liberty to break open the lock if necessary, after following due procedure of law in the presence of respectable persons.

5. The advocate for petitioner has filed memo dated 15-04-2026 stating that Sri.Prakasha.R.N., Advocate, KAR/229/2019 may be appointed as Commissioner, by fixing the fee as Rs.5,000/-. As such the said advocate is appointed as Commissioner to take and deliver the possession of schedule property to the petitioner. However, by considering the facts and circumstances of case, the commissioner fee is fixed as Rs.10,000/- and same shall be directly paid to the Court Commissioner and after filing of memo in that regard by petitioner, office to issue commissioner warrant.

6. Return the original documents to petitioner under proper endorsement and identification.

(Sanjeevkumar S.Hindoddi),

XXXI Addl. C.J.M., Bengaluru City.