Presented on : 17.10.2022
Registered on : 20.10.2022
Decided on : 10.04.2026
Duration : Y M D
03-05-24

IN THE DEBTS RECOVERY TRIBUNAL
AT AURANGABAD

SECURITISATION APPLICATION NO.397 OF 2022

1. Mrs. Sangita Prakash Pawar,
   Age : 53 years, Occu. Household,
   R/o Prakash Arcade, Near Sudarshan Lodge,
   Adjacent to Fly Over, Shivaji Chowk,
   Latur – 413 512

2. Prakash Tukaram Pawar (Guarantor),
   Age : 55 years, Occu. Business,
   R/o Prakash Arcade, Near Sudarshan Lodge,
   Adjacent to Fly Over, Shivaji Chowk,
   Latur – 413 512 ..**Applicants**

Versus

1. Bank of Maharashtra,
   A Body Corporate and constituted under the
   Banking Companies (Acquisition of Undertaking)
   Act, 5 of 1970, carrying on business and having
   Its Head Office at "Lokmangal", 1501,
   Shivaji Nagar, Pune – 411 005 and Zone Office
   At Pushpak Plaza, Ganesh Nagar, Ausa Road,
   Latur – 412 531, through its
   Authorized Officer ….**Respondent**

APPEARANCE :

Applicants : Mr. Mayur G. Deokate, Advocate

Respondent : Mr. Atul A. Mishra, Advocate

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

JUDGMENT

(Pronounced on : 10.04.2026)

1. 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") has been filed by the applicants against the respondent bank for the following reliefs:

(i) to quash and set aside the impugned order dated 05.08.2022 passed by the District Magistrate, Latur;

(ii) to quash and set aside the impugned notice dated 29.09.2022, issued by the Deputy Tahsildar, Latur for taking physical possession of the properties of the applicants;

(iii) to restore the possession of the properties of the applicant;

(iv) Any other relief to which the applicants are entitled may be granted in favour of the applicants.

2. The brief facts of this case as averred in the memo of Securitisation Application, are that the respondent bank granted house loan facility to the applicants for an amount of Rs.71,50,000/- in the year 2014. The applicants maintained loan account and paid the instalments regularly along with accrued interest. The applicant No.2 could not earn profit because of slow down in the business and also due to lock-down, he failed to generate income and more so, due to incorrect charging of interest, etc., the applicants could not run the business smoothly and requested the bank to restore the housing loan facility, but to no effect. The respondent bank has categorized the said loan as Non-Performing Asset (NPA) as per their whims and fancies and issued notice dated 02.11.2019, informing the applicants that in view of the provisions of SARFAESI Act, the bank has taken an action under Section 13(2) of the said Act for the purpose of taking over the assets of the applicants and that the applicants shall make the payment of Rs.65,75,339/- within 60 days. The respondent bank has not served this notice upon the applicant No.2. Thereafter, surprisingly, the

respondent bank issued notice of possession dated 24.01.2020 under Section 13(4) of the SRFAESI Act, whereas demand notice dated 02.11.2019 was never served upon the applicants by the respondent bank. The respondent bank took symbolic possession of the properties without even following the boundaries appearing in the mortgage deed. The respondent bank submitted an application under Section 14 of the SARFAESI Act to the District Magistrate/ Collector, Latur on 11.02.2020 seeking permission to take physical possession of the secured assets of the applicants. The learned district Magistrate, Latur passed order dated 05.08.2022, which is very cryptic and passed in casual manner as the demand notice was never served to the applicants in particular manner. The applicants got knowledge on 10.10.2022 about the said order having been passed by the District Magistrate, when they received notice dated 29.09.2022 issued by the Tahsildar, Latur for taking possession of the secured assets.

3. It is further averred that the impugned order dated 05.08.2022 passed by the learned District Magistrate, Latur is illegal and not sustainable in law, on the grounds that the respondent bank failed to submit an affidavit as envisaged in Proviso to Section 14 of the SARFAESI Act along with an application submitted by the respondent bank before the District Magistrate. The demand notice dated 25.10.2019, purported to have been issued under Section

13(2) of the Act has never been served upon the applicants by the respondent bank at any point of time. The impugned order passed by the District Magistrate does not refer to any observations or findings with regard to service of the alleged demand notice dated 25.10.2019 to the applicants. The respondent bank has failed to provide exact details of the properties with boundaries of the same in the application under Section 14 of the Act. The Deputy Tahsildar had no authority to take physical possession of the secured assets as the powers were not delegated by the District Magistrate. The respondent bank has charged interest at a higher rate against the terms of the agreement and RBI guidelines. Thus, according to the applicants, the impugned order dated 05.08.2022 and the possession notice dated 29.09.2022 are illegal, null and void *ab initio* and liable to be set aside.

4. The respondent No.1 bank filed reply to the aforesaid S.A. as well as I.A., alleging that the loan account of the applicants was classified as NPA on 25.10.2019 as the loan account of the applicants was irregular in payment of EMIs and they committed default in repayment of the said loan account. The bank issued notice dated 02.11.2019 to the applicants under Section 13(2) of the SARFAESI Act, directing them to make payment of the amount of Rs.65,75,339 plus interest and the said notice was served upon the applicants through RPAD. The said notice was also served to the

applicants personally and accordingly, the applicants had signed the document. The applicants failed to pay the demanded amount and did not raise any objection to the notice and therefore, the respondent bank took symbolic possession of the secured assets on 24.01.2020 by issuing notice of intimation of taking over the possession of secured assets. The respondent bank has also published the notice of symbolic possession in two newspapers, namely, Times of India and Loksatta, dated 28.01.2020. The respondent bank thereafter filed an application before the District Magistrate, Latur on 11.02.2021 for taking physical possession under Section 14 of the SARFAESI Act and the District Magistrate issued order dated 05.08.2022. The Tahsildar has also issued possession notice dated 29.09.2022 in view of order of the learned District Magistrate for taking possession of secured assets on 17.10.2022. The property belonging to Mrs. Sangita Prakash Pawar, who is applicant No.1 and applicant No.2 Prakash Tukaram Pawar, is not mortgagor of the secured assets. The applicants failed to redeem the secured assets as per Rules. In the circumstances, according to the respondent bank, it left with no other option but to proceed by obtaining order of the learned District Magistrate under Section 14 of the SARFAESI Act. The respondent bank denied all other allegations made in the Securitisation Application and dismissal thereof with costs was prayed for.

