DEBTS RECOVERY TRIBUNAL No.2, MUMBAI

PRESIDING OFFICER: HARISH KUMAR KAUSHIK

TRANSFER SECURITISATION APPLICATION NO.02 OF 2026

Date of Institution: 14.01.2026
Date of Decision: 30.04.2026

JUDY MICHAEL
Adult, Indian Inhabitant, age 46 years,
Occupation-
having address at, G-1, Gharkul CHS Ltd.
Chincholi Bunder Road, Malad (West),
Mumbai 400 064 and presently residing at,
Room No.395, Chawl No.50, M. H. B. Colony,
D. G. Nagar, Gate No.8, Malwani,
Malad (West), Mumbai 400 095. ... Applicant

Versus

1. Standard Chartered Bank
Constituted under the Banking Companies
(Acquisition and Transfer of Undertakings Act, 1970, having its Home Loan Department at Standard Chartered Tower, B1/201, Western Express Highway, Goregaon (East), Mumbai-400 063.
2. M/s. ICON Builders and Developers,
Having address at, Flat No.G-1,

Gharkul CHS Chinchbunder Road, Malad (W), Mumbai-400 064.

3. Rafiq S. Siddhique,
   Adult, Indian, Inhabitant, having address at, 106, Shahid Apts, Cross Pahkadi Lane, Versova, Andheri (West), Mumbai-400 061.

4. Vijaykumar N. Brahmnia
5. Vasanti Narayan Brahmnia,
   both adult, Indian, Inhabitant, having address at Plot No.17, Laxmi Niwas, Ashok Nagar, Cross Road No.1, Kandivali (East), Mumbai-400 101.
6. Gharkul Co-operative Housing Society Ltd.,
   A co-op. housing society registered under the provisions of Maharashtra Co-op. Societies Act, 1960, having its office at, Chincholi Bandar Road, Malad (West), Mumbai-400 064. ...Respondents

APPEARANCES

For the Applicant	:	Mr Charles D'Souza a/w Ms Neha Bane i/b M/s. S.B. Legal Asso., - Advocate
For Respondent No.1	:	Mr R.L. Motwani a/w Mr Shadab Siddiqui, Advocates
For Respondent Nos.4 and 5	:	Mr Yogesh P. Rane, Advocate
For Respondent Nos.2, 3	:	Set Ex-parte

and 6

Final Order

(1) By way of T.S.A. No.02 of 2026, the Applicant is challenging the measures and actions taken by Respondent No.1 under the provisions of Section 13(2), 13(4) and 14 of the SARFAESI Act, 2002. On 11.05.2011, the Authorised Officer of the Respondent No.1 illegally took possession of the said Flat No.G-1, admeasuring 416 sq. ft. built up area, in the building known as Gharkul Co-op. Housing Society Ltd., Chicholi Bunder Road, Malad (W), Mumbai 400064 (for short "the said flat").

Applicant's Submission:

(2) That the Applicant is seeking relief for setting aside the impugned notice dated 25.08.2008, possession receipt dated 09.09.2011 and Sale Certificate dated 03.10.2011. The Applicant prays that this Tribunal be pleased to pass a necessary order and direction to Respondent No.1 to remove the lock of the Respondent No.1 and handover vacant and peaceful possession of the said flat. The applicant prays to restrain the Respondent Nos.1 to 6 from taking any further steps towards sale, transfer, assign, charge, mortgage or to create any third-party rights of the said flat.

(3) That the Applicant states that by an Agreement of Sale dated 18.01.2002 made and executed between M/s. P & P Builders & Developers through its sole proprietor Smt. Pratibha Laxman Patil, therein referred to as the Developer of the One Part and Shri Ajit Mangesh Kanji therein referred to as the Flat Purchaser of the other Part, the Developer therein sold, transferred the conveyed Flat No.G-1, admeasuring 416 sq. ft. built up area on the Ground Floor of the building proposed to be named as Gharkul Co-op. Hsg., Society Ltd., situated at, Next to Infant Jesus High School, Chincholi Bunder Road, Malad (West), Mumbai 400064 standing on all that piece and parcel of land bearing Survey No.398, Plot no.7A, C.T.S. No.1232, situate lying and being at Village Malad (West), within the registration District and sub-District at Mumbai Suburban to the said Shri Ajit Mangesh Kanji.

