IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, KANNIYAKUMARI DISTRICT AT NAGERCOIL.

Present : Thiru.J.Selvan Jesu Raja, M.A., L.L.M.,
Chief Judicial Magistrate.

Thursday, the 21st day of May, 2026

<u>Criminal Miscellaneous Petition No. 884/2026</u>

M/S.EQUITAS SMALL FINANCE BANK LTD,
Ramanputhur, Chettikulam, Nagercoil – 629 002.
Rep. by its Authorized Officer Thiru.P.Saravana Kumar. … Petitioner

/Vs./

1 Baiju,
S/o.Philipose,
2-3-82,Thottinkarai Veedu,
Vellachiparai,
Vilavancode,
Kanniyakumari District.

2 Santhi
W/o.Baiju,
2-3-82,Thottinkarai Veedu,
Vellachiparai,
Vilavancode,
Kanniyakumari District. .... Respondents.

This petition coming on 14.05.2026 for hearing before me in the presence of Thiru.M.P.Girish Babu, Advocate for the petitioner and after hearing the petitioner side arguments and on perusing the entire records and having stood over for consideration till this day, this court today delivers the following :

<u>ORDER</u>

The petitioner has filed this petition under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to take physical possession of the secured asset properties mentioned in the schedule and documents relating thereto and handover the same to the petitioner with the assistance of an Advocate Commissioner and to break open the property, in case the property is locked and to handover the same to the petitioner, forward such assets and documents to the petitioner secured creditor and to direct the Inspector of Police, Arumanai Police Station, within whose jurisdiction, the said secured assets are situated to provide necessary police protection while taking over the secured property.

2. It is the case of the petitioner that, the respondents have approached the petitioner for availing Loan for Rs.5,20,000/- and the same has been sanctioned on 27.02.2024. The above said loan was secured by way of execution of an equitable mortgage by deposit of original title deeds regarding the schedule property. The respondents after completing the execution of all documents, the petitioner bank had disbursed the amount. Subsequently since the respondents committed default in repayment of the loan, the petitioner had classified the above said Loan Account as Non-performing Asset on 09.09.2025. In pursuant to the provisions of the SARFAESI Act, the petitioner through its Authorised Officer issued Notice dated 30.09.2025 by virtue of powers conferred under Section 13(2) of the SARFAESI Act calling upon the respondents to make payment of an amount of Rs.5,32,391/- within 60 days from the date of notice. After 60 days, Section 13(4) notice dated 09.01.2026 was issued to the respondents. The Possession notice was published in Tamil Daily news paper Dhinamani and also in English Daily News paper The New Indian Express on l5.01.2026. When the petitioner proceeded with the symbolic possession they were objected and resisted to take possession by the respondents and refused to hand over the possession of the secured asset schedule properties. The respondents are liable to pay an amount of Rs.5,32,391/- as on 29.09.2025 to the petitioner and future interest, cost. Hence the petitioner has filed this petition for taking physical possession.

3. Already Petitioner filed Affidavit along with the petition with supporting documents listed in the petition. The above said Affidavit and the list of documents No.1 to 11 annexed with the petition have been perused and taken for consideration.

4. **<u>Now the point for consideration is that whether this petition filed by the petitioner under Section - 14 of the SARFAESI Act is to be allowed or not?</u>**

5. Petitioner side arguments heard. Documents perused.

6. The petitioner contended that, the respondents have approached the petitioner for availing Loan for Rs.5,20,000/- and the same has been sanctioned on 27.02.2024. The above said loan was secured by way of execution of an equitable mortgage by deposit of original title deeds regarding the schedule property. The respondents after completing the execution of all documents, the petitioner bank had disbursed the amount. Subsequently since the respondents committed default in repayment of the loan, the petitioner had classified the above said Loan Account as Non-performing Asset on 09.09.2025. In pursuant to the provisions of the SARFAESI Act, the petitioner through its Authorised Officer issued Notice dated 30.09.2025 by virtue of powers conferred under Section 13(2) of the SARFAESI Act calling upon the respondents to make payment of an amount of Rs.5,32,391/- within 60 days from the date of notice. After 60 days, Section 13(4) notice dated 09.01.2026 was issued to the respondents. The Possession notice was published in Tamil Daily news paper Dhinamani and also in English Daily News paper The New Indian Express on l5.01.2026. It is further contended that the petitioner to prove their case has filed various documents relating to the loan transaction and subsequent legal proceedings as list of documents No.1 – 11 along with the petition. In that context, the petitioner has filed this petition to appoint an Officer/ Advocate to seek assistance of this court for taking physical possession of the petition schedule property.

7. The petitioner narrated in the petition specifically about the receipt of loan, subsequent failure to repay in the agreed manner, conversion of the debt into a Non-performing Asset, prior entitlement / ownership of the property, execution of memorandum of deposit of title deeds and about the subsequent proceedings initiated under the SARFAESI Act by the petitioner.

8. As per the SARFAESI Act, the petitioner who is the Secured Creditor may take possession of the Secured Asset under Section 13 of the said Act. The petitioner can file application before this court to seek assistance for taking possession of the property hypothecated. As per Section 14 of the Act, this court can provide necessary assistance to the secured creditor in taking possession of the secured asset and the documents relating thereto from the respondents and forward it to the Secured Creditor.

