Presented on : 23.01.2023
Registered on : 23.01.2023
Decided on : 10.04.2026
Duration : Y M D
03-02-18

IN THE DEBTS RECOVERY TRIBUNAL
AT AURANGABAD

SECURITISATION APPLICATION NO.21 OF 2023

1. Ramesh Dyanoba Wadekar,
   Age : 78 years, Occu. Labour,
   R/o House No.1146, Laxminagar,
   Shirdi, Tq. Rahata, Dist. Ahmednagar

2. Bharat Ramesh Wadekar,
   Age : 46 years, Occu. Business,
   R/o House No.1146, Laxminagar,
   Shirdi, Tq. Rahata, Dist. Ahmednagar ..**Applicants**

Versus

1. The Regional Manager,
   Canara Bank, Aurangabad Regional Office,
   Chikalthana, Adjacent to Prozone Mall,
   Aurangabad – 431 006

2. The Authorised Officer,
   Syndicate Bank, now converted into
   Canara Bank, Shirdi Branch,
   Near Hotel Pushpanjali, Pimpalwadi Road,
   Shirdi – 423 109

3. Navnath G. Jadhav,
Age : 47 years, Occu. Business,
R/o Dattanagar, Pimpalwadi Road,
Shirdi, Tq. Rahata, Dist. Ahmednagar ….**Defendants**

APPEARANCE :

Applicants : Mr. Mayur G. Deokate, Advocate

Defendant Nos.1 and 2 : Mr. Atul A. Mishra, Advocate

Defendant No.3 : None

CORAM: DR. J.R. CHAUHAN, PRESIDING OFFICER

JUDGMENT

(Pronounced on : 10.04.2026)

1. The applicants have filed this Securitisation Application (S.A.) under Section 17 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") with averments that the applicants had availed a housing loan for constructing house on the property Survey No.57/31 (1 R), Municipal Council No.4277, situated at Shirdi, Tq. Rahata, District Ahmednagar. The applicants

have paid instalments till year 2018, but there was no employment due to medical treatment of daughter of applicant No.2. Therefore, due to financial crisis and thereafter, Pandemic COVID-19 and lockdown, the applicants failed to pay instalments of the housing loan and the defendant Nos.1 and 2 started recovery proceedings against the applicants after obtaining order under Section 14 of the SARFAESI Act. Defendant No.1 issued demand notice under Section 13(2) of the SARFAESI Act for Rs.17,37,136/-. The applicants approached office of defendant No.2 and paid arrears of loan amount of Rs.2,86,633/- on 25.09.2018 and requested to cancel proceedings initiated by them. Defendant No.2 obtained order dated 30.05.2020 from Additional District Magistrate, Ahmednagar under Section 14 of the SARFAESI Act and in view of this order, the Tahsildar and Taluka Magistrate issued notice dated 09.12.2022 for taking possession of the secured asset. The applicants being aggrieved by the measures adopted by the defendants, challenged the proceedings on the ground that service

of demand notice was not effected personally and the said notice was not duly published in two leading newspapers having wide circulation. Defendant No.1 being secured creditor has no right to proceed against the secured asset as the charge was not registered with the Central Registry under Section 23 of the SARFAESI Act and the proceedings are hit by Section 26A of the SARFAESI Act. The learned Additional District Magistrate has miserably failed to appreciate that the application under Section 14 of the SARFAESI Act ought to have been filed along with an affidavit affirming the points given under Clauses (i) to (ix) in the first Proviso to Section 14 of the SARFAESI Act. There is no evidence to show that relevant statutory notice was served upon the applicants. The account of the applicants was declared as Non-Performing Asset (NPA) against the guidelines of the Reserve Bank of India (RBI). In view of order dated 30.05.2020 passed by the Additional District Magistrate, Ahmednagar, possession notice dated 09.12.2022 was issued by the Tahsildar and Taluka Magistrate, Rahata and thus,

according to the applicants, both these orders are liable to be quashed and set aside and they prayed for allowing the present Securitisation Application.

