

MHJN030003612026



**ORDER BELOW EXH.1**

By this application under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ( in short “SARFAESI ACT”) the petitioner seeking permission for taking possession of the following secured assets.

**SCHEDULE OF PROPERTY : -**

“All that part and parcel of the property bearing Survey No.529, Plot No.65, admeasuring area 95 Sq. Mtrs., Situated at Milkat Nagar, Aurangabad Road, Old Jalna, Tq. & Dist. Jalna having following four boundaries of property:

To North : Plot No.64

To South : Plot No.66,

To East : Road,

To West : Plot No.58.

**Contents of the application in short are as under :-**

2. Non-applicant No.1 is borrower and non-applicant No.2 are co-borrowers and they are jointly and severally liable for repayment of the loan for the financial facility provided to non-applicants. Non-applicants applied for loan and accordingly, loan was sanctioned for the amount of Rs.8,64,396/- in 26.06.2015. In

order to secure the aforesaid loan, non-applicants have created mortgage of the secured assets. However, non-applicant Nos.1 and 2 have committed a default in repayment of amount. Thus the loan account of non-applicant Nos.1 and 2 was classified as a Non-performing Asset on 30.06.2017. Thus, as on 13.09.2024, outstanding amount was Rs.24,88,818.44/-.

3. Demand notice dated 13.09.2024 under section 13(2) of SARFAESI Act was issued to non-applicants and thereby they were called upon to liquidate the dues i.e amount of Rs.24,88,818.44/- alongwith further interest thereon till the date of realization of payment within 60 days from the date of the receipt of notice. The said notice was duly served upon non-applicants. In spite of that non-applicants failed to repay the amount.

4. The procedure of Section 13 (4) is not adopted by the applicant. The learned advocate for applicant argued that the compliance under Section 13 (4) is not mandatory. To support his contention he placed reliance on Standard Chartered Bank Vs. Noble Kumar & ors, (2013) 9 SCC 620. Wherein Hon'ble Supreme Court held that *no doubt that a secured creditor may initially resort to the procedure under Section 13 (4) and on facing resistance, he may still approach the Magistrate under Section 14. But it is not mandatory for the secured creditor to make attempt to obtain possession on his own before approaching the Magistrate under Section 14.*

5. Thus, it is clear that the compliance of procedure under Section 13 (4) is not mandatory to approach before Magistrate under Section 14. Hence, prayed for allowing present application.

6. It is now settled principle of law that no notice required to be issued to borrowers and guarantors when application under Section 14 of SARFAESI Act is filed. Thus, no notice issued to non-applicants.

7. Reliance is place on *Trade well V/s Indian Bank 2007 (1) Bom.C.R.(Cri) 783* in which the following settled position of law has been reiterated that "*CJM/DM has to only verify from bank or financial institution whether notice under section 13 (2) has been given or not whether secured assets fall within his jurisdiction*".

8. It is requirement of section 14 of SARFAESI Act that authorized officer of applicant\ financial company has to file affidavit containing therein facts mentioned in section 14 (1) (b)(i) to 14 (1)(b)(ix). Accordingly, authorized officer has filed his affidavit on record. In addition to affidavit, copies of documents are placed on record.

9. Heard learned advocate for applicant finance company.

10. Perused the application, affidavits submitted by the authorized officer of applicant finance company and documents filed on record.

11. It appears that applicant finance company has granted aforesaid loan to non-applicants. In pursuance of such loan non-applicants have executed various documents in favour of applicant finance company to create security interest over the aforesaid secured assets. However, in due course non-applicants failed to repay the aforesaid loan. Thus, applicant finance company constrained to declare non-applicants account as “Non performing Asset” and has issued demand notice dated 13.09.2024 for outstanding amount. Despite service of notice non-applicants failed to comply the same within stipulated period. As such, the contents of affidavit appears true and correct. The applicant finance company is therefore entitled to take possession of secured asset for realization of loan amount. The secured asset is located in territorial jurisdiction of this Court and claim of applicant finance company is well within limitation. Hence, this order :-

### **ORDER**

1. Application (Exh.01) is allowed.
2. In view of Pursis at Exh.05, Advocate Kulthe Pritam Prakashrao is hereby appointed as Court Commissioner.
3. Court Commissioner is directed to take physical possession of the aforesaid secured assets and handover the same to applicant.
4. Court Commissioner may take assistance of police if required and shall take photograph of the commission work. Expenses thereof shall be borne by the applicant.
5. Court Commissioner is directed to carry out the commission work and file report alongwith photographs

at the earliest.

6. Issue commission writ accordingly on payment of Court Commissioner fee Rs.10,000/-.
7. The proceeding is disposed of accordingly.

Date : 25/03/2026

(Smt. Priti D. Taru)  
Addl. Chief Judicial Magistrate,  
Court No.2, Jalna.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : Amar R. Gadade

Court Name : 2<sup>nd</sup> Addl. Chief Judicial Magistrate, Jalna.

Date : 25.03.2026

Steno