MHAH030164102025 CRIMINAL M.A.No. 1283/2025

Muthoot Homefin (India) Ltd. Vrs.
Mujfhar Hanif Shaikh and other 2

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,
AHMEDNAGAR.
(PRESIDED OVER BY SHRI. L. S. PADHEN)

Muthoot Homefin (India) Ltd.,
Registered office at Muthoot
Chambers,
Kurian Towers, Banerji Road,
Emakulam, Kochi, Kerela – 682018
and Branch Address at : 415 – 416 E
Building, The courtyard, oppo. Bus
Stand, Behind Prerna Arcade,
Tarakpur, Tal. & Dist. Ahmednagar.
Through its authorized officer,
Mr. Nitin Ramesh Nakhale, Age- 42, : Applicant
Occ- Service, Address at
Pune 411 005

Versus

1) Mujfhar Hanif Shaikh,
Age-45, Occ- Service,
Add At – Hasnen Hotel, Tisgaon,
Tal. Pathardi, Dist. Ahmednagar.
2) Hanif Umar Shaikh,
Age- 50 Yrs. , Occu- Retired,
3) Sumayya Mujfhar Shaikh,
Age- 32, Occ- Housewife,
All No. 1 to 3 Residing at – Behind
Nagebaba Credit Society, Nagar
Pathardi road, Tisgaon, Tal. -
Pathardi, Dist. Ahmednagar.
Also At
Gat No. 299, Hissa No. 1, Tisgaon
Sant Nagebaba Patsanstha, Bhingar,
Ahmednagar. : Opponents

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Advocate Shubhangi P. Dhakulkar and Kharat Manisha Digambar for applicant.

ORDER BELOW EXH.01

(Dtd.28/04/2026)

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1) This is an application Under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act No.54 of 2002) (In short "SARFAESI Act") for taking possession of the secured assets known as :

Property : "All that piece and parcel of immovable property bearing Gat No. 299 part, out of it admeasuring area 00 H 4R out having plot area admeasuring 371.75 Sq. mtr. Along-with construction of bungalow thereon area 92.29 Sq. mtr. Situated at village – Tisgaon, Tal. Pathardi, Dist – Ahmednagar within the limits of Zilha Parishad, Ahmednagar and within the local limits of Grampanchayat Pathardi, and within the registration limits of Sub- registrar, Pathardi, and it is bounded as follows :-

Bounded by

East	**By out of Gat No. 299**
West	**By out of Gat No. 299**
South	**By internal road**
North	**By out of Gat No.299**

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2) Briefly stated, the case of the applicant is that, the Applicant has sanctioned Loan Housing loan for an amount of Rs. 09,50,679/- vide Loan offer letter dated 08/10/2016 and Loan

Agreement dated 31/10/2016 to the respondents. The respondents agreed to repay the loan amount along with interest with monthly rests and bank charges. It is averred in the application, that, the above properties are mortgaged to the applicant company as security for due repayment of the loan by way of mortgage by depositing all the original title deeds. The registered Mortgage Deed dated 22/11/2016, registered in the office of Sub- Registrar Pathardi at serial No. 2996/2016 along-with registration receipt and Index II. The respondents have mortgaged the above property in favour of the applicant as a security and by way of first charge on the aforesaid immovable property. It is further contended that, the respondents did not adhere repayment schedule. Therefore, the applicant has classified the account of the respondents as N.P.A. on 24/10/2022. The applicant many times requested the respondents to make payment and regularize their account. But they neglected to pay due amount. Therefore, the applicant bank issued statutory demand notice dt. 30.12.2023 under section 13(2) of SARFAESI Act to pay total loan dues of Rs.08,81,225/- with future interest in terms of the loan agreement w.e.f. 01/01/2024 within 60 days from service of notice. However, in-spite of service of notice, the respondents failed to pay the amount due. The respondents have not raised any objection / re-presentation under Section 13(3A) of SARFAESI Act. Therefore, the applicant become entitled to exercise right under Section 13(4) of SARFAESI Act. Despite, the service of said notice, respondents have not complied with the requisitions for payment of outstanding loan amount within stipulated period of 60 days. The applicant submitted that, the amount of Rs.8,81,225/- are due along with future rate of interest, costs and expenses etc. The secured assets are situated within territorial jurisdiction of this Court. Hence, applicant is constrained to file this application, which is well in limitation.

3) Hon'ble Bombay High Court in case of CA Manisha Mehta and Ors. V/s. The Board of Directors of Represented by its-Managing Director of ICICI Bank and Ors. [Reported in 2022 SCC OnLine Bom 1096] observed that-

> "It is implicit in the scheme of the SARFAESI Act that natural justice, only to a limited extent, is available and not beyond what is expressly provided. There seems to be little merit in the argument advanced by Mr. Nedumpara and we hold that the language of Section 14 is too clear and unambiguous, and does not admit of any requirement of complying with natural justice by putting the borrower on notice while an application thereunder is under consideration."

