

**Misc. Case No. 821 of 2024**  
**[CNR No.WBHW040050372024]**



**Order dated 07.01.2025**

Today is fixed for hearing and further order.

Ld. Advocate for the appellant is present today and has one Affidavit affirming by the authorized officer that the application has exhausted all sorts of procedures as enumerated in the said Act and the mortgaged properties in question, there is no stay order or injunction as has been passed by any competent Court or by any Higher Authority and is free from all encumbrances. The applicant/petitioner also filed some photo copy of documents showing that the notice in terms of symbolic possession of the properties in question have been affixed on the conspicuous part of the premises.

The record is taken up for passing final order pursuant to hearing the applicant/party.

It appears that an application has been filed by the Yes Bank Limited having it's Branch Office at 1<sup>st</sup> Floor, Stephen House, 56E, Hemanta Basu Sarani, Kolkata - 700001.

The gist of the fact is that the respondent(s)/Borrower(s)/O.Ps. approached the applicant/petitioner for availing certain credit facility and upon accepting and considering the application of the respondents, the applicant bank has sanctioned credit facility to the tune of Rs. **1,20,00,000/-** in form of overdraft facility and Rs. **1,20,00,000/-** in form of post shipment credit facility and Rs. **1,20,00,000/-** in form of export packing credit facility vide sanction letter dated **20.09.2021**. The borrowers/O.Ps created an equitable mortgage in respect of the immovable property being all that piece and parcel of bastu land measuring an area 1 katta 13 chatak 18 sq. ft. with one roof tile shed area 100 sq. ft. aprox room with common passage in Mouza – Bally, J.L. No.14 in Dag No.16515/16954 under khatian No.6937 with an easement right, P.S. - Bally, within the jurisdiction of Bally Municipality holding No.23/1, Hazrapara Lane, Ward No.7, which is butted and bounded as under :-

North : 23/1/A, Hazrapara Lane,

South : Bally Municipality/ Hazrapara Lane,

East : Hazrapara Lane,

West : 6 ft. wide common passage/25/1, Hazrapara Lane.

The borrowers/O.Ps deposited the original title deed of the mortgage property dated 07.06.1995 bearing No.1793 for the year 1995 with the applicant. Subsequently, other relevant documents under Loan Account No.019084600002620 and 005BM06241130002 was executed between the parties to record such financial transaction of credit facilities by the applicant. Later on the respondent(s)/Borrower(s)/O.Ps. defaulted in satisfying both the loan accounts and finally, on **10.05.2024** since, the said loan became due and unpaid, thereby classified as '**N.P.A.**'. The applicant issued a notice on **28.06.2024** upon the respondent(s)/ Borrower(s)/O.Ps. U/s. **13(2)** of the SARFAESI Act, 2002 requesting them to meet up the outstanding amount of **Rs.27,04,245.50/-** in respect of Loan Account No.019084600002620 due as on 25.06.2024 and **Rs.43,21,545.15/-** in respect of Loan Account No.005BM06241130002 due as on 26.06.2024 within the stipulated 60 days. The notice was duly served upon the respondent(s)/Borrower(s)/O.Ps. Thereafter, the applicant took recourse to Section **13(4) of the said Act on 17.10.2024 by taking symbolic possession** and thereby circulating notice on **19.10.2024** in two leading news papers but yielded no fruitful result. It is pertinent to mention herein that while taking the loan amount,

the respondent(s)/ Borrower(s)/O.Ps deposited the original title deeds of the property being the

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secured assets in favour of the applicant/petitioner as per agreement executed between the parties.

From the documents filed by the applicant/petitioner it appears that the scheduled properties were given in equitable mortgage by the Respondents to the applicant and they took the loan amount from the applicant/petitioner and thereafter they defaulted and could not repay the loan amount as above.

The applicant/petitioner has filed the documents to take physical possession of the secured assets as mentioned in the schedule of the petition to satisfy their dues. From the documents so filed, it appears that the lenders duly placed the scheduled properties in mortgage by furnishing the original title deed. Later an affidavit has also been filed by the applicant stating that there is no stay order or injunction issued in respect of any proceedings pending before any court of Law in respect of the property. The process U/s. 13(4) of the said Act having failed to yield the desired relief; hence, considering the fact that the secured assets are situated within the jurisdiction of this Court,

*Hence based on the above facts and circumstances and upon satisfaction as to the fulfillment of the statutory requirements, and being **satisfied with the nine-points affidavit**, the application filed u/s.14 of the Securitisation 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 Recover of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 is **allowed**.*

On relying the judgment dated 06.11.2019 passed by the **Hon'ble Bombay High Court in case of Mr. Subir Chakravarty and Anr. V/s Kotak Mahindra Bank Ltd. And Anr. Delivered in Writ Petition (L) No.28480 of 2019**, an officer subordinate to this court has to be appointed to take possession of the secured assets.

Accordingly, it is

**ORDERED**

that the petitioner/applicant is permitted to take physical possession of the immovable properties of the respondent(s)/Borrower(s)/O.Ps as described in schedule of the application which are well within the jurisdiction of this Court --

all that piece and parcel of bastu land measuring an area 1 katta 13 chattak 18 sq. ft. with one roof tile shed area 100 sq. ft. aprox room with common passage in Mouza – Bally, J.L. No.14 in Dag No.16515/16954 under khatian No.6937 with an easement right, P.S. - Bally, within the jurisdiction of Bally Municipality holding No.23/1, Hazrapara Lane, Ward No.7, which is butted and bounded as under :-

North : 23/1/A, Hazrapara Lane,

South : Bally Municipality/ Hazrapara Lane,

East : Hazrapara Lane,

West : 6 ft. wide common passage/25/1, Hazrapara Lane.

The Head Clerk, C.J.M. Court, Howrah is directed to take physical possession of the scheduled property and after taking the same will be handed over to the authorized officer of the applicant creditor executing proper receipt as per Law, if the property in question is found free from all encumbrance.

If the scheduled property is under lock and key, the petitioner may break open the same on certain terms and conditions:-

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1. The petitioner/applicant to remain present with proper identity proof, authorization paper and connected documents at the time of executing the order for the purpose of identification of the property in dispute.

2. The padlock/lock and key of the flat/premises/godown/office unit in question as mentioned in the application will be broken in presence of Authorized Officer of **Yes Bank Limited** or its competent representatives and police.

3. A person of the locality may be present during breaking the padlock.

4. The **Yes Bank Limited** will prepare an inventory list in respect of the articles lying inside the premises compound concerned.

5. After completion of the inventory, a list will be handed over to the Head Clerk C.J.M. Court, Howrah, the Opposite party and a copy of the list is also to be submitted before the Court.

6. The Head Clerk CJM Court, Howrah is at liberty to take the help of both the I/C, **Bally P.S.** if he faces any obstruction and to submit a compliance report.

7. The applicant is to bear the stipulated cost for providing force by the police.

Let a copy of this order be supplied to the Head Clerk for compliance.

Let the original documents be returned.

Fix **14.05.2025** for compliance report by Head Clerk.

Dictd & cortd by me

CJM

Chief Judicial Magistrate, Howrah  
(J.O. Code – WB01022)