(4) The Applicant submitted that she has paid entire sale consideration of the said Flat to Mr Ajit Kanji and confirmed the receipt of sale consideration of the said Flat. Mr Kanji has also given a Power of Attorney in favour of the Applicant in respect of the said Flat as per Agreement for Sale dated 08.06.2007.

(5) That the Applicant submitted that on 08.06.2007, the Vendor Mr Ajit M. Kanji has handed over

physical possession of the said flat. The Applicant has submitted Application for transfer of shares with all transfer forms to the Respondent No.6, Society. The Applicant is also holding a Bank Account in ICICI Bank and the Bank has issued Cheque Book with Name and Address details.

(6) That the Applicant submits that after purchase of the said Flat, the Applicant has given the said Flat to one Gauri V. Jadhav on Leave and License basis vide Leave and License Agreement dated 30.12.2008 for a temporary period of 11 months commenced from 01.01.2009 to 30.11.2009 and thereafter the Applicant has given the said flat to one Mr Sachin Shankar Lugade on Leave and License Agreement dated 19.05.2010 for a temporary period of 24 months commenced from 19.05.2010 to 19.05.2012. After taking permission from the Respondent No.6, the applicant has published a Public Notice in the News Papers on 29.06.2010 and 29.06.2011 in Free Press Journal and Navshakti. Her Predecessor in title also published a Public Notice in the Free Press Journal and Navshakti on 12.01.2008 edition. The applicant has relied upon the said public notices.

(7) That the Applicant submits that she was in lawful use, occupation, peaceful possession and enjoyment of the said flat from 08th June 2007

and despite the fact, the licensee called the Applicant and stating that one Mr Satish Mane, the Officer of the Respondent No.1 came with local police and asked the licensee of the Applicant to remove his articles from the said Flat as the Respondent No.1 wants to put a lock on the said Flat. The Applicant submits that the Applicant immediately rushed to the said Flat and called the members of the Respondent No.6 Society and also explained about purchase of the said Flat vide registered Agreement of Sale dated 08.06.2007. But the Officer of the Respondent No.1 succeeded in putting its lock on the said Flat.

(8) The Applicant approached the said officer of Respondent No.1 and was informed that the Respondent No.3 has obtained Housing Loan from the Respondent No.1 by mortgaging the said Flat as well as adjoining Flat. The Respondent No.1 assured to handover copy of the alleged Agreement for Sale by Respondent No.3. However, the Applicant time to time visited the Goregaon East Branch of the Respondent No.1, the Applicant has not been furnished any alleged Agreement of Sale of Respondent No.3 and documents towards action initiated for auction of the said Flat by Respondent No.1.

(9) The Applicant being a layman, thereafter approached to the lawyer and explained the

incidence and shown the documents which are available including title deeds of the said Flat. The Applicant shared all the relevant details to his advocate and submitted that the Applicant has filed a suit before the City Civil Court Bombay at Dindoshi bearing S.C. Suit No.614 of 2012 against Respondent Nos.1 to 3 and 6.

(10) After filing of the Suit by the Applicant, the Respondent No.1 has taken out Application under Section 9A of the Code of Civil Procedure thereby raised preliminary objection of the Civil Court and prayed that the preliminary issue with regard of lack of jurisdiction of the City Civil Court may be framed deciding the Suit and the matter is pending before the City Civil Court at Dindoshi. Meanwhile, Advocate of the Applicant did not take any speedy steps in the above pending suit, so the Applicant has changed his advocate and appointed a new advocate and handed over all the relevant documents.

(11) The Applicant had filed this application along-with separate application for delay condonation which was beyond her control. Then the Applicant states that she is a layman and not aware about the legal proceedings and law and has filed the above Suit before the Civil Court at Dindoshi and due to misguidance, the Applicant has not filed the present Application before this Hon'ble

Tribunal and accordingly after knowing, the Applicant has filed delay condonation application and it may be pleased to condoned.

(12) The Applicant got information from her advocate that the Respondent No.1 erroneously initiated action against the said Flat No.G-1 and the Respondent No.3 has mortgaged a Flat No.A-1 with Respondent No.1. From the perusal of the documents produced by Respondent No.1 with the Application under Section 9A taken out in the aforesaid pending Civil Suit, it appears that by an Agreement for Sale dated 25.10.2003 duly registered on 25.10.2004 on M/s. Icon Builders & Developers sold the Flat No.A-1, admeasuring 650 sq. ft. built up area on the ground floor of the building known as "Gharkul" standing on C.T.S. No.1232 at Village Malad, Mumbai to Respondent No.3.

