MHTH030442212025

**Before Chief Judicial Magistrate, Thane**

**Criminal Misc. Application No. 4261/2025**

**Tyger Home Finance Private Ltd.,**
**Formerly known as Adani Housing Finance Pvt Ltd.,** … Applicant
Vs.
**Chandrakant Rajaram Ahire** & 1 … Non applicants

**ORDER BELOW EXH. 1**

By virtue of present application jurisdiction of this Court contemplated under the provision of Section 14 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Hereinafter referred as The Act) is invoked for the purpose of relief claimed of possession of subject matter for non applicants failure to discharge their liability towards repayment of loan.

2. Brief facts of the application are as under :

Applicant is a company registered, indulging in activity of lending a finance to the needy and required entities having its operation within the country. Applicant further submit that non-applicants approached for financial assistance which the applicant company was pleased to grant in terms of disbursement of amount of Rs.11,28,000/- dt 21/10/2021. At the same time applicant got equitable mortgage deed executed in their favour of subject matter that is immovable property elaborately described as under :

"All that piece and parcel of Flat No. 205, area admeasuring 620 sq.ft., built up area, on the 2nd floor, Wing A, in the building known as Malang Plaza constructed on the land bearing Survey no.32, Hissa no. 16, situated at village Adivali-Dhokali, Tal. Ambernath, Dist. Thane".

3. For the purpose of creating a registration of executed equitable mortgage by deposit of title deed with an intimation to the office of Joint Sub Registrar Ulhasnagar-3, process was completed. According to applicant despite of undertaking scheduled repayment by borrowers/non applicants, there is a default on their part towards repayment of loan disbursed against the mortgaged property. Consequence of default made applicant to issue notice against borrowers/non applicants in compliance of provision of Section 13(2) of The Act which is for reference and convenience reproduced as under :

Section 13(2) :

> Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

Provided that -

> (i) the requirement of classification of secured debt as non-performing asset under this sub-section

shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee;

4. Applicant further submit that issuance of notice with acknowledge thereof followed by publication of notice in the daily newspaper having circulation of the edition within the jurisdiction where non applicants reside, there is the failure on the part of non applicants to make repayment. In that regard applicant contend and submit that due to such failure and default on the part of non applicants/borrowers, they approached court by invoking the jurisdiction contemplated for the purpose of relief which is claimed under the contemplated provision of section 13(4)(a) read with Section 14 of The Act. Provisions of Section 13(4)(a) are as under:

Section 13(4)(a) :

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely :-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured assets.

5. Appraisal of material available for case of applicant, I wish to refer provisions of Section 14 of The Act which make the

court to entertain the application and to act on the point of contentions raised for the relief of possession of the subject matter.

6. Learned advocate for the applicant relied the case of Balkrushna Rama Tarle (Dead) Thr. LRS & Anr. Vs. Phoenix ARC Private Limited & Ors. reported in (2023) 1 SCC 662 (Special Leave Petition No. 16013 of 2022) of Hon'ble Supreme Court of India. I have gone through the ratio laid down of Hon'ble Supreme Court of India in the case cited on behalf of applicant. Hon'ble Supreme Court of India in Paragraph 5 of the judgment has reproduced the relevant provision which are prominent amongst the consideration/parameters for dealing with the application registered under Section 14 of The Act. Hon'ble Supreme Court of India in the said case has observed in paragraph 5.2 of the judgment as under :

> 5.2 On a fair reading of Section 14 of the SARFAESI Act, it appears that for taking possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the District Magistrate/Chief Metropolitan Magistrate by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action.
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> The statutory obligation enjoined upon the CMM/DM is to immediately move into action

after receipt of a written application under Section 14(1) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. As observed and held by this Court in the case of NKGSB Cooperative Bank Limited Vs. Subir Chakravarty & Ors. (Civil Appeal No. 1637/2022) decided on 25.02.2022, the aforesaid act is a ministerial act. It cannot brook delay. Time is of the essence and this is the spirit of the special enactment. In the recent decision in the case of M/s R.D. Jain and Co. Vs. Capital First Ltd. & Ors. (Civil Appeal No. 175/2022) decided on 27.07.2022, this Court had an occasion to consider the powers exercisable by District Magistrate/Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act.

7. On behalf of applicant a reference is also made to the case of NKGSB Co-operative Bank Limited Vs. Subir Chakravarty & Ors.(Civil Appeal No. 175/2022) reported in (2022) 10 SCC 286. Hon'ble Supreme Court of India in the said case has stressed on its object and purpose of The Act with observations as under :

"36. The statutory obligation enjoined upon the CMM/ DM is to immediately move into action after receipt of a written application under Section 14(1) of the 2002 Act from the secured creditor for the purpose. As soon as such application is received, the CMM/DM is

> expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the 2002 Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. The latter is a ministerial act. It cannot brook delay. Time is of the essence. This is the spirit of the special enactment.

8. Hon'ble Supreme Court of India has also regarded the decision of the case cited in previous paragraph in decision of case of M/s. R.D.Jain & Co. Vs. Capital First Ltd reported in (2023) 1 SCC 675. Regard being given to ratio laid down by Hon'ble Supreme Court of India in all three cases relied and referred by applicant has its ratio applicability to facts of present case. Thus, proposition of law is respected and ratio in those cases is made applicable to present matter.

9. Thus, for any relief prayed through the application on the basis of provisions contemplated under the Act, in my humble opinion make applicant entitled for the relief only upon compliance of statutory provision of The Act. Those mandatory provisions cannot be ignored for any reason. I further observe that keeping in mind purpose and object of legislation in that regard require court to expedite the process for issuance of necessary orders forthwith. Exercising the authority for taking the physical possession of secured assets is nothing but a process of ministerial act without any judicial inquiry/adjudication. There is no need to either hear or tender any

opportunity to be heard other than applicant. Once statutory provisions are complied with, it is explicit and candid that possession of secured assets can be taken by secured creditor either by authorized officer of the bank noted in Rule 8 of the Security Interest (Enforcement) Rules 2002 or by the officer appointed by the Court.

10. Regard being given to the contentions raised in the application for the relief of possession in my opinion this application deserves to be acted upon for the purpose of issuing necessary directions, orders as a part of compliance of provision of Section 14 of the Act. This application is supported with the affidavit of applicant company. Applicant has showed disbursement of loan in favour of borrower. Applicant company further showed a default on the part of non applicants/borrowers and issuance of notice against them in compliance of provision of Section 13(2) of the Act. There is a also registration made in compliance of Section 26(D) of The Act making applicant entitled for relief of possession of secured assets. Through the mortgage deed, borrowers had made secured asset as subject matter for consideration of possession liable for orders.

11. For the reasons with observations of preceding paragraph I hold applicant entitled for relief of possession of subject matter. Accordingly contentions and submissions of applicant/advocate for applicant stands appreciated in terms of allowing the application in exercise of authority vested under Section 14 of The Act in following terms.

**ORDER**

1) Application is allowed.

2) Advocate **JAISWAR SANJAY YOGENDRA, MAH/7562/2019, Mobile No. 9657473843** is hereby appointed as Court Commissioner to take possession of secured asset and hand over it to the authorized officer of the applicant within 60 days from today with compliance report to Court.

3) Applicant is directed to deposit amount of Rs. 15,000/- in the court and it be paid to the Court Commissioner only after handing over the possession.

VIKRAM MADHUKAR KARHADKAR
Digitally signed by VIKRAM MADHUKAR KARHADKAR
Date: 2026.08.04 17:45:16 +0530

Thane ( V. M. Karhadkar )
Date : 04/08/2026 Chief Judicial Magistrate, Thane