MHRG030013402025

Cri.M.A. No. 643/2025

(DCB Bank Ltd. Vs.

Mohan Vasant Giri & 1)

Order below Exh. 1

This is an application filed u/s. 14 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act'), for direction to take physical possession and control of secured asset and police aid as mentioned in the application. Present applicant is State Bank of India. It is the contention of the applicant that it is bank and secured creditor under the provisions of SARFAESI Act.

2. Perused application, affidavit and documents filed on record. Present applicant has appointed Chetan Mendadkar as an authorized officer to institute the present application, sign and verify the application under the SARFAESI Act. As per the contention of the applicant, it has sanctioned loan amount of Rs. 31,50,000/- (In words Rupees Thirty one lakh fifty thousand only) to the respondents vide DCB Home-Loan Agreement dated 28.06.2021. The respondents agreed terms and conditions as mentioned in the agreement. They executed memorandum of

deposit of title deed and mortgaged their property i.e. Flat No. 301 on the 3rd floor, Project Terrace Area 32.497 Sq.Ft. & one Parking allotted in the building know as 'White Jasmine' being constructed on Plot No. C-32, Sector 08, UlW, Tal. Panvel, Dist. Raigad, by way of equitable mortgage on deposit of title deed.

3. The respondents made default in repayment of loan therefore, their loan account classified as Non Performing Assets on 04.01.2025. On 23.01.2025, the applicant issued notice u/s. 13 (2) of the SARFAESI Act calling upon the respondents to pay outstanding amount of Rs. 30,93,608/- (In words Rupees Thirty lakh ninety three thousand six hundred eight only) with further interest and other charge as per the terms of the loan agreement within 60 days from the date of notice. The said notice was sent by way of RPAD to the respondents and as per copy of online postal track report filed on record notice was served on the respondents. However, they failed to repay the loan.

4. The applicant has filed documents on record and affidavit in support of its claim. From these documents, it appears that the asset mentioned above is secured asset given by the respondents against the loan which they had obtained from the applicant. In spite of 60 days notice of repayment issued u/s. 13 (2) of the SARFAESI Act, they failed to repay the outstanding loan amount.

5. In ***<u>M/s. R.D. Jain and Co. Vs. Capital First Ltd. And Ors., Civil Appeal No. 175 of 2022, decided on 27.07.2022</u>***, 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 ***<u>Phoenix ARC Pvt. Ltd. And Ors. Vs. The state of Maharashtra and Ors., Writ Petition NO. 9749 of 2021, decided on 03.08.2022</u>***. It is also observed in the said authority that CMM/DM acting u/s. 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 ***<u>The Authorized Officer, Indian Bank Vs. D. Visalakshi & Anr., Civil Appeal No.(S), 6295 of 2015 dated 23.09.2019</u>*** even Chief Judicial Magistrate is now empowered to pass order regarding taking possession of the secured asset.

8. Thus, the applicant being the secured creditor entitled for 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. I find there is no need to keep the matter pending for report of Court Commissioner. 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. Advocate Bhakti Dilip Patil (MAH/7318/2017) (Mobile No. 8380893551) is appointed as a Court Commissioner to take possession of the secured asset property i.e. Flat No. 301 on the 3rd floor, Project Terrace Area 32.497 Sq.Ft. & one Parking allotted in the building know as 'White Jasmine' being constructed on Plot No. C-32, Sector 08, UlW, Tal. Panvel, Dist. Raigad.

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

panchnama and taking inventory of the secured assets.

4. The Court Commissioner shall give at least 15 days prior notice to the concerned before executing this order.

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. 15,000/- (In words Rupees Fifteen thousand only) towards the Court commissioner's fees deposited in the Court within 15 days from the date of this order. After submission of compliance report, Commissioner's fees be paid to her.

DATTA MADHUKARRAO ZATE

Digitally signed by DATTA MADHUKARRAO ZATE
Date: 2026.08.05 17:31:07 +0530

Alibag,
Date : 05.08.2026

(D.M.Zate)
Chief Judicial Magistrate,
Raigad-Alibag