(13) That the Applicant states that, from perusal, NOC for mortgage dated 26.10.2004, it appears that the said NOC was allegedly issued next day of execution of alleged Agreement for Sale dated 25.10.2004 by one ICON Builders & Developer, who is not developer of the building known as "Gharkul Co-op. Hsg. Society". The Applicant submits that the said building was constructed by M/s. P & P Builders and Developers, however, the Respondent No.1 has accepted the NOC for

mortgage of Flat No.A-1 from another builder/third party i.e. M/s. ICON Builders and Developers who is not at all concerned for the development of the Said building.

(14) That the Applicant submitted that the Demand Notice dated 25.08.2008 issued by the Respondent No.1 under Section 13(2) of the SARFAESI Act, 2002, the said demand notice is not addressed to the Applicant and it was served at Flat No.A-1, admeasuring 650 sq. ft. built up area, Ground Floor, building known as Gharkul CHS. The said notice is addressed to Rafiq M. Siddique and on 106, Shahid Apartment Cross PAK, Versova, Andheri (West), Mumbai 400061. But there is no Flat No.A-1 is situated in the building known as Gharkul CHSL and at any point time, the said Mr Rafiq Sidhhique is not at all residing on the above building. Therefore, the said notice under Section 13(2) is bad-in-law.

(15) That the Applicant states that the Respondent No.1 has granted loan of Rs.11,61,875/- to the Respondent No.3 herein and the loan was secured by equitable mortgage of immovable property i.e. the said Flat. The Applicant further submits that on the basis of the submissions of the Respondent No.1, the Hon'ble Chief Metropolitan Magistrate, Esplanade, Mumbai vide his Order dated 08.12.2009 allowed the application filed by the

Respondent No.1 and directed Mr R.G. Naik, Assistant Registrar of Bandra Centre of Courts, after issuing notice to Respondents to take possession of the secured assets. So, the Applicant submitted that according to the Order of Ld. CMM, to handover possession of Flat No.A-1, admeasuring 650 sq. ft. built up area or thereabouts on the Ground Floor in the building known as Gharkul CHS Ltd. Chincholi Bunder Road, Malad (W), Mumbai 400064 and not in respect of Flat No.G-1, adm.416 sq. ft. built up area on the Ground Floor of Gharkul CHS, therefore, the possession taken by the Respondent No.1 towards subject Flat No.G-1 itself is illegal, bad-in-law therefore liable to be set aside.

(16) That the Applicant submits site report dated 11.05.2011 prepared by the Asst. Registrar, Metropolitan Magistrate's Court, Bandra, Mumbai, the Assistant Registrar, Metropolitan Magistrate Court erroneously written that he has visited Flat No.A-1, and took possession of Flat No.A-1, however, the Assistant Registrar without any order and directions of the Hon'ble Court and without having any enquiry with the Society illegally and forcibly took possession of Flat No.G-1 of Gharkul CHS Ltd., which belongs to and owned by the Applicant.

(17) That the Applicant submits that the Authorised

Officer of the Respondent No.1 also issued Public Notice for Auction Sale of the said Flat and despite of the aforesaid fact, the Authorised Officer proceeded to sell the Flat No.G-1 and took possession. The Respondent No.1 also issued the Sale Certificate dated 03.10.2011. The Applicant states that the Sale Certificate is not properly stamped as per the Maharashtra Stamp Act nor it is registered as per the provisions of Registration Act, the sale certificate dated 03.10.2011 is in respect of the Flat No.A-1 and not for Flat No.G-1.

(18) That the Applicant states that the Applicant is neither borrower nor guarantor to the alleged loan granted by the Respondent No.1 to Respondent No.3. The Respondent No.6, Society vide its letter dated 21.05.2015 confirmed that the Applicant is the owner of the Flat No.G-1. Respondent No.6, Society refused to grant a membership to Respondent Nos.4 and 5.

