


**IN THE COURT OF THE ADDL. CHIEF JUDICIAL
MAGISTRATE, JALNA, DIST. JALNA.**
(PRESIDED OVER BY ADITI R. NAGORI)

MHJN030056602025 	Cri.M.A. No. 888 of 2025 (Mahindra Rural Housing Finance Ltd. Through Abhijit Dharmadhikari Vs. Ramesh & ors.
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ORDER BELOW EXH.1

(....Passed on 04th April 2026....)

This is an application under Section 14 of the Securitisation 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 piece and parcel of Gut/G.P. Milkat No.433, admeasuring 2508 sq. ft. situated at village Mandawa, Tq. and Dist. Jalna having four Boundaries as described follows:-

EAST : Agri Land of Baburao Shivram Chand

WEST : Agri Land of Balu Ambadas Chand

NORTH : Jalna to Mandawa Road/Road.

SOUTH : Agri Land of Baburao Shivram Chand

(Here-in-after referred to as “Secured Asset”).

02. In short it is the contentions of application that, the applicant had granted a Home Loan facility of Rs.1,50,000/- to the respondents No. 1 to 3 and respondent No. 4 stood as guarantor for the said loan. 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 15.11.2022 u/sec.13(2) of the SARFAESI Act was issued to respondents and called upon them to repay the outstanding loan amount of Rs.2,76,251/- within 60 days from the date of service of notice. Said demand notice was duly sent to the respondents, which was served upon them. Thus inspite of 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 plainly 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 Mr. Abhijit Vishnu Dharmadhikari 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 notice u/s.13(2) with postal receipt, track report, paper publication, home loan application, registered mortgage deed, loan agreement, account statement, NPA certificate & authority letter.

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, Mr. Abhijit Vishnu Dharmadhikari, 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 assistance 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 03.09.2019. 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. The learned advocate moved pursis (Exh.04) and prayed appoint an Advocate as Court Commissioner. In view of ratio laid down in case of **NKGSB Cooperative Bank Limited Vs. Subir Chakravarty and Ors. MANU/SC/0247/2022**, advocate can be appointed as a Court Commissioner. The advocate for applicant submitted that, **Mr. S. S. Kharat**, Advocate be appointed as Commissioner. Hence, **Mr. S. S. Kharat**, Advocate, is appointed as a Court Commissioner and accordingly, I proceed to pass the following order :

ORDER

1. Application is allowed.
2. **Mr. S. S. Kharat**, 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. **Mr. S. S. Kharat**, 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.10,000/- (Rs. Ten Thousand Only) by the applicant bank and it be given to the court commissioner commissioner after compliance of the work assigned.
6. The proceeding is disposed off accordingly.

Date : 04.04.2026

(**Aditi R. Nagori**)
Addl. Chief Judicial Magistrate,
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 : P. B. Magare

Court Name : Addl. Chief Judicial Magistrate, Jalna.

Date : 04.04.2026

Sd/-
Steno