DEBTS RECOVERY TRIBUNAL No.1, MUMBAI

ORDER
In
INTERLOCUTORY APPLICATION NO. 2092 OF 2026
In
SECURITISATION APPLICATION NO. 148 OF 2026
(Delivered on 20.08.2026)

MUKESH AGARWAL ... Applicant

Versus

UNION BANK OF INDIA ... Respondent

Advocate Puneet Gogad for the Applicant.

Advocate Nainesh Amin a/w Adv. Vipin Chandra a/w Adv. Priyam Amin for the Respondent.

ORDER

1. The applicant who is a guarantor to the loan availed by R3 is seeking to stay the possession intended on 21.08.2026 of the premises stated herein described as:

   a) Residential Flat No.702, 7th floor, peregrine building, Raheja Wood Co-operative Housing Society Limited, situated at plot No.3 Sub-divided plot No.25A. S. No. 221/1 (Part) TPS No.1, near Verde Residential Project, Off Pune-Nagar Road, Kalyani Nagar, Yerawada Taluka Haveli Pune, Maharashtra.

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b) Residential Flat Nos.703 and 704 (well amalgamated flats) 7th floor Peregrine Building Raheja Woods Co-operative Housing Society Limited, situated at plot No.3 Sub-divided plot No.25A, S. No. 222/1 (part) TPS No.1 near Verde Residential project off Pune-nagar Road, Kalyani nagar, gerawada, Taluka Haveli, Pune Maharashtra.

herein after stated as subject premises.

2. The applicant contends that the order passed on 09.06.2026 by NCLT Mumbai in S.95 petition filed by Bank Of Maharashtra in IBC petition is admitted under Section 100 IBC. It clearly imposes a moratorium restraining all creditors from initiating or proceeding with legal action for the debts of the applicant. As applicant is a party to the demand notice issued by respondent/bank, the applicant or the premises herein cannot be proceeded against by the respondent/bank.

3. It is next contended by the applicant that the nine pointer affidavit is seen filed without a notary register number and so it is not a proper affidavit. The applicant had replied to the demand notice on 15.12.2025 which fact is admitted by the respondent/bank. Even then the nine pointer affidavit filed by the authorised officer states that no reply is filed by applicant to the demand notice.

4. It is further contended by the applicant that the respondent/bank had not complied with the 1st clause of the (ix) clauses to be stated

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in the nine pointer affidavit. The claim as on the date of filing of S.14 application is not stated therein. Further the demand notice dated 17.10.2025 is defective for want of details under Section 13(3) SARFAESI Act.

5. So according to the applicant these defects cannot be taken as minute or technical defects. The possession now initiated on which is based on the allegedly improper S.14 order passed on improper affidavit, that too pending the moratorium passed by Hon'ble NCLT cannot be allowed to be effected and has to be stayed.

6. Respondent/bank contends that, Cash credit, Term loan and LC facilities were sanctioned to the borrower/R3, on him creating equitable mortgage by furnishing security by depositing title deeds of eight items of immovable property, with R4 and applicant as guarantor. The premises herein in this petition are owned by R3, and on the loan account getting declared as NPA, notice under Section 13(2) SARFAESI Act, demanding Rs.13,64,88,049.05 (Rupees Thirteen Crore Sixty Four Lakhs Eighty Eight Thousand Forty Nine And Paisa Five Only) was issued by R1. Symbolic possession of the premises herein was taken on 12.01.2026, and order under Section 14 SARFAESI Act was obtained from the Ld. Magistrate, and physical possession is fixed on 21.08.2026. In view of the huge amount outstanding in the loan accounts, the intended possession on 21.08.2026 cannot be stayed on any ground.

7. Heard both sides.

8. Perusal of the records shows that the applicant had executed a registered gift deed in favour of R3, for the flat no. 703, which is the premises herein. The gift deed date 03.02.2023 states that, the applicant had handed over the vacant, legal physical and peaceful possession of the said premises, to R3 who is stated to have accepted the possession. No records are offered by the applicant, to show his ownership over any of the premises stated in this petition.

9. The applicant is contending that, he is having locus to file the present petition as he is also included as an addressee in the notice issued under Section 13(2) SARFAESI Act alongwith R3, the borrower. The possession is intended for the premises owned and held in ownership by the borrower as R3.

10. As stated earlier, applicant, though a guarantor does not show any material to bring out his ownership, right or possession of the premises herein. So he must be stated to have no locus in the matter and he cannot seek for stay of the possession of the property owned by the borrower, for realisation of the loan dues availed by the borrower.

11. It is contended by the applicant that, the S.14 order based on the incorrect affidavit averment that no reply is sent to notice under Section 13(2) SARFAESI Act is erroneous, and cannot be based for effecting the possession of the premises herein. The applicant had sent a reply to the notice which is not denied by R1/bank. But there

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is no substantiated case for applicant that, the borrower as R3 had sent a reply to the notice under Section 13(2).

12. All the allegations and contentions against the S.14 proceedings could have been accepted, had the order of Ld. Magistrate been directed at the possession of any item owned by the applicant. The said order is directed at the premises which are owned by the borrower as R3. So the contention of R1 that applicant has no locus in the matter has to be accepted.

13. It is seen that as per letter dt. 10.01.2026 issued to R1, R3 the borrower, had expressly offered the physical possession of the premises as flat no.702, 703, 704, 7th floor, Peregrine building, Raheja Woods Kalyani Nagar, Pune. This shows that, R3 was having complete right and ownership over premises herein and the applicant has no such right over the same. Bills by Maharashtra Natural gas and property tax bills are not sufficient to show the right and title for applicant in the premises.

14. Applicant next contends that, the Hon'ble NCLT Mumbai had passed an order under Section 95 IBC restricting all creditors from initiating legal action for any debt. On that ground also R1/bank cannot proceed further to execute S.14 order and take possession of the premises as according to the applicant.

15. It is seen that, the petition under Section 95 IBC was filed by Bank Of Maharashtra for an entirely distinct debt. The protection granted to

him by way of moratorium does not extend to the borrower herein who is being proceeded for a separate debt by a separate secured creditor as R1.

16. So it is seen that none of the contentions offered by the applicant can be accepted and so the petition has to be dismissed.

17. Parties to suffer costs.

(Dictated to my Stenographer, transcribed by her corrected and signed by me and pronounced in open forum on 20.08.2026)

Presiding Officer
Debts Recovery Tribunal,
Mumbai-I
(Sreekala Suresh)

Date: 20.08.2026