IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, PASCHIM BARDHAMAN

Misc Case No. 1048/2025 (CNR- WBBD16-020600-2025)

Present: Indrani Gupta (WB00994)

C.J.M, Paschim Bardhaman

Jana Small Finance Bank Ltd…………………………………………Petitioner

Vs

(1) Mr. Aftab Khan

(2) Mr. Mujib Khan………………………………Opp Parties

Dated: 30.03.2026

1. Today is fixed for passing order. The petitioner is represented by his Ld. Advocate. Ld Advocate for the petitioner files an affidavit along with all documents, copy of paper publications. Let it be kept with the record. The record is taken up for passing the order.

2. This application has been filed under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), which has since been amended vide the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (12.08.2016).

3. The case of the applicant, in brief, is that the respondents approached the applicant for a loan and were sanctioned a credit facility. **Total Loan Amount taken Rs. 15,10,000.00/- (Rupees: - Fifteen Lakh Ten Thousand Only).** To secure the said Loan, the respondents created an equitable mortgage in favour of the applicant over the property detailed in the schedule below ("the secured asset").

4. The applicant states that, the respondents failed to maintain financial discipline and defaulted in the repayment of the loan, leading to their account being classified as a **Non-Performing Asset (NPA) on 01/06/2025.** Consequently, the applicant issued a demand notice under Section 13(2) of the SARFAESI Act on **12/06/2025** demanding payment of the **Total outstanding amount Rs 12,93,615.19/- (Rupees – Twelve Lakh Ninety-Three Thousand Six Hundred Fifteen and Nineteen Paise Only)** as on **03/06/2025**.

5. Within 60 days the respondents failed to comply with the said notice. Thereafter, the applicant's authorized officer took **Symbolic Possession of the Secured Asset on 18/08/2025, Under Section 13(4) of the SARFAESI Act**. Symbolic Possession of the said secured assets was published in two daily newspapers being **“ARTIK LIPI” (Bengali) and “THE ECHO OF INDIA” (English) dated 20/08/2025**.

6. Despite these measures, the respondents have failed to clear the outstanding dues, and physical possession of the asset could not be obtained. Hence, the applicant has approached this court for assistance under Section 14 of the said Act.

7. The petitioner has filed decision being **The Authorised officer, Indian Bank vs. D. Visalakshi and Anr. decided on 23-09-2019 decided by the Hon'ble Supreme Court** wherein **Hon'ble Supreme Court** has held that **CJM is**

equally competent to deal with an application moved by the secure creditor u/s. 14 of the SARFAESI Act.

Ld. Advocate for the petitioner has placed a ruling being **Mr. Munish Kumar Bhunsali vs. Kotak Mahindra Bank Ltd on 19-08-2019 by the Hon'ble Delhi High Court.** By filing, it has been held that, "thus the role of the Magistrate while dealing with an application u/s 14 of the Act is not adjudicatory nor is he obliged to give notice to the borrower. By filing an application u/s 14 of the Act, the secured creditor exercises one of the options available with him to take possession of the secured asset. All that the Magistrate at this stage is required to see is that requirements of the Act and the rules framed thereunder are satisfied in the affidavit filed on behalf of the secured creditor and proceed to pass an order."

Ld. Advocate for the petitioner also cited a ruling being **Cholamandalam Investment and Finance Company Limited vs. Rajeev Chawla & Anr. on 22 October, 2021 by the Hon'ble Delhi High Court** held that "all rights of the borrower or any aggrieved person are protected u/s 17 of the Act. As noted above, orders passed u/s 14 are only a procedural requirement and no substantive rights of the parties are affected. Once a receiver is appointed by the CMM u/s 14 of the Act, a notice is required to be issued and affixed at the secured asset by the receiver pursuant to orders passed u/s 14 of the Act."

