IN THE COURT OF THE ADDL. CHIEF JUDICIAL MAGISTRATE, COURT NO.5, THANE, DIST. THANE
(PRESIDED OVER BY SUNITA PAITHANKAR)

MHTH03-022573-2026	**Cri.M.A. No. 2843 of 2026** (The Cosmos Co-op Bank Ltd through A.S. Nitin D. Dhende Vs. M/s. New Tradelink Impex Pvt. Ltd. Through Shyamsunder V. Agarwal & Others)

ORDER BELOW EXH.1
(….Passed on 13th July, 2026….)

This is an application under Section 14 of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (In short "SARFAESI ACT") requesting assistance for taking possession of the property- **All that piece and parcel of flat no. 602, Admeasuring area 780 sq. ft., built up 57.99 sq. mtrs. On 6th floor, situated at Shree Nagar Co.op Housing Society Ltd., (Sagar Tower) Saibaba Nagar, Opp. New Petrol Pump, Mira Bhayandar Road, situated on plot of land bearing old survey no. 474, new survey no. 115, hissa no. 2, revenue village of Bhayandar, Mira Bhayander Road, Mira Road(East), Taluka & District Thane- 401107, in the Registration District, Sub- District of Thane** owned by respondent. (Here-in-after referred to as "Secured Asset").

02. In short it is the contentions of application that, the applicant had granted Loan facility of **Rs.3,00,00,000/-** to the respondents. In pursuance of loan various documents are executed by the respondents in favour of applicant. Against the said loan, respondents have created security interest over the above referred secured asset in favour of applicant. It is further contended that the respondents have committed default in repayment of loan installment as agreed. The loan account of the respondents declared as Non-performing Assets. Therefore, demand notice dated **03.11.2025** u/sec. 13(2) of the SARFAESI Act was issued to respondents and called upon them to repay the outstanding loan amount of **Rs.9,35,53,436.22/-** as on **31.10.2025** within 60 days from the date of service of notice. Said demand notice was served through RPAD, and postal receipts, tracking reports are on record. Paper notice also is on record. Objection was submitted by respondent no.5 to which, applicant bank send rejoinder stating non acceptance of reply dated 28.11.2025. Acknowledgment of sending rejoinder of reply is on record. Other envelopes returned with a remark of unclaimed, intimation. However, address mentioned on the postal receipts and also envelopes shows the same as shown in the loan agreement therefore so, Sec. 27 of the G.C. Act attracts. Despite the demand notice, respondents did not comply within stipulated period of 60 days. Hence, this application.

03. **NKGSB Co-operative Bank Ltd. Vs. Subir Chakravarty 2022 Live Law SC 212** wherein the Hon'ble Apex Court held that, it is open to the District Magistrate or the Chief Judicial Magistrate to appoint an advocate commissioner to assists him in execution of the order passed under section 14 (1) of the SARFAESI Act. The advocate must be regarded as an officer of the Court and, in law, subordinate to the concerned CMM/DM within their jurisdiction. The apprehension of the borrowers about improper execution of order of the CMM/DM passed u/s 14(1) of the SARFAESI Act by the Advocate commissioner is planely misplaced. Further being an officer of the court and appointed by the CMM/DM, the acts done by the advocate Commissioner would receive immunity u/s 14(3) of the Act. There must be presumption that if an advocate is appointed as commissioner for execution of the orders passed by the CMM/DM u/s 14 (1) of the Act that responsibility and duty will be discharged honestly and in accordance with rules of law.

04. Balkrishna Rama Tarale Dead Through Lrs Vs. Phoenix ARC Ltd. AIR Online 2022 SC 286 , The Hon'ble Apex Court held that, District Magistrate/ Chief Metropolitan Magistrate exercising powers under section 14 are performing Ministerial Act. Once all requirements under section 14 are satisfied by the secured creditor, it is duty cast upon CMM/DM to assist secured creditor in obtaining possession as well as the documents related to secured assets. CMM/DM is not required to adjudicate dispute between the borrower and secured creditor and/or between any other third party.

05. Phoenix ARC Pvt. Ltd. Vs. State of Maharashtra (Writ Petition No.9749 of 2021) judgment dated 03.08.2022, The Hon'ble High Court Bombay held that, Section 14 does not contemplate the following:-

(i). Any notice to be given to either Borrower or a Third Party.