Affidavit in Reply by Respondent No.1:

(19) The Respondent No.1 states that he has taken valid and legal measures under the rules and provisions of the SARFAESI Act and have also obtained the orders u/s. 14 of the SARFAESI Act. Further, the Respondent No.1 submitted that Respondent No.3 along-with Mr Rafat R. Siddique (herein after referred to as the co-borrower) had

approached the Respondent No.1 Bank for Home Loan Facility for the purpose of acquiring the said flat. The Respondent No.1 considered the representation and sanctioned the sum of Rs.11,61,875/- in the year 2004 to the Respondent No.3. and the Co-borrower had executed several loan documents and had agreed to abide by the terms and conditions of the same accordingly. The Respondent No.3 had created the mortgage of property i.e. Flat No.A-1, Ground Floor, building known as Gharkul CHS Ltd., Next to Infant Jesus High School, Chicholi Bunder Road, Malad (W), Mumbai 400064 (herein after referred to as the said property) and accordingly submitted the original title documents being the Agreement for Sale dated 25.10.2003 entered into between Shri Ajit Mangesh Kanji as the Sole Proprietor of M/s. Icon Builders Developer as the Developer and Respondent No.3 as the Flat Purchaser alongwith the letter regard to the permission to mortgage issued by Icon Builders and Developers dated 26.10.2004. The said documents have been annexed by the Petitioners with the present S.A. and are on record of this

Hon'ble Court.

(20) After availing and enjoying the loan facility, they committed default in repayment of the loan amount whereby the loan account was classified as NPA. Accordingly, the demand notice dated 25.08.2008 was issued calling upon them to clear the outstanding dues of Rs.11,43,911.72/- as on 17.09.2008. The notices were duly served upon them but failed to clear the loan amount. After non-payment of the dues, the Respondent No.1 Bank has filed an application under S-14 of the SARFAESI Act being M.A. No.283/MISC/2009 before the Ld. CMM Court, at Esplanade, Mumbai and the Court after verifying all the documents passed Orders u/s. 14 of the SARFAESI Act on 08.12.2009. The copy of the Order passed u/s 14 of the SARFAESI Act has been annexed by the Applicant along-with their compilation of documents.

(21) In accordance of the Order passed by the Ld. CMM, Mumbai, the Respondent No.1 had taken steps in accordance with the provisions of the SARFAESI Act and was put in physical possession of the mortgaged property by the Ld. Assistant

Registrar on 11.05.2011 and after complying all the rules and provisions of the SARFEASI Act conducted the auction thereby sold the said property to the Respondent Nos.4 and 5, as per the rules and provisions of the SARFAESI Act, being the Auction Purchaser. After taking possession, the society i.e. the Respondent No.6 had issued a letter dated 21.06.2011 to the Defendant No.1 informing the Respondent Bank about the Total outstanding and other dues of the Society.

(22) That the Respondent No.1 submits that the Petitioners are claiming title on the property on the basis of an Agreement for Sale dated 08.06.2007 executed between one Ajit Mangesh Kanji and the Applicant. From perusal of the said Agreement it can be seen that the said Agreement is for a total consideration of Rs.14,00,000/- and an amount of Rs.4,00,000/- has been paid by cash to the Petitioners and considering the same and the transaction on the face of it is illegal and bad in law and the said agreement would not have any relevance.

(23) That the Respondent No.1 submits that it is

pertinent to note that the Applicant during filing of the Suit before the City Civil Court, Dindoshi have relied upon two Leave and License Agreements dated 30.12.2008 and 19.05.2010 in which the present Applicant is shown as a Constituted Attorney of Mr Ajit Kanji who is the seller in the Agreement for sale dated 08.06.2007 and that too after the said flat being allegedly sold by him to the Petitioners. Mr Ajit Kanji is the same person who has sold the said flat to the Respondent No.3 vide Agreement dated 25.10.2003.

(24) That the Respondent No.1 states that the intentions of the Applicant becomes clear and apparent that the Applicant along-with the Respondent Nos.2, 3 and 6 are hand in glove with each other and the present proceedings are initiated only to defeat the rights of the Respondent Bank on some false and baseless contentions. The mortgaged property is the one and the same property and the Respondent Nos.2 and 3 have in collusion with each other have tried to create such false circumstances to create some doubt which is without any basis and legal

standing. All the documents produced by the Applicant are bogus and sham.