2. The defendant Nos.1 and 2 filed say/reply (Exhibit-6) and contested the S.A. on the grounds that the loan account of the applicants was irregular in payment of EMIs and they committed default in repayment of the said loan amount. As such, the loan account of the applicants was classified as a NPA on 31.05.2012. Thereafter, the bank issued demand notice dated 06.01.2014 under Section 13(2) of the SARFAESI Act for making demand of an amount of Rs.17,37,136 + interest, expenses and other charges, which are served upon the applicants through RPAD. The notice was also served to the applicants personally and accordingly, the applicants had signed the documents, but no objection was raised against the demand notice. The defendant bank has also issued notice of intimation on 01.07.2015 to take possession of the secured asset. The applicants have not raised any objection to the action

initiated by the bank and thereafter, the defendant bank filed an application before the District Magistrate, Ahmednagar on 15.03.2019 for obtaining physical possession order under Section 14 of the SARFAESI Act in respect of secured assets. The District Magistrate issued order dated 30.05.2020 by following the procedure and as per law. In view of the order dated 30.05.2020, the Tahsildar issued possession notice dated 09.12.2022 fixing the date of possession as 25.01.2023. The applicants have approached this Tribunal with uncleaned hands and suppressed various aspects and he has no right to challenge the procedure. The respondent bank has to recover dues of R.45.50 Lacs from the applicants and the applicants want to drag the time and defeat the recovery of the bank as they have not paid a single pai after the date of NPA. The defendant bank denied all other averments of the S.A. and dismissal of the S.A. with costs was prayed for.

3. The applicants have also filed rejoinder (Exhibit-8) and again re-asserted their claim as set up in the memo of S.A. and controverted the allegations of the defendant bank.

4. The applicants have produced on record following documents as per lists of documents (Exhibit-4).

Sr. No.	Description of document	Annexure
1	Copy of Bank Statement of the loan amount of the applicants.	A
2	Copies of order dated 30.05.2020, passed by learned Additional District Magistrate, Ahmednagar	B
3	Copy of notice dated 09.12.2022 issued by the Tahsildar and Taluka Magistrate, Rahata	C

5. The applicants have also produced following two documents along with rejoinder as per the list of documents dated 16.10.2023:

Sr. No.	Description of document	Exhibit
1	Copy of notice dated 06.01.2014 under Section 13(2) issued by the respondent No.1.	A-1

2	Copies of application bearing Securitization Application No.38/2020 along with affidavit submitted by the Authorized Officer of respondent bank	A-2

6. The defendant No.1 bank has filed documents vide Diary No.704/2026 regarding acknowledgements pertaining to service of notice under Section 13(2) of the SARFAESI Act dated 06.01.2014, the service of sale notice dated 09.08.2018 and copy of CERSAI Report to show that the charge of the bank was registered with the Central Registry.

7. I have heard the learned counsel for the applicants and learned counsel for the defendants/ bank and gone through the material on record. My findings along with reasons are as under.

8. The factum of granting loan to the applicants by the bank in the years 2010 and 2012, respectively, in this case, has not been disputed by the applicants borrowers. The demand notice under Section 13(2) of the SARFAESI Act for an amount of Rs.17,37,136/- was issued. The respondent bank moved an

application under Section 14 of the SARFAESI Act before the Additional District Magistrate, Ahmednagar and the learned Additional District Magistrate, Ahmednagar passed order on the said application on 30.05.2020 (Exh-B) and in view of this order, the Tahsildar and Taluka Magistrate, Rahata issued possession notice dated 09.12.2022 (Exh-C).

9. The learned counsel for the applicants submitted that the applicants have challenged the proceedings initiated by the respondent bank mainly on two grounds that the demand notice was not served upon the applicants and no evidence regarding service thereof upon the applicants has been produced on record by the bank. It was also submitted that the impugned order dated 30.05.2020 passed by the learned Additional District Magistrate, Ahmednagar is also wrong and illegal and in violation of Section 14 of the SARFAESI Act as no proof regarding service of demand notice was provided by the Authorized Officer. Further, he submitted that the mandatory affidavit under Section 14, required to

