

MPBalekar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**INTERIM APPLICATION (L) NO. 13584 OF 2026
IN
COMMERCIAL ARBITRATION PETITION NO. 767 OF 2025**

Profectus Capital Private Limited ... Applicant
In the matter of
Profectus Capital Private Limited ... Petitioner
V/s.
Asma Dhaba and Ors. ... Respondents

Mr. Vishal Maheshwari i/by VM Legal for the applicant.

Mr. Shyam Chopda, Officer on Special Duty, Court Receiver, present in the Court.

CORAM : AMIT BORKAR, J.

DATED : JUNE 10, 2026

P.C.:

1. The applicant has filed the present Interim Application and is asking for a direction that the Court Receiver, who is presently holding the secured property under orders of this Court, should hand over actual possession of the mortgaged property to the Authorised Officer appointed by the applicant under the provisions of the SARFAESI Act, 2002.

2. According to the applicant, it is a secured creditor and has already started the legal process available under the SARFAESI Act for recovery of its outstanding dues. It is contended that once the procedure under the said Act is properly initiated, the secured

creditor gets a legal right to take possession of the secured property and proceed further for recovery. However, in the present case, the property is not in direct possession of the applicant but is lying with the Court Receiver appointed by this Court. Therefore, according to the applicant, without permission and necessary directions from this Court, it cannot actually obtain possession of the property. On this basis, the applicant seeks appropriate orders so that its rights under the SARFAESI Act can be recognised and the recovery process can move ahead in accordance with law.

3. The facts leading to the present application are largely not disputed. By an order dated 20 March 2025, this Court had appointed the Court Receiver in respect of the mortgaged property belonging to the respondents. Such appointment was considered necessary for safeguarding and protecting the secured asset till the disputes between the parties were finally resolved. After the appointment, the Court Receiver started taking steps for obtaining possession of the property. It appears that on 28 April 2025 an attempt was made to take actual possession. At that stage, the respondent approached the Court Receiver and gave an undertaking assuring that the obligations would be complied with. Considering such assurance and with a view to grant one more opportunity to the respondent, the Court Receiver did not immediately take possession. The expectation was that the respondent would honour the undertaking and the need for further coercive action would not arise. However, things did not happen in that manner. Thereafter the respondent committed defaults and failed to act in accordance with the assurances earlier

given. As a result, the Court Receiver was left with no option but to proceed further. Ultimately, on 23 July 2025, physical possession of the mortgaged property was taken. Along with the property itself, possession of various goods and articles lying inside the premises was also taken. Thus, from that date onwards, the property remained under the custody and control of the Court Receiver acting under authority of this Court.

4. The record further shows that thereafter the applicant initiated proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 by filing Commercial Arbitration Petition (L) No.23572 of 2025. The purpose of filing such proceedings was to obtain interim protection and preserve the subject matter of dispute till constitution of the arbitral tribunal. The petition came to be entertained by this Court and by order dated 12 August 2025, an Arbitrator was appointed. With such appointment, the disputes arising from the contractual dealings between the parties became liable to be adjudicated through arbitration in terms of the agreement between them. However, even after appointment of the Arbitrator, the position regarding possession did not change. The secured property continued to remain in possession of the Court Receiver under orders passed by this Court.

5. The matter, however, did not stop there. The applicant has placed material on record showing that sometime in September 2025 it came to know that the respondents had allegedly entered the property again and committed acts of trespass even though possession had already been taken by the Court Receiver. If such allegations are correct, the same would amount to interference

with possession protected by orders of the Court. Once a property is taken into custody of the Court Receiver, it is considered to be under the protection of the Court itself and ordinarily nobody can disturb such possession by taking law into their own hands. On learning about the alleged trespass, the applicant immediately approached this Court and sought further directions. Taking serious note of the situation and considering the necessity of preserving the sanctity of judicial orders, this Court by order dated 13 November 2025 directed the Court Receiver to regain possession with police assistance if required. Pursuant to such directions, possession was again secured by the Court Receiver. Therefore, as of today, the property continues to remain under the custody of the Court Receiver acting as an officer of this Court.

6. In the meantime, the applicant, being a secured creditor under the SARFAESI Act, independently initiated statutory proceedings for recovery of its dues. A demand notice under Section 13(2) of the Act was issued calling upon the borrower and concerned persons to clear the outstanding liabilities within the prescribed period. Such notice is the first important step under the mechanism provided by the Act. According to the applicant, after expiry of the statutory period and failure of the borrower to satisfy the demand, rights under Section 13(4) of the Act became available to it, including the right to take possession of the secured asset. However, since the property is presently in possession of the Court Receiver and thereby under control of this Court, the applicant submits that it cannot practically exercise those statutory rights without obtaining appropriate directions from this Court. It

is under these circumstances that the present application has been filed seeking delivery of possession so that the applicant can proceed further under the SARFAESI Act.