(25) That the Respondent No.1 states that with reference to para 4 i.e. Limitation of the S.A. is not filed withing the limitation period. The Applicant has taken almost 354 days in filing the Appeal u/s.17 of SARFAESI Act before the DRT, Mumbai. As per the settled law laid down by the Hon'ble Supreme Court in the case of Civil Appeal No.92 of 2026 (Arising out of S.L.P. (Civil) No.3906 of 2017) – The Property Company (P) Ltd. vs. Rohinten Daddy Mazda (07.01.2026-SC), the delay in filing of Section 17 before the Debt Recovery Tribunal cannot be condoned.

(26) With reference to para 5.1 of the S.A., the Agreement for Sale dated 08.06.2007 is sham and a bogus document which has no legal standing. The Respondent No.1 Bank is having valid mortgage over the said property and the Applicant is trying to create false circumstances by bring out some different flat number which appears to have been changed by the Respondent No.2 by being hand in glove with the Applicant only in order to dupe the Respondent Bank.

(27) That the Respondent No.1 states that with reference to para 5.7 of the S.A., the said flat is having an area of 650 sq. ft, built up which can make out to an area less when calculated in Carpet Area. Admittedly there is a single building and has already stated the same is situated on Plot no.7A, CTS No.1232.

(28) That the Respondent No.1 states that with reference to para 5.9 of the S.A., the Applicant cannot claim any title in pursuance to the said Agreement as the said flat is already mortgaged with the Respondent No.1 Bank. The entire sale consideration has been paid for purchase of the said flat and interesting from the record, it appears that an amount of Rs.4 lakhs has been paid in cash. With reference to para 5.10 of the S.A., the possession letter is also a false and bogus document provided by the Applicant.

(29) That the Respondent Bank states that the leave and licence agreements are not executed by the Applicant and false statements have been made in this regard. With reference to para 5.13 of the S.A., the said contentions cannot be gone into as the paper publications are after the creation of

mortgage in favour of the Respondent Bank.

(30) That the Respondent Nos.2 and 3 along-with the Applicant have conspired to defraud the Respondent Bank. The said agreement is duly signed and executed by the Respondent No.3 and the Respondent Bank has sanctioned and disbursed the loan amounts to the Respondent No.3 and further the Applicant is not a party to the Loan Contract.

(31) That the 13(2) notice was issued at the last known correct addresses of the Respondent No.3 and the same has been served as per the rules. The Ld. CJM, Mumbai, the Respondent Bank has taken physical possession of the mortgaged property and have thereby put the same in the auction. The Respondent No.1 further submits that Respondent Nos.4 and 5 were the successful auction purchasers to whom the Sale Certificate has been issued which is duly registered with the sub-Registrar.

(32) That the Respondent No.1 states that the Respondent No.1 being a Secured Creditor had followed due process of law and has acted as per the provisions of the SARFAESI Act. The Applicant

is not entitled to any reliefs or ad-interim reliefs and that the S.A. be dismissed with compensatory costs.

Affidavit in reply by Respondent Nos.4 & 5:

(33) That the advocate for Respondent Nos.4 and 5, filed this reply to bring on record the actual position of the ground floor of the building wherein the said flat is located.

(34) That the Ld. Advocate for the Respondent Nos.4 and 5 pointed out that the applicant has shown the Map of the floor plans of ground floor attached to the original application at page nos.57 and 125. But from the perusal of the both plans, there are four flats as shown on floor plan of ground floor.

(35) However, in actual, there are only two flats situated at ground floor of the said building. Therefore, both the plans relied by the Applicant cannot be taken into consideration as the same are not denotating the correct position of the ground floors flats. The photographs of the ground floor of Gharkul CHS Ltd. are attached in the reply.

(36) Ld. Counsel for Respondent Nos. 4 and 5, during the course of arguments, also in alternate

submitted that in the event possession is restored to the Applicant, the sale consideration paid by them be directed to be refunded along with appropriate interest.

Findings & Analysis

Heard the parties and perused the record.

(37) At the outset, in view of the order dated 07.06.2022 passed by the Hon'ble Bombay High Court, the issue of delay does not survive for consideration and the present application is required to be examined only on merits.

