

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, ERODE

Present:- Thiru.S.Ramachandran, B.L.,
Chief Judicial Magistrate, Erode.

Wednesday, the 05th day of May 2025.

C.M.P. No. 838 of 2025

(CNR.No.TNED04-000984-2025)

The Karur Vysya Bank Ltd.,
Asset Recovery Branch,
No 1498-c, 3 floor, KVB Towers,
Avinashi road, Peelamedu,
Coimbatore-64 1 004.
Rep. by its authorized officer,
Mr. S.Krishnan, Chief Manager

..... Petitioner/Secured Creditor

// Vs //

- 1) SS Ramesh
S/o S.K.Subramaniam,
D.No.13/30, East Street,
Savandapur,
Gobichettipalayam Taluk,
Erode District - 638 502.
- 2) S.K.Subramaniam,
S/o. Kumarasamy Gounder,
D.No.10/1, East Street,
Savandapur,
Gobichettipalayam Taluk,
Erode District -638 502
- 3) S.Prabhakaran,
S/o. Subramaniam,
D.No.28, East Street,
Savandapur,
Gobichettipalayam Taluk,
Erode District - 638 502.

.....Respondents/Borrower

This petition coming up for final hearing before this Court on **03.06.2025** in the presence of **Mr.K.Raveendran**, Advocate for the petitioner and upon hearing petitioner's side arguments, perusing affidavit, petition and other relevant documents, and having stood over for consideration till this day, this court delivered for following:

ORDER

This petition has been filed by the petitioner for Assistance under Section 14 of the SARFAESI Act 2002.

2. It is the case of the petitioner that the **The Karur Vysya Bank Ltd, Coimbatore Branch**, had extended the financial assistant/ facilitated in the account of the Respondents the tune of **Rs.13,00,000/-**. The said respondents who are under a liability to repay the outstanding loan amount to the petitioner's Bank. The Respondents executed necessary loan documents and security agreements. Thereby created Security interest in respect of the immovable properties described as such in the petition. The said property is situated limit of **Erode District, Gobichettipalayam Taluk, Gobichettipalayam Village**. Since, the Respondents had defaulted in repayment of the aforesaid credit facilities and the petitioner had notified the said account of **NPA(Non Performing Asset)** on **29.10.2023**. Subsequently, the petitioner's Bank initiated recovery proceedings under the provisions of SARFAESI Act by issuing notice u/s.13(2) to them on **09.10.2024**. The respondents are received the above said notice and the respondents did not pay any amount. Even after issuing notices, the respondents have not settled the outstanding dues in the account. The petitioner also took symbolic possession of the schedule property on **16.12.2024** and issued possession notice to the respondent and also published in two leading Newspapers on **18.12.2024**. As on **31.07.2024**, **Rs.18,44,548.92/-** is due and payable by the respondents. The petitioner could not take physical possession of the property as the respondents are refusing and resisting in handing over the vacant physical possession of the property. Unless physical possession is handed over, the petitioner will be put to great loss. Hence the petitioner filed this petition.

3. Now the question is that whether the petition filed by the petitioner under Sec. 14 of SARFAESI Act has to be allowed or not?

4. Heard the counsel for the petitioner, on perusal of the records, the following

particulars are emerged from the affidavit, petition and documents filed by the petitioner.

LIST OF DOCUMENTS

Sl. No.	Date	Description of Documents	Nature
1.	16.09.2023	Authorization letter issued by the petitioners bank to its employee namely S.Krishnan.	Xerox Copy
2.	28.04.2017	Loan Application Form	Xerox Copy
3.	20.06.2017	Sanction letter	Xerox Copy
4.	20.06.2017	Hypothecation Agreement	Xerox Copy
5.	20.06.2017	Agreement of Guarantee executed by 3 rd respondent	Xerox Copy
6.	20.06.2017	Affidavit executed by the 2 nd respondent	Xerox Copy
7.	20.06.2017	Memorandum of deposit of title deeds (Doc No.968/2017 Gobichettipalayam SRO)	Xerox Copy
8.	14.09.1987	Sale deed infavour of 2 nd respondent (Doc No.830/1987 Gobichettipalayam SRO)	Xerox Copy
9.	09.10.2024	Demand Notice and postal receipts	Xerox Copy
10.	15.10.2024	Served Acknowledgement of the respondent 1 to 3	Xerox Copy
11.	16.12.2024	Possession notice and postal receipts	Xerox Copy
12.	19.12.2024	Served Acknowledgement of the respondent 1 to 3	Xerox Copy
13.	18.12.2024	Paper Publication in Indian Express English Daily, Vernacular publication of possession notice.	Xerox Copy
14.	18.12.2024	Paper publication in Dinamani Tamil Daily Vernacular publication of possession notice.	Xerox Copy
15.	16.12.2024	Photography showing the affixer of possession notice	Xerox Copy
16.	19.02.2025	Encumbrance Certificate	Xerox Copy
17.	01.09.2023 to 14.02.2025	Statement of accounts for the credit loan facility KVB Green Card Account No. 1678272000000393	Xerox Copy

5. The petitioner has produced copy of loan documents, title deed, notice, postal acknowledgments, paper publications, possession notice. Paper publication established that the schedule mentioned properties were hypothicated and mortgaged.

