

MHRG030008452025



(Asset Reconstruction Company
India Limited Through
Ashfaque Shaikh Vs. Sachin
Avinash Patil and 01 Other)

CNR No. MHRG030008452025

ORDER BELOW EXH. 01 IN CRI. MISC. APPLN. NO. 432/2025

1. Perused application, affidavit and documents filed on record. This application is filed U/sec.14 of The Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act'), for seeking direction to take physical possession of secured asset mentioned in the application. It is the contention of the applicant that it is a secured creditor.

2. It appears from the application and the documents submitted herewith that the applicant sanctioned Home loan facility of ₹ 7,14,063/- and ₹ 2,02,814/- to the respondents. The respondents agreed for the terms and conditions mentioned in loan agreement. They executed loan security documents and created security interest over the secured asset by way of mortgage in respect of following secured asset :-

'Flat No. 007, 1st Floor, admeasuring are

610 Sq. Ft. (Built up), Building known as “Mahaveer Darshan”, Survey No. 64/A/4A, Plot No. 6 and 7, Chinchpada, near Pen Bus Depot, Tal. Pen, Dist. Raigad 402107.’

3. The respondents made default in repayment of loan therefore, their loan account classified as non-performing asset on 30/09/2021 and 31/01/2022. The applicant issued notice dated 11/10/2021 and 15/02/2022 under section 13(2) of the SARFAESI Act calling upon the respondents to repay total outstanding amount of ₹ 7,39,260.47 and ₹ 1,77,688/- as on 06/10/2021 and 12/02/2022 together with interest within 60 days from the date of notice. The applicant also published demand notice in two newspapers viz. Active Times and Mumbai Lakshadweep on 10/11/2021 and the Free Press Journal and Navshakti dated 25/02/2022. The said notice is served upon the respondents but they failed to discharge their liability.

4. The applicant has filed documents of loan i.e. copy of sanction letter, copy of loan agreement, copy of agreement for sale, copy of memorandum of deposit of title deed, copy of notice issued u/s 13(2) of the SARFAESI Act, copy of postal receipts, copy of newspaper publication and affidavit Exh. 5 in support of its claim. From loan documents and memorandum of

deposit of title deed, it appears that the asset mentioned above is secured asset given by the respondents against the loan which they had obtained. In spite of 60 days' notice issued under section 13(2) of the SARFAESI Act, respondents failed to repay the outstanding loan amount.

5. 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.”

6. 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.

7. 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.

8. Thus, applicant bank being the secured creditor entitled to take 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. Adv. Damodar Mahadev Patil (MAH/3404/2022) is appointed as a Court Commissioner who can take physical possession of secured asset. 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 :

:: ORDER ::

1. Application is allowed.
2. Adv. Damodar Mahadev Patil (contact No.

9422689047) is hereby appointed as a Court Commissioner.

3. The applicant bank is directed to deposit the commission fees within 15 days from the date of order.
4. The court commissioner is directed to take physical possession of the secured asset i.e. 'Flat No. 007, 1st Floor, admeasuring are 610 Sq. Ft. (Built up), Building known as "Mahaveer Darshan", Survey No. 64/A/4A, Plot No. 6 and 7, Chinchpada, near Pen Bus Depot, Tal. Pen, Dist. Raigad 402107.' and hand over the same to authorized representative of the applicant within one month from the date of payment of fees.
5. He 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.
6. The commission fee is quantified as ₹15,000/- (Rupees Fifteen Thousand Only) to be paid to the Court Commissioner before making Commission.
7. Court Commissioner to issue intimation notice to respondents 07 days before taking physical possession of the secured asset.
8. The case is disposed off.

Alibag
Dt. 18/04/2026.

(M. B. Attar)
Chief Judicial Magistrate,
Raigad-Alibag.