(38) It is not in dispute that all measures initiated by the Respondent Bank under the SARFAESI Act, including the demand notice, possession proceedings under Section 14 and the sale certificate, refer to Flat No. A-1, admeasuring area of builtup area of 650 sq ft, Gharkul CHSL, Chincholi Bandar Road, Malad (West), Mumbai-400064 as the secured asset.

(39) The consistent case of the Applicant is that possession has been taken of Flat No. G-1, Gharkul CHSL, Chincholi Bandar Road, Malad (West), Mumbai-400064 which is a different property.

(40) The Respondent Bank, despite such specific contention, has not placed any material on record to demonstrate that Flat No. A-1 and Flat No. G-1 are one and the same property or that the property of which possession has been taken corresponds to the secured asset mortgaged by the borrower.

(41) The Respondent Bank has filed Exh-12 wherein leave and license agreements have been executed by the Applicant. The same reflects that the Applicant had executed a Leave and License Agreement dated 19.05.2010 in favour of one Mr. Sachin Shankar Lugade.

(42) The Respondent No 4 & 5 have placed on record the panchnama dated 11.05.2011 prepared by the Assistant Registrar, Metropolitan Magistrate Court, Bandra Mumbai. The said panchnama prepared at the time of taking possession records that at the time of taking possession, Mr Sachin Shankar Lugade was staying in the said premise. This indicates that the possession of the property prior to the action under the SARFAESI Act was flowing from the Applicant and that the property was in settled occupation.

(43) Also, the layout/map relied upon by the Bank while granting loan appears to be a proposed plan having four flats and not an approved plan, indicating that the issue regarding identification of the flat is not free from doubt. Further, the auction purchaser has, in his reply, stated that there are only two flats on the ground floor of the building. This further indicates that the issue regarding identification of the flat assumes significance and requires clear co-relation with the secured asset.

(44) That apart from the above, it is also noted that no material has been placed on record to indicate that the Respondent Bank had taken steps to reflect its charge in the records of the society while this by itself does not invalidate the mortgage, it assumes relevance in the context of identification of the secured asset.

(45) In proceedings under the SARFAESI Act, the secured creditor is empowered to take possession only of the secured asset. The action of taking possession must therefore strictly correspond to the property in respect of which the security interest has been created by the mortgagor.

(46) In the present case, in absence of any material establishing the identity of Flat No. A-1 with Flat No. G-1, the Respondent Bank has failed to demonstrate that the measures taken by it were in respect of the secured asset which goes to the root of jurisdiction under the SARFAESI Act, 2002.

(47) The contention of the Respondent Bank regarding the nature of the Applicant's title, including reliance on Power of Attorney and related documents, does not advance its case in the present proceedings. Even assuming that the Applicant's title is disputed or not conclusively established, the Respondent Bank cannot take possession of a property unless it establishes that the same forms part of the secured asset.

(48) The judgments relied upon by the Respondents No. 4 & 5 regarding finality of auction sale and protection of auction purchaser are not applicable to the facts of the present case, as the foundational issue is regarding the identity of the secured asset itself.

The issue involved is not of title adjudication but of the legality of measures taken under the SARFAESI Act in relation to the secured asset.

(49) In the facts and circumstances of the case, this Tribunal finds that the Respondent Bank has failed to establish that the property of which possession has been taken is the secured asset, and therefore the measures taken under the SARFAESI Act cannot be sustained.

ORDER

In view of the above, the following order is passed:

I. The measures taken by Respondent No.1 under the SARFAESI Act, including the possession dated 11.05.2011 and subsequent sale proceedings, insofar as they relate to Flat No. G-1, Gharkul CHSL, Chincholi Bandar Road, Malad (West), Mumbai-400064 are hereby set aside.

II. The Respondent Bank and the auction purchasers are directed to restore and handover peaceful and vacant possession of the property in question to the Applicant within 03 months from the date of this order.

III. The Respondent Bank is directed to refund the sale consideration paid by the Auction Purchasers along with an interest of 12% per

annum from the date of receipt of sale consideration

IV. It is clarified that this Tribunal has not adjudicated upon the title of the parties in respect of the subject property, and the same shall be decided by a competent forum, if so required.

V. The Transfer Securitisation Application No. 02 of 2026 is accordingly allowed as above.

VI. No order as to costs.

Sd/-

(Harish Kumar Kaushik)
Presiding Officer,
DRT-2, Mumbai

Srishti