be filed/submitted, was not filed by the Authorized Officer meeting out all the requirements of the affidavit as provided under Section 14 of the Act and therefore, the possession notice dated 09.12.2022 issued by the Tahsildar and Taluka Magistrate, Rahata pursuant to the illegal order of the learned Additional District Magistrate, is not sustainable. In support of this submission, reliance was placed by the learned counsel on the judgment of Division Bench of the Hon'ble High Court of Bombay delivered on 13.03.2018 in ***Writ Petition No.2910 of 2018*** in the matter of ***M/s Masscorp. Ltd. & Anr. Vs. Cosmos Co-op. Bank Ltd. Pune & Ors.***, Judgment of the Hon'ble High Court of Calcutta in the case of ***UCO Bank Vs. District Magistrate and Collector and Another***, decided on 19.06.2025 in ***Writ Petition A. No.56 of 2025,*** reported in ***2025 SCC OnLine Cal 4993*** and the judgment dated 15.09.2025 delivered by the Hon'ble Debt Recovery Appellate Tribunal, Mumbai (sitting at Chennai) in ***Regular Appeal No.343/2015*** in the

case of ***Mr. Mohammed Hanif Syed & Anr. Vs. Kotak Mahindra Bank Ltd***.

10. On the other side, it was submitted on behalf of the defendant bank that the demand notice dated 06.01.2014 was duly served upon the applicants/borrowers and possession notice dated 09.12.2022 (Exh-C) was also served upon the applicants. It was further argued that the order of learned Additional District Magistrate, Ahmednagar dated 30.05.2020 is legal and valid and in view of this order, the defendant bank has issued possession notice dated 09.12.2022 and the bank has proceeded against the applicants/ borrowers as per the provisions of SARFAESI Act and Rules made thereunder. According to the defendant bank, the present Securitisation Application is liable to be dismissed.

11. After having heard both sides and going through the material on record, I am of the considered view that present Securitisation Application deserves to be allowed for the reasons recorded herein-after.

12. The loan account of the applicants was declared as Non-Performing Asset (NPA) on 31.05.2012. The demand notice (Exh-A-1) under Section 13(2) of the SARFAESI Act was issued on 06.01.2014 for demand of Rs.17,37,136 + interest, expenses and other charges. The onus to prove that the notice was served upon both the borrowers/applicants as per the provisions of SARFAEASI Act and the Rules framed thereunder, was on the defendant bank. It was necessary for the bank to produce the documentary evidence like postal receipt, postal delivery report, publication or by any other means permitted under the Act. The defendant bank has not produced any of these documents on record. The defendant bank has produced photocopies of post card (blank) at pages 7 to 10 of documents filed vide Diary No.704/2026 which is not an evidence of service of demand notice. Hence, there is no documentary evidence produced by the defendant bank to prove that the demand notice dated 06.01.2014 was duly served upon both the applicants.

13. Upon perusal of the order dated 30.05.2020 passed by the Additional District Magistrate (Exh-B) in the list of documents (Exh-4) filed by the applicants, it is found that no evidence was produced before the Additional District Magistrate regarding service of demand notice before initiating action under Section 14 of the SARFAESI Act before the District Magistrate. Even there is no reference in the District Magistrate's order that mandatory affidavit as required under Section 14 of the SARFAESI Act has been filed by the Authorized Officer along with application moved by the bank under Section 14 of the SARFAESI Act. The requirement of filing mandatory affidavit by the Authorized Officer of the bank is necessary to obtain order under Section 14 of the SARFAESI Act from the District Magistrate/Chief Judicial Magistrate as the case may be. At this juncture, it is necessary to make reference to relevant part of Section 14 of the SARFAESI Act i.e. first Proviso and second Proviso to Section 14, which read as under:

"Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the uthorized officer of the secured creditor, declaring that

"(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a nonperforming asset;

(vi) affirming that the period of sixty days notice as required by the provisions of subsection (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with."

"Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application."

14. On perusal of the above referred two Provisos, it is apparent that not only an affidavit is required to make averments from clauses (i) to (ix), but the District Magistrate or the Chief Judicial

Magistrate is required to satisfy himself with the contents of affidavit before passing final order. Admittedly, in the present case, an affidavit has been filed before the District Magistrate along with application (Exh-A-2). On perusal of affidavit filed before the District Magistrate at pages 12 to 14 with documents (Exh-A-2), wherein at point 7, it is mentioned that the demand notice was issued and served to the borrowers/respondents through personal delivery on 19.11.2013 and the borrowers/respondents received and acknowledged the same. Admittedly, when the demand notice was issued on 06.01.2014, then there was no question of service on 19.11.2013. No postal receipt, delivery report or acknowledgement has been produced on record by the bank and above affidavit filed by the authorized officer before the District Magistrate is against the facts and defective too. Hence, no proof of service of demand notice to the applicants has been produced by the respondent bank and therefore, the order dated 30.05.2020 passed by the Additional

District Magistrate is against the provisions of the SARFAESI Act and the same is not sustainable in the eye of law.