It is settled in **Madan Mohan Srivastava vs. Additional District Magistrate (South) Bhopal and Others decided by the Hon'ble Madhya Pradesh High Court on 01-04-2021** that "the action u/s 14 of the act constitutes an action taken after the stage of section 13(4) and, therefore, same would fall within the ambit of section 17(1) of the act, therefore, the act contemplates an efficacious remedy for borrower or any person affected by any action taken u/s 13(4) of the Act by providing for an appeal before the DRT."

The similar issue came up before the **Hon'ble Supreme Court in the matter of Authorized Officer, State Bank of Travancore and Another vs. Mathew K.C., 2018 SCC online 55** in reference to challenge to the proceedings u/s 13(4) of the Act and the Hon'ble Supreme Court held that:

"The SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under section 17 before the Debt Recovery Tribunal, followed by a right to appeal the Appellate Tribunal under section 18."

8. **Hon'ble Supreme Court held in Standard Chartered Bank vs. V. Nobel Kumar & Ors.** 14(1) MPCJ 396 that, "the appeal u/s 17 is available to the borrower against any measure taken u/s 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible u/s 13(4). Alienating the asset either by lease or sale, etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Sec. 14 authorizes the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower (sic the secured creditor). Therefore, the borrower is always entitled to prefer an 'appeal' u/s 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4) (a) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure u/s 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process

contemplated u/s 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy u/s 17 is available.”

9. In the judgment of **Balkrishna Rama Tarle Dead Thr LRS & Anr. vs Phoenix ARC Private Limited & Ors. dt. 26.09.2022, it was held by the Hon'ble Supreme Court** “in that view of the matter once all the requirements under section 14 of the of 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 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 u/s 17 of SARFAESI Act, before Debt Recovery Tribunal.”

10. Perused the affidavit filed by the petitioner in compliance with the section 14(1) of the Act. Thus it appears that the petitioner has filed this application after complying the provisions of section 13(2) and 13(4) of the Act and has complied all necessary requirements of the Act for taking possession of the secured asset against the financial assistance granted to respondent no. 1. Hence, it appears that petitioner's prayer is needed to be allowed for taking possession of the secured asset and related documents thereto and to forward the same to the secured creditor.

11. Hence, based on the above facts and circumstances, and upon satisfaction as to the fulfillment of the statutory requirements, the application filed under section 14 of the Securitisaton and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred to as SARFAESI Act), which has since been amended vide the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 is considered and allowed.

12. On relying upon the judgment dated 06.11.2019 passed by the **Hon'ble Bombay High Court in case of Mr. Subir Chakravarty & Anr. vs. Kotak Mahindra Bank Ltd. & Ors. Delivered in Writ Petition (1) No. 28480 of 2019 and in the judgment of Balkrishna Rama Tarle Dead Thr LRS & Anr. vs Phoenix ARC Private Limited & Ors. dt. 26.09.2022** an Officer subordinate to this Court or even an advocate can be appointed to take possession of the secured assets. The petitioner has also filed the name of Ld. Advocate to be appointed as advocate commissioner.

13. Hence, it is O R D E R E D that the application under Section 14 of the SARFAESI Act, 2002, is hereby allowed.

14. **Ronika Shaw (8670574549)** Ld. Advocate, Bar Association, Asansol, appointed as the Special Officer to carry out the orders of this Court. Ld. Advocate is hereby appointed as Advocate commissioner to take possession of the secured asset situated at District: - Paschim Bardhaman, Sub Registry Office: - Asansol, Mouza: - Narshinghbad, J.L No: - 21, under R.S. Kh. No: - 2537, comprising in R.S. Plot No: - 3903, P.S: - Hirapur, measuring area 460 sq. ft. of bastu land along with a 12 years old tiles shaded structure having covered area 460 sq. ft. with all fittings, fixtures and easement rights etc. under ward no. 38 of Asansol Municipal Corporation registered at the office of A.D.S.R Asansol in book no 1 C.D volume no 8 Page from 1407 to 1419 being deed no 00971 for the year 2014 in the name of Mujib Khan.

