<u>IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, KARUR</u>

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

CHIEF JUDICIAL MAGISTRATE, KARUR

Tuesday, the 30th day of September 2025

<u>Cr.M.P.No.2919/2025</u>

Canara Bank, Kulithalai Branch,
No.45,Vaigainallur Agraharam,
Vaigainallur North Village,
Kulithalai, Karur – 639 104
Rep. By its Authorized officer,
Divisional Manager, R.Pendem Sunil Kumar …...**Petitioner**

/Vs/

1) P.Dharmalingam,
2) D.Revathi, … **Respondents**

This petition is coming for final hearing on 30.09.2025 before this court in the presence of Thiru.R.R.Revathi 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

<u>ORDER:</u>

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

2) The Applicant is a canara Bank a body corporate constituted under the

Banking companies having its authorized officer F. Pendem Sunil Kumar, S/o. Franklin, is a constituted Authorization, and also an Authorized officer of the petitioner bank under the provisions of the SARFAESI Act, 2002, and he is authorized to file the instant petition under section 14 of the SARFAESI Act, on behalf of the Petitioner of Authorization letter if file as Document No.1.

3) The petitioner submits that borrower in first respondent is the Borrower and the 2nd respondent is the Joint Borrower and Cum Mortgagors. On agreed term between the petitioner and respondents a loan agreement was loan application from for loans to Canara Mortgage was executed between the petitioner bank and respondents on 17.05.2021 date for granting Rs.10,00,000/- as financial assistance by the petitioner to the respondents.

4) A Sanction Memorandum on 24.06.2021 as Rs.10,00,000/- was executed by 2nd respondents in favour of petitioner bank requesting the petitioner bank to grant financial assistance to respondent 1st . A Term Loan Agreement on 24.06.2021 as Re.10,00,000/- was executed by 2nd respondents in favour of petitioner bank requesting the petitioner bank to grant financial assistance to respondent 1st .The loan Application form for Loans to Canara Mortgage if filed as Document No.2, the Sanction Memorandum is filed as Document No.3, The Loan Agreement is filed as Document No.4, to secure the above loan, the respondents being absolute owner of property's by way of Sale deed on 05.09.2005 as DocNo.1417/2005 at Sub – registrar office Kulithalai and had created an equitable mortgage by executing memorandum of deposit of title deeds of the scheduled property on 24.06.2021 as

documents No.1651/2021 at Sub – Registrar officer - Registrar Officer - Kulithalai in favour of the petitioner. The Sale Deed is marked as Document No.5 and the Memorandum of Deposit of title deeds is filed as Documents No.6.

5) The petitioner bank and respondents an amount of Rs.10,00,000/- loan account No.3466605000011 was disbursed dated on 24.06.2021, which in reflected in statement of account of the above mentioned the loan account. The loan transaction based on agreement and mortgage is registered in central register of secularization asset reconstruction and security interest of India(CERSAI) as security interest ID is 400054841420 and ID is 200055023446 on 24.06.2021 and the CERSAI is filed as Documents No.7. Consequently the loan dues payable by the respondents was classified as Non – performing asset (NPA) on 30.10.2018 as per reserve bank of India Guidelines “Interest/and or Installment of principal remain overdue for the period of more than 90 days in respect of term loan.

6) Subsequently, on 20.02.2025, the petitioner had issued Demand notice under sub section 2 of section 13 of the SARFAESI Act, calling upon the respondents to repay the entire outstanding amount Rs.13,47,421.54/- as on 20.02.2025 within a period of 60 days from the date of service of the notice together with incidental charges, expenses and further interest till to realization of over dues. The demand notice is filed as Document No.8. The respondents had returned cover with acknowledgement the demand notice on 06.03.2025 the returned cover with acknowledgment are filed as document No.9.

7) The respondents refused to hand over the possession of the scheduled

mentioned property to to petitioner. Hence, the authorized officer had taken only symbolic possession on 06.06.2025, The Possession notice is filed as documents No.10. The respondents had served Acknowledgement the possession notice on 12.06.2025. The served acknowledgement are filed as document No.11. The served acknowledgement of possession notice was caused on 11.06.2025 in Tamil “Dinamani” and in English “The New Indian Express” daily newspaper. The online paper publication of possession notice in Tamil is filed as document No.12 and in English is filed as document No.13. The Encumbrance certificate Sale Deed (Doc:1417/2005) and MOD(Doc.No.1651/2021) of title Deeds EC filed as Documents No.14, and partition release Deed EC filed as Document No.15.

9) The petitioner submits that the present total outstanding is Rs.14,31,963.64/- as on 17.08.2025 the statement of accounts is filed as Documents No.16.

10) 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**

<u>Through Lrs vs Phoenix Arc Private Limited on 26 September, 2022</u>

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, RBI notification, Resolution passed by Board of directions, Letter of Offer cum acceptance, Loan agreement, MODT, Statutory notice, Possession notice, Photos, Daily publications Tamil and English, Summary of Accounts, Sale deed, Encumbrance Certificate.

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 Mr.B.Sathikumar

Ms.No.1069/2017, 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 **Kulithalai Police Station** and Revenue Officials, **VAO of Vaigainallur North Village, Agraharam Street of property** for executing the warrant.
5. To break open the door if locked.

A sum of Rs.25,000/- is fixed as remuneration for the said Advocate Commissioner and that amount to be paid to Advocate Commissioner directly to Advocate Commissioner, Report by 25.10.2025

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 30th day of September 2025

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

<u>DESCRIPTION PROPERTY</u>

Karur District, Karur Registration District, Kulithalai Taluk, Kulithalai Sub Registrar Office, Vaiganallur North Village, Agraharam Street, I Phase, in T.S.No.73, Ward No.C, Block No.10, R.C.,C Building Bearing Door No.37A, to extent of 980 Sq.ft out of 1750 Sq.ft.

S.F.No.53/1 = Ac.0.31 cents(Hec 0.12.5 Ares) and

S.F.No.53/2 = Ac.0.15 cents(Hec 0.06.5 Ares)

In the total extent Ac.0.46 House site to extent 980 Sq.ft along with pathway and all easement rights.

<u>The four Boundaries of 980 Sq.ft as follows:</u>

North of : 15 feet width East – West pathai,

South of : Now Dineshkumar House site,

West of : Jayapal(Now Thiruvengadam) House site,

East of : 15 feet width North - South Pathai

<u>Measurement:-</u>

East to west at both sides = 35 feet,

North to South at both sides = 28 feet.

-

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

Chief Judicial Magistrate Court,
Karur.
Cr.M.P.No.29.09/2025
A/c WARRANT
30.09.2025