Cri.M.A. No. 1115/ 2025
HDFC Bank Vs. Bhushan + 2
MHNG030060622025

ORDER PASSED BELOW EXHIBIT- 01
(Passed on 2nd May, 2025)

The present application is filed by applicant bank under the provision of section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 *(hereinafter referred as "the SARFAESI Act")* for taking possession of the secured assets i.e. property mentioned below:-

SCHEDULE OF PROPERTY

All Piece And Parcel of Shop No. 1 and 2, P. H. No. 46, CTS No. 60, Ward No. 10, Mouza Umred, Situated at Umred Road Near Jivanvikas School Jeevanvikas Urued Tahsil Urued Dist Nagpur.

The present application is supported by an Affidavit and the documents.

2. Heard the learned counsel for the applicant bank.

3. Before going into the merits of the application at hand I would like to refer landmark judgment of the Hon'ble Bombay High Court, M/s. Trade Well & Anr V/s. Indian Bank and Another reported in (2007 (1) Bom CR (Cri) 783) wherein the guidelines in respect of section 14 of the SARFAESI Act are laid down which are as under:-

1. *The bank or financial institution shall, before making an application under section 14 of the NPA Act, verify and confirm that a notice under section 13(2) of the NPA Act is given and that the secured asset falls within the jurisdiction of CMM/DM before whom application under section 14 is made. The bank and financial institution should also consider before approaching CMM/DM for an order under section 14 of the NPA Act, whether section 31 of NPA Act excludes the application of sections 13 and 14 thereof to the*

case on hand.

2. *CMM/DM Acting under section 14 of the NP Act is not required to give notice either to the borrower or to the third party.*
3. *He has to only verify from the bank or financial institution weather notice under section 13(2) of the NPA Act is given or not and whether the secured assets fall within his jurisdiction. There is no adjudication of any kind at that stage.*
4. *It is only if the above conditions are not fulfill that the CMM/DM can refuse to pass an order under section 14 of the NPA Act by recording that the above conditions are not fulfilled. If this two conditions are fulfilled, he cannot refuse to pass an order under section 14.*
5. *Remedy provided under section 17 of the NPA Act is available to the borrower as well as the third party.*
6. *Remedy provided under section 17 is an efficacious alternative remedy available to the third party as well as to the borrower where all grievances can be raised.*

4. On the perusal of record, it appears that the respondents are the borrower. On the request of the respondents, the applicant bank sanctioned loan of Rs. 11,60,000/- to the respondents. In order to secure the loan amount, the respondents with an intention to create equitable mortgage and duly deposited the documents with the applicant bank. As per the terms and condition of the said loan agreement property described in the schedule of property is mortgaged to the applicant bank. However, the respondents failed to reply the loan amount along with interest thereon. Accordingly, loan amount was classified as NPA on 04.04.2024 by the applicant bank as per the guidelines issued by the Reserve Bank of India. There was an outstanding amount of Rs.13,11,219.98/-. The applicant bank issued statutory demand notice under section 13(2) of the SARFAESI Act to the respondents and direct them to repay the outstanding loan amount

along with interest thereon within 60 days from the date of receipt of the notice. The notice was duly served upon the respondents. However, the respondents failed to repay the loan amount as stated in the notice and they have not taken any objection to the said notice. The applicant bank has taken symbolic position under section 13(4) of the SARFAESI Act and notice was issued to the respondents. The applicant bank is a secured creditor. Hence, applicant bank wish to take physical possession of the mortgage property. Accordingly, the present application is filed.

5. In view of the above such guidelines, there is no requirement to give the notice to the borrower/respondent while deciding this application under section 14 of the SARFAESI Act. It appears from the material placed on record that the applicant has issued the notice under section 13(2) of the SARFAESI Act to the borrower and it was served as per law. Moreover, no material is available on record to suggest that the borrower has preferred any application under section 17 of the SARFAESI Act. The secured assets fall within the jurisdiction of this court. On the top of it, the authorized officer of the applicant bank has filed sworn affidavit on record wherein it has been affirmed that all the requirements of section 13 of the SARFAESI Act had duly complied with. Therefore, there is no impediment in granting the necessary assistance to the applicant in taking possession of the secure assets as per section 14 of the SARFAESI Act. Hence I proceed to pass following order :-

O R D E R

1. Application is allowed.
2. Issue Possession Warrant as prayed.
3. The Assistant Superintendent, Administration is appointed to

take possession of the property mentioned in detailed as below and after taking possession, Assistant Superintendent, to handover possession of the said property to the applicant. The Assistant Superintendent, can take help of other court, employees, including Bailiff and head bailiff for taking possession.

4. Permission is granted to break open the lock, if any, found on the property and the Assistant Superintendent, is directed to prepare the inventory of goods and articles lying in the secured assets and handover the same to the applicant bank.
5. The In-charge police station of concerned police station, within whose jurisdiction, the property situated is directed to provide necessary police protection for the execution of the aforesaid Possession Warrant at the cost of the applicant.
6. The applicant shall have to bear the requisite charges as per the rules.
7. The compliance of the order be reported within 90 days of the receipt of this order.
8. Proceeding is accordingly to the disposed off.

RAI REENA SURESH

Digitally signed by RAI REENA SURESH Date: 2025.05.03 12:28:34 +0530

(Reena S. Rai)
14th Jt. Civil Judge Senior Division &
Additional Chief Judicial Magistrate
Nagpur.

Date : 02/05/2025
Nagpur.