

MHRG030020692024



(State Bank Of India through
Mahesh Choudhary Vs. Sulbha
Dharmaraj Lubal)

CNR No. MHRG030020692024

ORDER BELOW EXH. 01 IN CRI. MISC. APPLN. NO. 1025/2024

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 credit facility (Home Loan) of ₹ 69,24,000/- to the respondent. The respondent agreed for the terms and conditions mentioned in loan agreement. She executed loan security documents and created security interest over the secured asset by way of mortgage in respect of following secured asset :-

'Flat No. 405, 4th Floor, admeasuring area of

about 59.94 Sq. Mtrs. Carpet (i.e. 645 Sq. Ft.) and equivalent to 71.93 Sq. Mtrs. (774 Sq. Ft.) built up area in building known as Kamothe Ved CHS Ltd., Plot No. 26, Sector No. 35, Kamothe Phase II, Navi Mumbai 410209, Tal. Panvel, Dist. Raigad.’

3. The respondent made default in repayment of loan therefore, her loan account classified as non-performing asset on 30/03/2024. The applicant issued notice dated 31/03/2024 under section 13(2) of the SARFAESI Act calling upon the respondent to repay total outstanding amount of ₹71,97,563/- as on 31/03/2024 together with interest within 60 days from the date of notice. The demand notice is served upon the respondent by way of RPAD. The applicant also published demand notice in newspapers on 31/03/2024. The said notice is served upon the respondent but she failed to discharge her 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 postal acknowledgment, copy of postal track report, copy of newspaper publication and affidavit Exh. 05 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 respondent against the loan which she had obtained. In spite of 60 days' notice issued under section 13(2) of the SARFAESI Act, respondent 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. Chaitali Haresh Magar (MAH/4402/2018) 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. Chaitali Haresh Magar (contact No. 9308758727) 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. 405, 4th Floor, admeasuring area of about 59.94 Sq. Mtrs. Carpet (i.e. 645 Sq. Ft.) and equivalent to 71.93 Sq. Mtrs. (774 Sq. Ft.) built up area in building known as Kamothe Ved CHS Ltd., Plot No. 26, Sector No. 35, Kamothe Phase II, Navi Mumbai 410209, Tal. Panvel, Dist. Raigad.' and hand over the same to authorized representative of the applicant within one month from the date of payment of fees.
5. She is at liberty to take police aid while executing commission and may break open the lock, if any, if the respondent resists in execution of commission.
6. The commission fee is quantified as ₹15,000/- to be paid to the Court Commissioner before making Commission.
7. Court Commissioner to issue intimation notice to respondent 07 days before taking physical possession of the secured asset.
8. The case is disposed off.

Alibag
Dt. 16/03/2026.

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