

Misc. Case No. 896 of 2024
(CNR No.WBHW04-005514-2024)



Order dated 19.07.2025

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 lying vacant at present which 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 AXIS Bank Limited having it's registered office at 1, Shakespeare Sarani, 4th Floor, A.C. Market, Kolkata-700071.

The gist of the fact is that the respondent(s)/Borrower(s)/O.Ps. approached the applicant/petitioner for financial assistance by mortgaging immovable properties-

1. All that the piece and parcel of Mokarari Mourashi Bastu Land containing an area measuring about 1 bigha 12 cottahs 13 chittacks 44 sq. ft be the same a little more or less together with structure standing thereon altogether with all easement rights, appurtenances and appendages, drains, water ways, path ways approached to the main road being a part of the holding no. 18/1 (previously 18), Kumorpara Road comprised within Mouza - Liluah, P.S. Bally, Dist-Howrah, Khatian Nos. 4974, 618 & 5309, Dag Nos. 2285, 2286 and 2289 within the jurisdiction of the office of the District and Additional District Sub Registrar, Howrah which butted and bounded in the manner as follows:

North: Garden Land of RBS Rubber Co

South: Kumor Para Road & Land of Sadhu Singh

East: Land of Sadhu Singh and shed of Calcutta Silk Mill

West: Garden of Srinibas Sur

2. All that shop no 4 on the Ground floor, Block "A" (Jagat Banerjee Ghat Road) of the building comprised in the residential complex constructed upon the demarcated part or portions of the lands written containing an area measuring about 80 sq. ft. be the same a little more or less and in all super privileges area thereon the rights of the user of the common area in the building and the lands comprised in Howrah Municipal Corporation Premises No. 432 GT Road (South) PS- Shibpur, Dist-Howrah, within the jurisdiction of the Office of the District and Additional District Sub-registrar, Howrah which is butted and bounded as follows:

North: Jagat Banerjee Ghat Road

South: Godown

East: Common Passage

West: Other shop

3. All that Godown on the Ground floor, Block "A" (entrance from Jagat Banerjee Ghat Road by common passage) of the building comprised in the residential complex constructed upon the demarcated part or portions of the lands and area measuring about 235 sq. ft be the same a little more or less and in all super privileges area thereon the rights of the user of the common area in the building and the lands comprised in Howrah Municipal Corporation Premises No. 432 GT Road (South) PS-Shibpur, Dist- Howrah, within the Jurisdiction of the Office of the District and Additional District Sub-registrar, Howrah, which is butted and bounded as follows:

North: Shop room no.

South: Other spaces/Godown

East: Common passage

West: Partly other spaces and garage

Misc. Case No. 896 of 2024
[CNR No.WBHW04-005514-2024]



Order dated 19.07.2025 (Cont'd...)

4.All that Garage on the Ground floor, Block "A" (entrance from Jagat Banerjee Ghat Road by common passage) of the building comprised in the residential complex constructed upon the demarcated part or portion of the lands and area measuring about 434 sq. ft be the same a little more or less and in all super privileges area thereon the rights of the user of the common area in the building and the lands comprised in Howrah Municipal Corporation Premises No. 432 GT Road (South) PS-Shibpur, Dist-Howrah, within the jurisdiction of the Office of the District and Additional District Sub-registrar, Howrah which is butted and bounded as follows:

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East: Common Passage

West: Passage after drain

and on consideration, a loan of **Rs.9,00,00,000/- (Rupees Nine Crore only)** was sanctioned vide letter dated **16.03.2018** in equatable monthly installments thereby depositing the original title deeds of the immovable properties. Later on the respondent(s)/Borrower(s)/O.Ps. defaulted in satisfying the loan amount and finally, on **19.07.2019** since, the said loan became due and unpaid, thereby classified as 'N.P.A.'. The applicant issued a notice on **16.03.2020** 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.8,10,18,456.99/- (Ruppees Eight Crores Ten Lac Eighteen Thousand Four Hundred Fifty Six and Ninety Nine Paise Only)** within the stipulated 60 days but which returned undelivered.Thus the notice was also published on **18.08.2020** in two leading news papers. In reply, the respondent(s)/Borrower(s)/O.Ps. made representation objecting the claims of the appellant/petitioner in terms of Sec. 13(3A). Thereafter, the applicant took recourse to Section **13(4) of the said Act on 16.01.2021 by taking symbolic possession** and thereby circulating notice on **22.01. 2021** 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 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,

Misc. Case No. 896 of 2024
(CNR No.WBHW04-005514-2024)



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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 --

1. All that the piece and parcel of Mokarari MourashiBastu Land containing an area measuring about 1 bigha 12 cottahs 13 chittacks 44 sq. ft be the same a little more or less together with structure standing thereon altogether with all easement rights, appurtenances and appendages, drains, water ways, path ways approached to the main road being a part of the holding no. 18/1 (previously 18), Kumorpara Road comprised within Mouza - Liluah, P.S. Bally, Dist-Howrah, Khatian Nos. 4974, 618 & 5309, Dag Nos. 2285, 2286 and 2289 within the jurisdiction of the office of the District and Additional District Sub Registrar, Howrah which butted and bounded in the manner as follows:

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3. All that Godown on the Ground floor, Block "A" (entrance from Jagat Banerjee Ghat Road by common passage) of the building comprised in the residential complex constructed upon the demarcated part or portions of the lands and area measuring about 235 sq. ft be the same a little more or less and in all super privileges area thereon the rights of the user of the common area in the building and the lands comprised in Howrah Municipal Corporation Premises No. 432 GT Road (South) PS-Shibpur, Dist- Howrah, within the Jurisdiction of the Office of the District and Additional District Sub-registrar, Howrah, which is butted and bounded as follows:

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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:-

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 the AXIS Bank Limited or its competent representatives and police.

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

4. The the AXIS Bank Limited authority 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 and Shibpur** 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 **06.11.2025** for compliance report by Head Clerk.

Dictd & cortd by me

CJM

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