This petition also filed after the expiry of 60 days from the date of receipt of notice issued under Sec.13(2) of SARFAESI Act by the respondent. The respondent is not entitled to any further notice under the said act from this court. The petitioner Bank is having its **Branch at Coimbatore** and the petition mentioned such property is situated limit of **Erode District, Gobichettipalayam Taluk, Gobichettipalayam Village**. Encumbrance certificate also produced by the petitioner to show that the title of the respondents is clear and valid. Necessary affidavit of the authorized officer of the Secured Creditor/Petitioner also produced, who duly affirmed that the provisions of the SARFAESI Act and rules have been complied with. This court has satisfied about the contents of the affidavit filed for the purpose of taking the possession of secured assets. Thus, there is compelling situation arise for the petitioner to realize the loan amount by taking necessary action to take actual possession of the secured assets by sale or transfer. For the said purpose, it is just and necessary to render assistance to the secured creditor in taking possession of the secured assets and in doing so, the court can appoint a Commissioner for identification of the secured assets and taking possession there of and if there is any resistance, ask for police assistance and take any effective steps to have possession of the secured assets taken over.

6. The Hon'ble Supreme Court also mandates the following guidelines in **the Authorised Officer, Indian Bank Vs The Visalakshi and another (Civil Appeal No. 6295 of 2015)**, dated 23.09.2019.

“This it is only a procedural step without any adjudication of any dispute whatsoever. The action is therefore, only an administrative order made for taking possession of the secured assets, if all other conditions are fulfilled. Having already noted that the powers exercised by the CMM and DM in terms of Section 14 of the 2002 Act are synonymous to each other and that they are not adjudicatory in nature”

“It did notice that the authority referred to in Section 14 of the 2002 Act has no power to adjudicate upon any rights of the parties but can only render assistance to the secured creditor to recover possession ”

“The power to be exercised under Section 14 of the 2002 Act by the concerned authority is, by its very nature, nonjudicial or State’s coercive power. Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy under section 17 of the 2002 Act and /or judicial review under Article 226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lesses: nor is it possible to suggest that they are rendered remediless in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any advantage much less added advantage”

“It also noted that the authority after receiving such request under Section 14 of the 2002 Act, was not expected to do any further scrutiny of the matter except to verify from the secured creditor whether notice under Section 13(2) of the Act has already been given or not and whether the secured asset is located within his jurisdiction. There is no adjudication of any kind at this stage. The Court also noticed in paragraph 23 of the reported judgment that after amendment of Section 14 of the 2002 Act, by inserting first proviso therein, the designated authority has to satisfy itself only with regard to the matters mentioned in clauses (i) to (ix) ” From the above documents produced by the petitioner and in view of the principles laid down, it is clear that the provisions of SARFAESI Act has been complied with. Considering all aspects, this court is of the view that an appropriate direction to prepare inventory and to take physical possession of the secured asset shall be passed in favor of the petitioner and as such, this court is inclined to allow this application.

SCHEDULE - B
DESCRIPTION OF PROPERTY

Registration District &

Sub Registration District : Erode & Gobichettipalayam

Taluk : Gobichettipalayam Village

: Old Door No. 25,
Savandapur Village.

Survey No. : Natham Old S.F.No. 42/1

Total Extent : 1765 ½ Sq.ft

BOUNDARIES:

NORTH BY : East West Street,

SOUTH BY : Chenniappa Gounder and SC Venkidusamy's remaining 16 ½ feet,
12 feet house property in Door No.26 and East West Street

EAST BY : P V Lakshmana Gounder House

WEST BY : North South Road.

In the result, this application is allowed, thereby appointing **Ms/Mrs.Preethi Dhanalakshmi, MS.No.8482/2022**, as an Advocate Commissioner.

1. To inspect the petition mentioned property:
2. Take inventories:
3. Take physical possession and immediately hand over to the petitioner/secured creditor and
4. If necessary take assistance of Police and Revenue Officials in executing the warrant.

A sum of Rs.20,000/- in fixed as remuneration for the said Advocate Commissioner. The petitioner shall deposit the said remuneration into the court

within 15 days. After executing the warrant and filing his report, the Advocate Commissioner is entitled to get the said remuneration by filing necessary application. Report by **10.07.2025.**

This order dictated directly to the typist, typed by him, corrected and pronounced by me in the open court, on this the **05th day of June 2025.**

Sd/-(S.RAMACHANDRAN)
CHIEF JUDICIAL MAGISTRATE,
ERODE.