9. The petitioner contended that, the respondents are in possession of the Secured Asset and declined to surrender vacant possession of the schedule properties to the petitioner and so they have filed this petition seeking assistance of the court for taking possession of the schedule properties.

10. Section 14 of the Act does not contemplate any notice to the respondents before passing any order under this section. On perusal of the petition affidavit and documents filed by the petitioner, it is seen that, the petitioner has complied all the pre-conditions to invoke Section 14 of the SARFAESI Act and also proved that, there is a compelling situation for the petitioner to realise the loan amount by taking necessary action, for taking actual possession of the Secured Asset for sale or for transfer. For the said purpose it is just and necessary, to render assistance to the Secured Creditor in taking possession of the Secured Asset, it is necessary to appoint an Advocate Commissioner for identification of the Secured Asset and taking possession and if there is any resistance, seek for police assistance and take any effective step to have possession of the secured Asset.

11. In this regard, this court also takes into consideration the decision of the Hon'ble Supreme Court in the case of the **Authorised Officer, Indian Bank Vs. D.Visalakshi and another in AIR 2019 SC 4619** wherein it has been categorically held as follows :

> “ 22. . . . **Thus it is only a procedural step without any adjudication of any dispute whatsoever. The action is therefore**

> **only an administrative order made for taking possession of the secured assets if all other conditions are fulfilled. Having already noted that the powers exercised by the CMM and DM in terms of Section 14 of the 2002 Act are synonymous to each other and that they are not adjudicatory in nature. . . "**
>
> "25.. . . **It did notice that the authority referred to in Section 14 of the 2002 Act has no power to adjudicate upon any rights of the parties but can only render assistance to the secured creditor to recover possession. . ."**

12. Considering the above facts and documents filed on behalf of the petitioner as list of documents No.1 to 11 which includes the Loan Application, Sanction Letter, MOD, Encumbrance Certificate and demand notices issued by the petitioner this court is satisfied that, the respondents have defaulted in repayment of the due loan amount with subsequent interest and the said loan is also not barred by limitation and the secured asset for the same, namely schedule property offered as security for the said loan is also located within the jurisdiction of this court. Hence, this court finds it fit to issue necessary directions to take physical possession of the secured asset described in the schedule after taking proper inventory and also to handover the possession of the schedule property to the petitioner bank and as a result this court hereby decides that, the present petition deserves to be allowed.

13.1. In the result, this petition is allowed and Advocate J.Jaya Bharathi, (Enrollment No.8728//2023), is appointed as Advocate Commissioner and she is directed to inspect the petition schedule property, to take inventories and to take physical possession of the schedule property and prepare a mahazar with details of the property in the presence of two independent witnesses and hand over the same to the authorised officer of the petitioner with an acknowledgment. The Advocate Commissioner may take assistance of the local police and Revenue officials if necessary for taking possession of the said property and if such a request is made, those officials

are directed to give all assistance required to execute the warrant. A sum of Rs.22,000/- is fixed as remuneration for the Advocate Commissioner and the Applicant/Secured Creditor shall pay the same directly to the Advocate Commissioner on or before 04.06.2026 and file memo to that effect. The petitioner shall file an affidavit before the advocate commissioner swearing that no stay has been granted in this regard prior to the execution of the warrant.

13.2. Considering the facts and circumstances involved and also the threat and possibilities of any untoward incident that may occur at the time of execution of the order of this court, if necessary Advocate Commissioner is at liberty to also seek the assistance of 108 ambulance service and fire service personnel for which the Advocate Commissioner shall address the appropriate authorities in advance and in turn the appropriate authorities shall ensure that necessary assistance of fire service personnel and 108 Ambulance service is provided to the Advocate Commissioner to assist her in the course of execution of the order of this court.

13.3 It is also made clear that while taking inventories if any pets are found in the schedule property without causing any harm to them they shall be entrusted to their owner or the appropriate authorities as found fit in the existing circumstances. For Commissioner's Report call on 25.06.2026.

Dictated to Steno-typist and directly typed by her in the computer, corrected and pronounced by me in the open court on this the 21st day of May 2026.

J SELVAN JESU RAJA
Digitally signed by J SELVAN JESU RAJA
Date: 2026.05.22 16:36:09 +0530

Chief Judicial Magistrate,
Kanyakumari District at Nagercoil.

List of witnesses on the petitioner side : NIL

List of documents on the petitioner side : NIL.

DESCRIPTION OF THE IMMOVABLE PROPERTY

All the piece and parcel of the land and building, comprised in Resurvey No: 19/98 and measuring an extent of 3610.79 sq.ft equal to 8.29 cents situated in Mancode Village, Vilavancode Taluk, Kanniyakumari District bounded on :-

Bounded On:-

North by	:	Property of Annamma
South by	:	Property of Annamma
East by	:	Pathway
West by	:	Chandhiran.

J SELVAN JESU RAJA

Digitally signed by J SELVAN JESU RAJA
Date: 2026.05.22 16:36:15 +0530

Chief Judicial Magistrate,
Kanyakumari District at Nagercoil.