MHRG031916302025	**Criminal M.A. No. 738/2025** **IDBI Bank Ltd Thr. Abhishek** **Vs** **Nitin Sumant Gaikwad**

ORDER BELOW EXH. 01

01. Perused application, affidavit and documents filed on record. By this application U/sec.14 of The Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act'), direction is sought to take physical possession and control of secured asset mentioned in the application. It is the contention of the applicant that it is a registered with the National Housing Bank as a Housing Finance Company and engaged in various financial service business and a secured creditor within the meaning of section 2(1)(zd) of the SARFAESI Act.

02. That the present applicant has appointed Mr. Abhishek as an authorized officer to institute the present application and sign and verify the application under the SARFAESI ACT. It appears from the application and the documents submitted herewith that the applicant sanctioned Financial Assistance and disbursed an amount of Rs. 23,00,000/-, and loan for insurance premium of Rs. 71,706/- vide sanction letter dtd. 24/01/2014 and thereby executed a loan Agreement dtd. 29/01/2014. The respondents agreed for

terms and conditions mentioned in the agreement. They executed memorandum of deposit of title deed and mortgaged their a property i.e. 'Flat No. 101, 1st Floor, Sky Avenue, Plot No. 7,8,16,18 Sec. 34, Kamothe Navi Mumbai - 410210.' (the secured asset), by way of equitable mortgage on deposit of title deed. The respondents also deposited all the original title deeds in respect of secured assets with the applicant. The respondents executed loan agreement in favor of the bank.

03. The respondents made default in repayment of loan therefore, their loan account classified as non-performing assets on 15/11/2018. On 02/01/2024 the applicant issued notice under section 13(2) of the SARFAESI Act calling upon the respondents to pay Rs. 33,36,276/- as on 12/10/2023 with further interest and other charge as per the terms of the loan agreement within 60 days from the date of notice. The said notice was sent to the respondents by RPAD on their last known address and the same has been served to the Respondents. But it remained to unserved. Therefore, the applicant issued contents of demand notice in English and Vernacular language newspapers. However, they failed to repay the loan.

04. Moreover, applicant has registered the said loan with Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) and filed its report on

record, which is mandatory as per section 26D to proceed U/s 14 of SARFAESI Act. From the affidavit and documents, it appears that the asset mentioned above is secured asset given by the respondents against the loan which they had obtained from the bank. In spite of 60 days notice of repayment issued under section 13(2) of the SARFAESI Act, they failed to repay the outstanding loan amount.

05. In **M/s. R.D. Jain and Co. Vs. Capital First Ltd. And Ors., Civil Appeal No. 175 of 2022, decided on 27/07/2022**, the Hon'ble Apex Court observed 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 quasi judicial 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 of the SARFAESI Act does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured asset.*"

06. The said view is also affirmed by the Hon'ble High Court in **Phoenix ARC Pvt. Ltd. And Ors. Vs. The state of**

Maharashtra and Ors., Writ Petition NO. 9749 of 2021, decided on 03/08/2022. It is also observed in the said authority that CMM/DM acting under section 14 is not required to give notice either to borrower or to third party.

07. As per Sec.14 of the SARFAESI Act, powers are vested with the Chief Metropolitan Magistrate or District Magistrate, however, as per the judgment in ***The Authorized Officer, Indian Bank Vs. D. Visalakshi & Anr., Civil Appeal No. (S), 6295 of 2015 dtd. 23/09/2019*** even Chief Judicial Magistrate is now empowered to pass order regarding taking possession of the secured asset.

08. Thus, applicant company is financial institution being the secured creditor entitled for the physical possession of the "secured asset" described above as per Sec.14 of the SARFAESI Act. The physical possession of the said secured asset can be taken with the help of Court Commissioner. As per the list provided by Raigad District & Alibag Bar Association Adv. Farhan Abdul Kadrik Misrik (MAH/7357/2017) (Mob. No. 9270645486) is appointed as Court Commissioner who can take physical possession of secured asset.

09. In ***L & T Finance Ltd. Vs. The State of Maharashtra and Ors., Writ Petition No. 15285 of 2022*** the Hon'ble Bombay High Court has raised concern about the

pendency of applications filed under Section 14 of the SARFAESI Act. In Paragraph 5 the Hon'ble High Court has stated thus : -

> "*It is needless to stress the importance of expeditious disposal of the applications under section 14 of the SARFAESI Act of 2002, as the pendency of large number of applications hinders the recovery of bad loans, which has significant impact on the financial positions.*"

10. Therefore, I find there is no need to keep the matter pending for report of Court Commissioner. After passing this order the application can be disposed of and the Court Commissioner can take recourse to execute the order. Hence, I pass following order :

:: **<u>O R D E R</u>** ::

1. Application is allowed.
2. Court Commissioner Adv. Farhan Abdul Kadrik Misrik (MAH/7357/2017) (Mob. No. 9270645486) is directed to take physical possession of the secured asset i.e. 'Flat No. 101, 1st Floor, Sky Avenue, Plot No. 7,8,16,18 Sec. 34, Kamothe Navi Mumbai -410210.'
3. The commissioner is at liberty to take police aid while executing commission and may break open the lock, if any, if the respondents resist in execution of commission.
4. The commission fee is quantified as Rs.15,000/- to

be paid to the Court Commissioner before execution of the Commission.

5. Court Commissioner to issue intimation notice to respondents 07 days before taking physical possession of the secured assets.

6. After payment of the court commissioner's fee the writ shall be issued.

7. The application is disposed of.

ARCHANA YOGESH MORE Digitally signed by ARCHANA YOGESH MORE Date: 2026.04.29 16:21:14 +0530

Alibag (**A. H. Thakur**)
Dt. 29/04/2026. Addl. Chief Judicial Magistrate,
Raigad-Alibag.