GJAH060268032026

Presented on	:	23.06.2026		
Registered on	:	23.06.2026		
Decided on	:	04.08.2026		
Duration	:	YY	MM	DD

IN THE COURT OF 6TH ADDL. SENIOR CIVIL JUDGE & A.C.J.M. AHMEDABABD (RURAL), NAVRANGPURA.

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CRIM. MISC. APPLICATION NO.3509 OF 2026

Exh.___

APPLICANT:

The Kalupur Commercial Co-Op. Bank Ltd.,
Through Shri Khanjanbhai Pravinchandra Shah,
Working as Assistant General Manager & duly authorized by the bank Having its Head office at: Kalupur Bank Bhavan, Near Income Tax Circle, Ashram Road, Ahmedabad – 380014.

Versus

OPPONENTS:

1) **M/s. VARUN METAL INDUSTRIES (Borrower),**
(Through its Proprietor Mr. Vipul Ratilal Gandhi)
Address-1: Shed No.49, VK Complex, Nr. Mangalam Cinema, Odhav, Ahmedabad-382415.
AND
Address-2: 2, Keshar Park, Nr. Murlidhar Society, Odhav, Ahmedabad-382415.

2) **Mr. Nigam Vipulkumar Gandhi (Guarantor),**
Address-: 2, Keshar Park, Nr. Murlidhar Society, Odhav, Ahmedabad-382415.

Subject:- Application U/S.14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI ACT) for taking possession of secured assets).

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APPEARANCE :
For Applicant : Ld. Advocate Shri H C RAVAL.
For Opponents : ---

-: ORDER :-

1. The present application has been filed by the applicant u/s.14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT) against the opponents. The applicant had sanctioned Finance Facility to the opponents as per para 2 against the asset/property of the opponents as mentioned in table at Para 14.8 of this application respectively. The opponents have executed necessary documents towards mortgage of immovable property mentioned in the present application.
2. The applicant has stated that the opponents have failed to make the repayment of the dues, therefore, the account of the opponents has been classified as Non-Performing Assets (NPA) on **15.04.2025.**
3. The applicant issued notice u/s.13(2) of the SARFAESI Act, 2002 on **03.05.2025** for calling upon them to make payment of their due amount with further interest and also published in English Newspaper Business Standard and Gujarati Newspaper Navgujarat Samay (Ahmedabad Edition) on 12/03/2026 as being mandatory under the SARFAESI Act. Thus, by way of the said notice, the opponents were called upon to pay the due amount as outstanding.
4. I have heard Ld. Advocate Shri H. C. Raval who has mainly argued in consonance with the averments of the application.

Applicant has also submitted affidavit in support of his case, as per the law.

5. On perusal of the record, it reveals that, the applicant has served the notice **u/s 13(2)** of the SARFAESI Act to the opponents and has also submitted the affidavit as per the law. Thus, the applicant has fulfilled all the mandatory requirements of the law.

6. In view of the judgment of the Hon'ble Supreme Court in the case of **Balkrishna Rama Tarle Dead Thr Lrs Versus Phoenix Arc Private Limited**, SPECIAL LEAVE PETITION NO.16013 OF 2022, in the judgment, after relying upon the judgment of R.D. Jain & Co. Versus Capital First Limited & Ors. in CIVIL APPEAL NO.175 OF 2022 Para Nos. 8, 8.1 and 9, it is held that :-

"8. *Thus, considering the scheme of the SARFAESI Act, it is explicit and crystal clear that possession of the secured assets can be taken by the secured creditor before confirmation of sale of the secured assets as well as post confirmation of sale. For taking possession of the secured assets, it could be done by the "authorised officer" of the Bank as noted in Rule 8 of the Security Interest (Enforcement) Rules, 2002.*

8.1 *However, for taking physical possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM 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. 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 15 take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. <u>As mandated by Section 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of</u>*

the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days.

Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence.

This is the spirit of the special enactment. 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.*

9. *Thus, in view of the scheme of 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*

<u>SARFAESI Act, before Debts Recovery Tribunal.</u> 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."

7. Considering the above facts of the application and in view of the above judgment of Hon'ble Supreme Court specifically held that, **"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"**. Further, it reveals that sufficient time has been given to the opponent. In spite of that, he has not paid his outstanding dues, hence, I passed the following order:-

:: <u>O R D E R</u> ::

(1) The present application is hereby allowed.

(2) I authorize **Shri P. P. Ozat** officer of the Court is hereby appointed as Court Commissioner under Section 14 (1-A) of the SARFAESI ACT, 2002.

(3) Court Commissioner is directed to take possession of the properties mentioned at Schedule of Property of the present application under the heading description of the mortgage of immovable property/ Secured Assets. The description of the properties is as under :-

<u>DESCRIPTION OF MORTGAGED PROPERTY/ SECURED ASSET</u>:

Type of Secured Asset	Name of the Owner	Location of Property			Admeasuring
		Plot No. / Survey No.	Address	At	
1. Immovable Property	Vipul Ratilal Gandhi	S.No.616/2 Paiki House No.2, Kesar Park, Odhav, Ahmedabad Mouje: Odhav, Taluka: Vatva, Dist. Ahmedabad			Plot area admeasuring 104 Sq. Mtrs. along with construction admeasuring 50 Sq. Mtrs.

(4) If the secured assets is found in closed condition, the Court Commissioner may take possession of this secured assets by breaking / opening the lock or may take any other steps, he may think fit.

(5) After taking the possession of the secured assets, Court Commissioner shall prepare the inventory of any item, documents relating to the assets if found in secured assets, handover the same to the applicant-authorized officer.

(6) The Court Commissioner may take assistance of the concerned police station and may take or cause to be taken such steps and use, or cause to be used such force, as any, in his opinion be necessary.

(7) The applicant shall bear the expenses incurred in taking possession of the secured assets and shall provide all necessary assistant to the Court Commissioner in taking possession of the secured assets.

(8) Applicant is hereby directed at present to deposit lump-sum amount of Rs.20,000/- towards the expenses and remuneration of the each Court Commissioners, **within 30 days** or within the limit extended by the Court and submit the compliance report of completion of the proceedings.

(9) The Court Commissioner shall carry out the said proceedings on public holidays or except Court working hours.

(10) In view of the above observations, present application is hereby disposed of as allowed.

Signed and Pronounced in the open Court on 4th August, 2026.

Date: 04/08/2026
Place: Ahmedabad

[D. M. CHAMPANERIYA]
6th Addl. Sr. Civil Judge,
Ahmedabad (Rural), Navrangpura.
UID.No.GJ01177