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

Sr. No.	Description of document	Exhibit
1	Copy of the notice u/s 13(2) dated 02.11.2019 issued by the respondent bank.	A
2	Copies of possession notice dated 24.01.2020 issued by the respondent bank.	B
3	Copy of application under Section 14 of the Act filed by the respondent bank	C
4	Copy of impugned order dated 05.08.2022 passed by the District Magistrate, Latur	D
5	Copy of notice dated 29.09.2022 issued by the Deputy Tahsildar, Latur	E

6. The respondent No.1 bank has produced following documents on record as per list of documents (Exhibit-7).

Sr. No.	Description of document	Annexure
1	Copy of symbolic possession notice publish in two news papers on 28/01/2020	A-1

8. I have heard the learned counsel for the parties and gone through the material on record. My findings along with reasons are as under.

9. The factum of granting loan by the bank in this case has not been disputed by the applicants borrowers. The demand notice (Exh-A) under Section 13(2) of the SARFAESI Act was issued on 02.11.2019. The possession notice was issued by the respondent bank on 24.01.2020 (Exh-B). The respondent bank moved an application under Section 14 of the SARFAESI Act before the District Magistrate, Latur on 11.02.2020 as per copy of the said application (Exh-C). The learned District Magistrate, Latur passed order on the said application on 05.08.2022 (Exh-D) and in view of this order, the Naib Tahsildar, Latur issued possession notice dated 29.09.2022 (Exh-E).

10. 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

dated 02.11.2019 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 05.08.2022 passed by the learned District Magistrate, Latur 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 of the respondent bank as no such affidavit is available in the record of learned District Magistrate and copy of the affidavit has not been produced on record by the respondent bank in the present case and therefore, the possession notice dated 29.09.2022 issued by the Naib Tahsildar pursuant to the illegal order of the learned 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***.

11. On the other side, it was submitted on behalf of the respondent bank that the demand notice dated 02.11.2019 was duly served upon the applicants/borrowers as this demand notice has been produced by the applicants as Exh-A at page 37 of the memo of S.A. and possession notice (Exh-B) bears the signature of applicant No.1 and it amounts to service of the demand notice upon applicants. It was further argued that the order of learned District

Magistrate, Latur dated 05.08.2022 is legal and valid and in view of this order, the respondent bank has issued possession notice dated 29.09.2022 and the bank has proceeded against the applicants/ borrowers as per the provisions of SARFAESI Act and Rules made thereunder. According to the respondent bank, the present Securitisation Application is liable to be dismissed.

12. 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.

13. The loan account of the applicants was declared as Non-Performing Asset (NPA) on 25.10.2019. The demand notice under Section 13(2) of the SARFAESI Act was issued on 02.11.2019 for demand of Rs.65,75,339/-. 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 respondent bank. It was necessary for the respondent bank to

produce the documentary evidence like postal receipt, postal delivery report, publication or by any other means permitted under the Act. The respondent bank has not produced any document except the publication of symbolic possession notice in two newspapers on 28.01.2020 as per Annexure-A1 in the list of document (Exh-7) filed along with the reply/written statement. Hence, there is no documentary evidence produced by the respondent bank to prove that the demand notice dated 02.11.2019 was duly served upon both the applicants.

14. Upon perusal of the order dated 05.08.2022 passed by the District Magistrate (Exh-D) in the list of documents (Exh-4) filed by the applicants, it is found that no evidence was produced before the 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 (Exh-C) 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."

15. 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, no such affidavit has been filed before the District Magistrate as there is no reference of such an affidavit, in the order dated 05.08.2022 passed by the District Magistrate. Hence, no proof of service of demand notice to the applicants has been produced by the respondent bank and therefore, the order dated 05.08.2022 passed

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

16. 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).

17. 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 is proved before the 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 and therefore, the District Magistrate has passed the impugned order dated 05.08.2022 in violation of the provisions of the SARFAESI Act and all the proceedings conducted by the respondent bank pursuant to the District Magistrate's order impugned in this S.A. are illegal, null and void and are liable to be set aside.

18. For the foregoing reasons and my findings as above, the Securitisation Application deserves to be allowed and the impugned order passed by the District Magistrate and the impugned possession notice issued by the Naib Tahsildar are liable to be quashed and set aside.

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

ORDER

(A) The Securitisation Application No.397 of 2022 is hereby allowed with no order as to costs.

(B) The impugned order dated 05.08.2022, passed by the District Magistrate, Latur and possession notice dated 29.09.2022, issued by the Naib Tahsildar, Latur for taking physical possession of the secured property of the applicants, are quashed and set aside.

(C) The respondent bank is directed to restore the possession of the secured property to the applicants.

(D) However, the respondent bank is at liberty to proceed further against the applicants/borrowers after serving fresh demand notice and obtaining the 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