IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, KARUR

PRESENT: THIRU.N.S.JAYAPRAKASH,B.Sc.,B.L.,

CHIEF JUDICIAL MAGISTRATE, KARUR

Monday, the 19th day of May 2025

Cr.M.P.No.898/2025

M/s Home First Finance Company India ltd.,
Having its office at
511, Acme Plaza, Andheri Kurla Road,
Andheri East, Mumbai – 400059.
Rep by its Authorized officer,
Mr.Gopi, S/o. Shanmugam. **. . . Petitioner**

/Vs/

1) Sathishkumar Chandrasekaran,
2) Naveena Ramalingam, **… Respondents**

This petition is coming for final hearing on 19.05.2025 before this court in the presence of Thiru.N.Prasanna Advocate for petitioner and upon hearing petitioner side arguments, perusing affidavit, petition and other relevant documents, and having stood over for consideration till this day, this Court delivered the following

ORDER:

1) This petition has been filed by the petitioner for taking physical possession of secured assets under section 14 (1) and (2) of the SARFAESI ACT 2002.

2) The Petitioner herein is a non banking housing finance company having its authorized officer Gopi. The petitioner home First finance company India ltd is duly notified as a Financial Institution under the Securitization and Reconstruction of Financial assets and Enforcement of security interest act 2002. The said copy of the Gazette Notification dated 08.12.2015 is filed herewith in as doc.No.1. The Resolution passed by company of Home first Finance company India ltd, along with Authorization under the SARFAESI act dated 15.03.2024 is filed herewith in as Doc.No.2.

3) The petitioner company financed the Home construction loan facility for a sum of Rs.15,00,000/- in vide loan Ref No.: LAI 00184851 by the letter of Offer cum acceptance dated on 10.1.2022, by mortgaging the schedule mentioned property. In which the Respondents have agreed to repay the said loan amount to the petitioner company together with the agreed interest. The letter of offer cum acceptance dated on 10.01.2022 to the respondents is filed herewith as Doc.No.3. The respondents have agreed to repay the loan amount for a sum of Rs.15,00,000/- in vide above said loan account with agreed interest and installments. The said loan agreement dated on 20.01.2022 is filed herewith as Doc.No.4. and also on 27.01.2022 the 1st respondents executed the Registered memorandum of deposit of title deed in favour of the petitioner company of deposit of title deed in vide doc.No.162/2022 is filed herewith in as Doc.no.5.

4) The petitioner submits that the respondents committed default in payment of loan dues and the respondents failed to adhere to the repayment schedule. The

petitioner repeatedly called them to repay the dues buu the respondent failed to repay the dues. Therefore on 04.07.2024 the loan facility extended to the respondents was classified pass “non-performing asset” within the meaning of section 2(o) of the act in accordance with directions / guidelines issued by the Reserve bank of India.

5) The petitioner had issued the statutory notice U/s 13(2) of the act on 04.07.2024 and also issued the paper publication in Vernacular language dated on 11.07.2024 interalia calling upon the respondents to repay a sum of Rs.16,28,868 as on 11.07.2024 for discharge their liabilities in full within 60 days from the date of statutory notice and the said Statutory notice U/s 13(2) of the act to the respondents along with postal receipts and paper publication are filed herewith as Doc.No.6. The petitioner company taken the Symbolic possession notice U/s 13(4) of the act on 10.9.2024 at proposed property directly and the possession notice along with its photos filed herewith as Doc.No.7. The petitioner company issued public notice in “Trinity Mirror” in English language and “Makkal Kural” in Vernacular language dated 14.09.2024 and the same are filed herewith in as Doc.No.s.8&9.

6) The Petitioner submits that despite repeated demands and reminders, the respondents neither came forward to clear their outstanding dues nor handed over the physical possession of the secured asset. The Respondents are refusing to hand over the vacant possession of the mortgaged properties and till date the possession is not handed over to the petitioner. The petitioner submits that the sum due to the petitioner from the respondents herein are RS.16,28,868/- in vide above said loan account as on 21.12.2023 under the aforesaid loan accounts as per the statement of accounts

maintained by the petitioner company in its regular course of business and the Respondents herein are liable to pay the said sum along with subsequent interest at contractual rate with penal interest, charges and costs etc., The statement of accounts produced herewith as Doc.No.10. The sale deed in vide doc.No.2422/2020 dated on 23.12.2020 for the schedule mentioned property are produced herewith as Doc.No.11. The encumbrance certificate for the schedule mentioned properties is produced herewith as Doc.No.12.

7) Hence this petition filed under section 14 of Sarfeasi Act, to take physical possession of the secured asset more particularly described in the schedule hereunder and handover the possession thereof to the authorized Officer of the Petitioner Bank.

8) Now the point for consideration is

Whether the petition under sec.14 of SARFAESI ACT is to be allowed or not?