15. In the judgment delivered in the case of ***M/s Masscorp. Ltd. & Anr.*** (supra), the Division Bench of Hon'ble Bombay High Court has specifically held that not only the affidavit is required to be submitted before the District Magistrate pertaining to Clauses (i) to (ix) mentioned in the Proviso to Section 14, but the District Magistrate is required to satisfy himself with the contents of the affidavit before passing final order. The Hon'ble High Court of Bombay further held that the District Magistrate, in the case before it, has failed to consider the mandatory provision of Section 14 of the SARFAESI Act, which required the bank to file an affidavit making necessary averments in terms of Proviso to Section 14 and the impugned order passed by the District Magistrate was set aside and the respondent bank was granted liberty to file fresh application before the District Magistrate and Collector in accordance with law. Almost similar view has been taken in the judgment of Hon'ble

High Court of Calcutta in the case of ***UCO Bank*** (supra) and in the judgment of Hon'ble DRAT, Mumbai in the case of ***Mohammed Hanif Syed & Anr.*** (supra).

16. If the present case is appreciated in the light of above referred judgments and facts and circumstances of this case, it is established that the demand notice issued under Section 13 (2) of the SARFAESI Act has not been proved to have been served upon the applicants. Even no evidence regarding service of demand notice was produced before the Additional District Magistrate and more so, further nine points i.e. clauses (i) to (ix) affidavit mandatorily required under Section 14 of the SARFAESI Act was not filed before the District Magistrate as per provisions of the Act and therefore, the Additional District Magistrate has passed the impugned order dated 30.05.2020 in violation of the provisions of the SARFAESI Act and all the proceedings conducted by the defendant bank pursuant to the Additional District Magistrate's

order impugned in this S.A. are illegal, null and void and are liable to be set aside.

17. The applicants have also claimed that the defendant bank has no right to initiate the proceedings as the same is hit by Section 26E of the SARFAESI Act as the charge was not registered with CERSAI Agency. This plea of the applicants is not sustainable as the defendant bank has produced on record the documents whereby the secured interest/charge was registered with Central Registry and this certificate has been filed by the applicant along with the pursis for filing of document on record produced vide Diary No.704/2026. Therefore, the charge was duly registered with the Central Registry and hence, on this ground, the plea taken by the applicants with regard to embargo of Section 26E of the SARFAESI Act, is not sustainable.

18. For the reasons recorded hereinabove and my findings arrived at as above, the Securitisation Application deserves to be

allowed and the impugned order passed by the Additinoal District Magistrate and the impugned possession notice issued by the Tahsildar and Taluka Magistrate, Rahata are liable to be quashed and set aside.

19. In the result, I pass the following order:

ORDER

(A) The Securitisation Application No.21 of 2023 is hereby allowed with no order as to costs.

(B) The impugned order dated 30.05.2020, passed by the Additional District Magistrate, Ahmednagar and possession notice dated 09.12.2022, issued by the Tahsildar and Taluka Magistrate, Rahata for taking physical possession of the secured assets, are quashed and set aside.

(C) The defendant bank is directed to restore the possession of the secured asset to the applicants as symbolic possession has already been taken by the bank.

(D) However, the respondent bank is at liberty to proceed further against the applicants/borrowers after serving fresh demand notice and obtaining the fresh order from the District Magistrate/Chief Judicial Magistrate, as per law.

(E) The interlocutory applications, if any pending, stand disposed of in terms of this order/judgment.

(F) File be consigned to the Record Room.

(G) Copy of this judgment and order be uploaded on the website.

(Dr. J.R. Chauhan),
PRESIDING OFFICER,
DEBTS RECOVERY TRIBUNAL,
AURANGABAD

Aurangabad

Date : 10.04.2026