7. The learned Advocate appearing for the applicant has placed reliance on a recent decision of a Co-ordinate Bench of this Court in *Aditya Birla Capital Ltd. Vs. Ma Durga Hardware Stores and Others decided on 27 March 2026*. It is submitted that in similar circumstances, the Court recognised the statutory rights of the secured creditor and directed that possession be handed over so that proceedings under the SARFAESI Act could continue. The submission proceeds on the basis that where a property is in possession of the Court Receiver, such property remains under custody of law and under protection of the Court. Therefore, even a secured creditor who otherwise has legal rights under the statute cannot directly take possession without obtaining leave of the Court. At the same time, the requirement of obtaining such permission does not take away the rights granted under the statute. Rather, it ensures proper coordination between the powers of the Court and the rights available under the SARFAESI Act. It is therefore contended that unless this Court directs delivery of possession, the applicant would not be able to effectively exercise the rights available under Section 13(4) of the Act. Hence, according to the applicant, the relief sought deserves to be granted.

8. The record also shows that sufficient opportunity was given to the respondents to oppose the present application. The learned Advocate for the applicant has placed on record proof showing

service of notice upon the Advocate appearing for the respondents. When the matter was first called out, this Court, in order to ensure fairness and provide adequate opportunity, kept the matter back till the second session. This was done so that the respondents could appear and place their submissions on facts as well as law. However, despite the matter being passed over and despite another communication being sent through e-mail around 12.11 p.m., nobody appeared on behalf of the respondents. No request for adjournment was made and no explanation was offered for the absence. In these circumstances, this Court is satisfied that reasonable opportunity was available to the respondents. Since they have chosen not to remain present despite notice, the Court is required to proceed on the basis of the material available on record and decide the application on merits.

9. After considering the material placed before the Court, this Court finds substance in the request made by the applicant. It is true that an Arbitrator has already been appointed. Normally, once an arbitral tribunal is constituted, interim reliefs are expected to be sought before the Arbitrator under Section 17 of the Arbitration and Conciliation Act. However, the facts of the present case stand on a different footing. The relief sought is not merely against the opposite party. The property is presently in custody of the Court Receiver who acts under authority of this Court. The learned Arbitrator would not be in a position to issue effective directions to the Court Receiver regarding possession of property held under orders of this Court. Therefore, the remedy under Section 17 cannot be considered equally effective in the peculiar facts of the

present matter. As such, an exceptional case is made out for exercise of powers under Section 9 even after appointment of the Arbitrator.

10. The material on record also prima facie indicates compliance with the statutory requirements of the SARFAESI Act. The applicant has already initiated the procedure contemplated by law and seeks possession only for exercising rights available under Section 13(4) of the Act. The Court Receiver is holding possession solely because of orders passed by this Court. Once the secured creditor has become entitled under the statute to proceed against the secured asset, there appears no sufficient reason to continue withholding possession, particularly when possession was originally taken only as a protective measure. The view taken by the Co-ordinate Bench in *Aditya Birla Capital Ltd.* also supports such a course of action. No distinguishing circumstance has been pointed out in the present matter. Accordingly, this Court is of the opinion that the applicant is entitled to obtain possession of the secured asset in recognition of rights flowing from Section 13(4) of the SARFAESI Act. However, it is clarified that while proceeding further, the applicant shall strictly comply with all provisions of the SARFAESI Act and the Rules framed thereunder while taking any action relating to sale, auction or disposal of the secured asset.

11. There is one more aspect which requires clarification. It appears that while taking possession, the Court Receiver prepared an inventory of the articles, goods and other movable items found in the premises. Such inventory is an important record and safeguards the interests of all concerned parties. Therefore, while

taking over possession, the applicant shall execute an appropriate possession receipt specifically referring to the inventory prepared by the Court Receiver. The receipt shall acknowledge possession of all articles mentioned therein. This requirement is necessary so that future disputes regarding existence, quantity or condition of the articles can be avoided. Since disputes regarding such articles may still survive between the parties, any further directions in that regard can appropriately be considered by the learned Arbitrator while deciding the disputes finally. The applicant shall also ensure payment of all charges, costs and expenses payable to the Court Receiver in accordance with law.

12. For all the aforesaid reasons, and upon considering the overall facts, legal position and material placed before the Court, the Interim Application deserves to be allowed. Accordingly, the Interim Application stands allowed in terms of prayer clauses (b) and (c).

13. In view of the orders passed herein and as no further directions are required on the report submitted by the Court Receiver, Court Receiver Report No.430 of 2025 stands disposed of. Considering the nature of the matter and the circumstances of the case, the report is disposed of without passing accounts.

(AMIT BORKAR, J.)