15. The Ld. Special Officer/Advocate Commissioner is directed to take physical possession of the secured asset as described in the schedule below. He/She is authorized to break open any lock(s) if necessary to gain access to the property. After taking possession, he/she shall prepare an inventory of any articles found therein and hand over the vacant possession of the asset to the authorized officer of the applicant, **JANA SMALL FINANCE BANK LTD** to ensure transparency and prevent future complications. The entire possession process must be video recorded. The video recording should then be submitted to the court along with the compliance report.

16. The police assistance shall be rendered on the date and time specified by the Advocate Commissioner/Authorized Officer of the Applicant Bank, upon receiving a written intimation from the said officer at least 24 hours in advance.

17. The appointed Advocate Commissioner is to provide possession notice to both the Authorized Officer of the secured creditor and the borrower. This notice must be served personally or via speed post at least 14 days in advance. Additionally, the notice, along with a copy of this order, shall be affixed to the main door or another prominent part of the property.

18. During the execution of this order for taking physical possession, the Advocate Commissioner and the Authorized Officer of the Applicant Bank shall ensure that a legal aid counsel is present to assist the Occupants/Borrowers, if they so desire or are found to be in need of legal assistance, in consonance with the principles of legal aid and recent judgments emphasizing the right to legal representation during coercive actions.

19. This order does not adjudicate upon the merits of the claim or the validity of the debt/security interest and is passed without prejudice to any rights or remedies available to the Respondent(s) under the SARFAESI Act (such as approaching the Debts Recovery Tribunal under Section 17 or any other law in force).

20. A copy of this order shall be sent forthwith to the Commissionerate of Police, Asansol, Paschim Bardhaman, and the **Officer-in-Charge, Hirapur** Police Station, for information and necessary compliance.

21. A copy of this order is supplied to the Applicant Bank and the appointed Advocate Commissioner.

22. The **Officer-in-Charge, Hirapur** Police Station is hereby directed to provide adequate police force, including female constables, to the Ld. Special Officer/Advocate Commissioner at the time of executing this order to prevent any breach of peace.

23. The applicant bank is required to deposit **Rs. 15,000/- (Rupees Fifteen Thousand Only),** with this Court or directly with the Advocate Commissioner. A receipt of this payment, serving as remuneration for the Ld. Special Officer, must then be deposited with the Court.

24. The applicant will also bear all others incidental costs required for the execution of this order.

25. The Ld. Special Officer/Advocate Commissioner shall execute this order and **submit a report of compliance to this court within 60 (sixty) days from the date of this order**.

26. A copy of this order is given to the petitioner bank and the Receiver for immediate compliance without any delay. Bench Clerk is hereby directed to

inform the receiver about this order and supply him/her with a copy of the order.

27. The undersigned requires no further proceedings except receiving a report regarding the directions given above.

28. **Accordingly, the case is disposed off**.

29. Copy of this order is uploaded in CIS.

30. Note in TR.

Chief Judicial Magistrate,
Paschim Bardhaman at Asansol.

SCHEDULE OF THE SECURED ASSET

All that piece and parcel of landed property with residential house situated within the District: - Burdwan, Chowki & Sub-Registry Office and Sub-Division:- Asansol, P.S.:- Hirapur, Mouza: - Narshinghbad, J.L. No: - 21, under R.S. KH no: - 2537, comprising in R.S. Plot No: - 3903, measuring area 460 sq. ft. of bastu land along with a 12 years old tiles shaded structure having covered area 460 sq. ft. with all fittings, fixtures and easement rights etc. under ward no. 38 of Asansol Municipal Corporation.

Property Boundary: -
North: Common Wall.
South: 6’ ft wide Road.
East: 3’ ft wide Goli Road.
West: Property of others.

Chief Judicial Magistrate,
Paschim Bardhaman at Asansol

Copy of order be forwarded to:

1. The Petitioner.
2. The Ld Advocate Receiver.
3. The Officer-in-Charge of concerned P.S.

For taking necessary action.

Chief Judicial Magistrate,
Paschim Bardhaman at Asansol