4) The Hon'ble Supreme Court in case of Balkrishna Rama Tarle V/s. Phoenix ARC Pvt. Ltd. and anr. [Reported in (2023)1 SCC 662], observed that-

> "In that view of the matter once all requirements under Section 14 of SARFAESI Act are complied with / satisfied by secured creditor, it is the duty cast upon CMM/DM to assist secured creditor in obtaining the possession as well as the documents related to the

secured assets even with 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 borrower and the secured creditor and / or between any third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceeding under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal."

5) Heard Ld. Counsel for the applicant. The following points arises for my determination along with my findings thereon are as under :

Sr. No.	Points	Findings
1.	Whether the applicant is entitled for taking possession of the secured asset as per Section 14 of SARFAESI Act ?	Yes
2.	What order ?	Application is allowed

REASONS

As to Point Nos.1 and 2 :-

6) It is requirement of Section 14 of SARFAESI Act that Authorized Officer of applicant financial institute has to file affidavit containing therein facts mentioned in Section 14(1)(b)(i) to 14(1)(b) (ix) of SARFAESI Act. Accordingly, Authorized Officer had filed affidavit at Exh.10. In addition, copies of documents are

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placed on record vide Exh.3. Authorised Officer also shown original documents for verification on the date of hearing.

7) Perused the application, affidavit (Exh.10) submitted by the Authorised Officer of applicant and documents filed on record. It appears that applicant has granted the aforesaid financial assistance to the respondents. In pursuance of such financial assistance respondents have executed various documents in favour of applicant to create security interest over the aforesaid secured assets as per list of document Exh.3. However, in due course they failed to repay the due amount of loan. Thus, applicant constrained to declare Borrower account as "Non Performing Asset" and constrained to issue demand notice dated 30/12/2023 U/sec.13 (2) of SARFAESI Act, demanding total outstanding amount of Rs. 8,81,225/- as on 31/12/2023. Despite service of notice to respondents and publication of notice, they have not complied the notice within stipulated period. Respondents have not raised any objection under Section 13(3A) of SARFAESI Act. The applicant bank is Secured Creditor and the respondents created Security Interest on the property, which is known as Secured Assets within the meaning of SARFAESI Act. Thus, it appears that, present application came to be filed for taking possession of Secured Assets. Further, Secured Assets are located within territorial jurisdiction of this Court and claim of applicant is well in limitation. More so, as per the pleading, documents filed in the case and affidavit of authorized officer of applicant, there is no stay to the present proceeding.

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8) In view of above facts and circumstances, I do not find any hurdle to pass order in favour of applicant Under Section 14 of SARFAESI Act to take over the possession of aforesaid secured assets by appointing Advocate as a Court Commissioner. The Hon'ble Supreme Court in case of N.K.G.S.B. Co-operative Bank Ltd. V/s. Subir Chakravarty and Ors. [Reported in (2022) 10 SCC 286], observed that,

> "It is open to the C.M.M. / D.M to appoint an advocate and authorized him/ her to take possession of secured assets and documents relating thereto and forward the same to the secured creditor U/sec.14(1-A) of the SARFAESI Act".

9) As regards jurisdiction is concerned, the Hon'ble Supreme Court in case of Authorized Officer, Indian Bank V/s. D. Visalakshi and Anr.[Reported in (2019) 20 SCC 47], observed that,

> "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."

Thus, in view of above observation, this Court is having jurisdiction to pass order under section 14 of SARFAESI Act.

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10) Therefore, the application of the applicant U/sec.14 of SARFAESI Act is liable to be allowed. I answer point No.1 in affirmative and in answer to point No.2, proceed to pass following order :-

ORDER

1. The application is allowed.

2. Advocate Abhijeet Surendra Londhe is appointed as a Court Commissioner to take possession of the secured assets viz.

   Property : "All that piece and parcel of immovable property bearing Gat No. 299 part, out of it admeasuring area 00 H 4R out having plot area admeasuring 371.75 Sq. mtr. Along-with construction of bungalow thereon area 92.29 Sq. mtr. Situated at village – Tisgaon, Tal. Pathardi, Dist – Ahmednagar within the limits of Zilha Parishad, Ahmednagar and within the local limits of Grampanchayat Pathardi, and within the registration limits of Sub- registrar, Pathardi, and it is bounded as follows :-

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3. The Court Commissioner is authorized to take such steps and use such force including breaking open the lock or any hurdle thereof by taking assistance of police, if required, at the expenses of the applicant and deliver possession thereof along with documents / articles, if any, found therein to the authorized officer of the applicant after preparing panchanama and taking inventory of the secured assets.

4. The Court Commissioner shall give at least 15 day's prior notice to the concerned before executing the order.

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5. The Court Commissioner shall report compliance within one month from the receipt of the writ of commission.

6. Issue writ of commission accordingly on payment of Rs.10,000/- towards the Court commissioner's fees in the Court within 15 days from the date of this order. After submission of compliance report, Commissioner's fees be paid to him.

(L. S. Padhen)
Chief Judicial Magistrate
Ahmednagar.

Ahmednagar.
Date :- 28/04/2026.