(ii). Borrower or a Third Party to file any reply to the application.

(iii). Borrower/Third Party to be heard,

(iv). Adjudication as to the legality or validity of the mortgage.

(v). Adjudication as to the quantum of the debt claimed by the secured creditor.

(vi). Adjudication of any issues such as limitation, etc.

06. Jay Bharat Synthetics Ltd. and ors. Vs. State Bank of India reported in 2010 (6) BOM. C. R 769, The Hon'ble High Court Bombay held that, SARFAESI Act enables banks to enforce security interest with power to take possession of securities and sale them. While bank possess drastic powers , scheme of the act also ensures safeguards to protect borrowers' interest. Borrower may appeal to Debts Recovery Tribunal (DRT) under section 17 of the Act that action taken by the creditor is wrong. Assistance of Magistrate under section 14 after notice under section 13 (1) of the SARFAESI Act is intended to secure that proceedings under section 13 (1) of the Act are taken to its logical conclusion. The provisions do not contemplate any adjudicatory process therefore principle of natural justice are not attracted in this case.

07. The application u/sec.14 of the SARFAESI shall be accompanied by an affidavit duly affirmed by the authorized officer of the said secured creditor declaring the facts mentioned in Section 14 (1)(b) (i) to 14 (1)(b) (ix) is the only requirement to allow this application. Here, in the case in hand the authorized officer of the applicant namely **Nitin D. Dhende** has filed his affidavit declaring therein the mandatory facts as mentioned in Section 14 of the SARFAESI Act. In addition to the affidavit, he has also filed copies of resolution for authorization of powers, RBI order, sanction letter, loan documents, title deed i.e. agreement sale deed, possession notice,

notice u/sec. 13(2), postal receipts, paper publication & track report etc. All documents verified by the A. S. of this Court.

08. Considered the application, affidavit filed by Authorized Officer and documents placed on record. Heard Ld. Advocate for applicant. Authority letter filed on record reveals that, **Nitin D. Dhende,** who has filed the affidavit is the authorized person of the applicant Bank. On perusal of sanction letter it seems that, the applicant has granted the financial assistant to the respondents. The mortgage deed reveals that, the respondents have created security interest over the secured asset in favour of applicant. From the copy of N.P.A. certificate filed on record it seems that the account of borrowers has been classified as “Non Performing Asset” on **14.06.2014**. Despite service of demand notice under Section 13(2) of the SARFAESI Act, the respondents did not comply it within stipulated period of 60 days.

09. Despite publication of demand notices, the respondents did not comply it within stipulated period of 60 days. Possession notice under Rule 8(1) of the SARFAESI Act, 2002 is published in daily news paper. The Authorized Officer has also stated in application that, the secured asset is not in possession of any lessee / tenant / third party and there is no stay to the present proceeding by a competent Court. Furthermore, secured asset is located within the territorial jurisdiction of this Court and the claim of applicant is well within limitation. Therefore, I have no hesitation to hold that, there is no hurdle to pass the order in favour of applicant as prayed.

10. As per the provision of section 14 of the SARFAESI Act, 2002 any subordinate officer can be appointed for the purpose of assisting the applicant for delivery of possession of the secured asset. The property is secured asset and is situated within the local limits of **Proper Municipal Corporation**. The Advocate can accordingly be appointed for the purpose of a completing the task as required by the section 14 of the Act. In view of the above referred situation, I pass the following order.

O R D E R

1] Application is allowed.

2] **Kirti V. Patil** Advocate, is hereby appointed as Court Commissioner to take possession of the secured assets and handover it to the authorized officer of the applicant.

3] The Court Commissioner to take steps and use such force including breaking open the lock by taking assistance of police if required at the expenses of the applicant bank and if any articles, documents found in the secured asset then deliver its possession to the Authorized Officer of the applicant bank after preparing panchanama and taking inventory.

4] **Kirti V. Patil** Advocate, shall report compliance at the earliest from the receipt of the writ of commission.

5] Issue writ of commission accordingly on payment of Rs.15,000/- (Rs. Fifteen Thousand Only) by the applicant bank and it be given to the court commissioner after compliance of the work assigned within 15 days from the date of order.

(Sunita Paithankar)

Date : 13/07/2026

Addl. Chief Judicial Magistrate,
Court no.5, Thane