

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7370 OF 2026

Mahindra and Mahindra Financial .. Petitioner
Services Ltd.

The State of Maharashtra and Ors .. Respondents

Ms. Priya Nigwekar, i/b Ms. Pallavi Chari, for the Petitioner.

Ms. T. N. Bhatia, AGP for Respondent Nos. 1 and 8 – State.

Mr. Sachidanand D. T., for Respondent Nos. 4 and 7.

Mr. Ram Upadhyay, a/w Mr. Narayan Mishra, Law Competere Consultus, for
Respondent No. 9.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

DATE : 19TH JUNE 2026.

PC:

1. Heard learned counsel for the Petitioner (secured creditor).
2. The petitioner has brought to the notice of this Court that despite possession of the secured asset being taken and it being handed over to the auction purchaser – Respondent No. 9, the borrowers have trespassed into the property as a consequence of which, the Respondent No. 9 – auction purchaser was constrained to cause an FIR to be registered on 27/03/2026.
3. Copy of the FIR is annexed at Exhibit I, which shows that FIR No. 0137 of 2026 was registered at Kharghar Police Station, Kharghar, Navi

Mumbai, for offences under Sections 333 and 351 of the Bharatiya Nyaya Sanhita, 2023 (BNS) against Respondent No. 4, 6 and 7.

4. The learned counsel for the Petitioner submits that an earlier writ petition was filed before this Court in the backdrop of an order dated 03/11/2023 passed by the Competent Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, in order to take physical possession of the secured asset. But, when the writ petition came up for consideration, the petitioner had already taken possession of the secured asset with the assistance of the police and hence, the writ petition had to be disposed of as infructuous.

5. It is the case of the Petitioner that on the very next day of the possession having been taken, the respondent – borrowers trespassed into the property and thereby, dispossessed the auction purchaser – Respondent No. 9.

6. As a matter of fact, the learned counsel appearing for Respondent No. 9 submits that she had purchased the said property out of her hard-earned income and she has been thrown out by the aforesaid actions of the borrowers. It is contended that the police have also not taken any further action beyond registration of the FIR as a result of which the auction purchaser- Respondent No. 9 is left high and dry despite having parted with

the consideration amount.

7. In this backdrop, the learned counsel for the Petitioner (secured creditor) is praying for relief in this petition.

8. The respondent – borrowers have appeared through counsel and they submitted that they are merely guarantors. The said submission cannot be countenanced for the reason that under the provisions of the SARFAESI Act, guarantors are also included under the definition of borrowers.

9. Apart from this, the allegations now being leveled by the said respondents about alleged fraud committed by the petitioner cannot be considered in this writ petition, which arises from the order passed by the Competent Magistrate under Section 14 of the SARFAESI Act. As per settled law when the Competent Magistrate considers an application under Section 14 of the SARFAESI Act, he is not required to give any audience to parties like the borrowers as they have a remedy available under Section 17 of the SARFAESI Act to approach the Debts Recovery Tribunal.

10. The Respondents appearing through counsel today before this Court seeking to resist the prayer made in this petition do not appear to have approached the DRT and therefore, this Court is not inclined to consider the contentions raised on their behalf. It is submitted at this stage that the Petitioner should at least be directed to provide necessary documents for the

said Respondents to take appropriate steps in accordance with law.

11. The Petitioner being the secured creditor would have copies of documents concerning the loan transaction and there should not be any impediment in providing copies of such documents to the said Respondents.

12. We are of the opinion that in such cases, there is a tendency amongst borrowers/guarantors to brazenly violate the rule of law and take law in their own hands by trespassing into properties that are secured assets. Learned Counsel for Respondent No. 9 submits that this is not the first occasion on which the said Respondents have trespassed into the property, but there have been earlier occasions also.

13. Even if this is the first occasion on which such an act has been undertaken by the said Respondents, it is reprehensible, as it completely violates the rule of law. Any party that takes the law in its own hands cannot be heard by this Court. The record shows that Respondent No. 9 as the auction purchaser was put in possession of the subject property strictly in accordance with law after the Competent Magistrate had passed the order under Section 14 of the SARFAESI Act.

14. The Respondent State is represented by the learned AGP.

15. We are surprised that the concerned police officers are not taking further steps beyond registration of the FIR in order to assist the Petitioner

(secured creditor) and Respondent No. 9 – auction purchaser, as a consequence of which Respondent Nos. 4 and 7 being rank trespassers, are enjoying possession of the subject property. In such situations, immediate orders are warranted to restore the rule of law.

16. In view of the above, Respondent No. 2 – Court Commissioner is directed to take possession of the secured asset as specifically described in prayer clause 'A' of this petition on 24th June 2026. The Respondent No. 8 – Senior Inspector of Police, Kharghar Police Station, Kharghar, Navi Mumbai, is directed to provide appropriate police assistance to Respondent No. 2 – Court Commissioner in executing the said direction issued by this Court. Sufficient number of police personnel, including lady constables shall be provided to ensure that physical possession of the said secured asset is taken and handed over to the Respondent No. 9 (auction purchaser) on the very same day.

17. It is made clear that in the event, the said directions issued by this Court are not executed, the Senior Inspector of Police, Kharghar Police Station, Kharghar, Navi Mumbai, shall remain personally present in this Court on the next date of listing.

18. The Respondent Nos. 4 to 7 are directed not to cause any obstruction during execution of the said directions issued by this Court. The entire process of executing the directions of this Court shall be videographed by

the Petitioner at its own cost.

19. List for compliance on 29th June 2026.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)