POINT:-

9) Heard the counsel for the petitioner. Records perused. Before going in to the merits of this application it is necessary to have a look on the settled position of law on the subject. Power of this court as designated court under section 14 of SARFAESI Act 2002 is clearly explained by the latest decision of Apex Court in **Balkrishna Rama Tarle Dead Through Lrs vs Phoenix Arc Private Limited on 26 September, 2022**

10)*"9. Thus, in view of the scheme of the SARFAESI Act, more particularly, Section 14 of the SARFAESI Act and the nature of the powers to be exercised by learned Chief Metropolitan Magistrate/learned District Magistrate, the High Court in the impugned judgment and order has rightly observed and held that* *the power vested in the learned Chief Metropolitan Magistrate/learned District Magistrate is not by way of persona designata.” Thus, the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial step and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section 14 of the SARFAESI Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act, before Debts Recovery Tribunal. Under the circumstances in the present case no error has been committed by the High Court in setting aside the order dated 27.08.2021 passed by the designated authority keeping the application pending till the secured creditor initiates the legal proceedings for eviction of the tenant cannot get the possession in an application under Section 14 of the SARFAESI Act. The High Court has rightly directed the designated authority to proceed further with the application under Section 14 of the SARFAESI Act, and to dispose of the same in accordance with the provisions of Section 14 of the SARFAESI Act”.*

11) Bearing the above decision on mind now this court proceeded to consider whether the petitioner/Secured creditor had complied all formalities referred to in the provision in Section 14(1) of the SARFAESI Act. In support of the contentions of the petition, petitioner produced the copy of documents namely, Gazette Notification, Resolution passed by MD & CEO, Letter of Offer cum acceptance, Loan agreement, MODT, Statutory notice, Possession notice, Daily publication tamil and English, Sale deed, Encumbrance certificate, Summary of accounts,

12) This petition had also been filed only after the expiry of 60 days from the date of receipt of notice issued under Sec.13(2) of SARFAESI Act. The respondents are not entitled to get any further notice under the Act. On perusal of above documents it is clear that the petitioner complied all formalities referred to in the proviso of section 14 of the act. The petition mentioned property is situated in **Karur** District within the jurisdiction of this court. Necessary affidavit of the Authorized officer of the Secured Creditor/Petitioner has also been produced, who duly affirmed that the provisions of the SARFAESI Act and Rules have been complied with. This court is satisfied about the contents of the affidavit filed for the purpose of taking possession of secured assets. Thus, as a secured creditor the petitioner has right to realize the loan amount by taking necessary action to take actual possession of the secured assets. Hon’ble Apex Court in **M/s R.D. Jain and Co. vs CapitalFirst Ltd & Ors** held in

13) para *14) “As observed and held by this Court in the case of NKGSB Cooperative Bank Ltd. (supra), the step taken by the CMM/DM while taking*

possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the advocate commissioner who is considered as an officer of his/her court. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. 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 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets".

14) In view of the above decision as the petitioner complied all the formalities referred to in the provision of section 14 of the act, he is is entitled to get a relief as prayed for in this petition and advocate commissioner has to be appointed to take possession of the below mentioned schedule property .

15) In the result, this application is allowed. Advocate Ms.P.Lakshmi, Ms.No.1115/2017, Ph.No.9585063717 is appointed as Advocate /Commissioner. She is directed to

1. 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 **Vangal Police Station** and Revenue Officials, **VAO of Nerur North Village of property** for executing the warrant.

5. To break open the door if locked.

A sum of Rs.20,000/- is fixed as remuneration for the said Advocate Commissioner and that amount to be paid to Advocate Commissioner directly to Advocate Commissioner, Report by 27.06.2025.

This order was dictated by me to the Typist, typed by her directly in computer, corrected and pronounced by me in open court, this the 19th day of May 2025.

Sd/-N.S.Jayaprakash
CHIEF JUDICIAL MAGISTRATE,
KARUR.

SCHEUDLE OF PROPERTY

Karur District and Registration District, Karur Joint No.1 sub Registration district, Manmangalam Taluk, Nerur North part Village, Old S.F.No.573, New SF No.573/9, with in extent of 2184 sq ft Equivalent to 202.81 sq mtr Land with all other appurtenances attached to the said property with the following. This property was comes under Ward -5, Kattupaguthi Street, also as per patta No.2136, this property was comes Under present New SF.No.82/1B1, Hec 0.70.53 ares.

Four Boundaries:

North	:	Property Belongs to kandasamy
South	:	Property belongs to Kandasamy

East	:	Property belongs to Kandasamy
West	:	13 ft Width South to North Pathway

Measurements

North to South Eastern Side	:	39 ft
North to South Western side	:	39 ft
East to West Southern side	:	56 ft
East to West Northern side	:	56 ft

Sd/-N.S.Jayaprakash
CHIEF JUDICIAL MAGISTRATE,
KARUR.