IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

945 WRIT PETITION NO. 5092 OF 2026

Motilal Oswal Home Finance Limited,
(Formerly Known as
Aspire Home Finance Corporation Limited,
Mr. Achal Pathak
Age 42 y. Major Occu: Service,

Having Address at Motilal Oswal Towers,
Junction of Gokhale, Sayani Rd, Prabhadevi,
Mumbai, Maharashtra 400025. ...PETITIONER

VERSUS

1. The State of Maharashtra
District Magistrate, Ahmednagar

2. Station House officer, Shrigonda

3. Superintendent of Police,
Ahmednagar ...RESPONDENTS

...

Mr. Sandeep Rebari h/f. Mr. Shreyas Deshpande, Advocate for the Petitioner
Mr. V. M. Kagne, AGP for Respondent/s – State

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CORAM : SMT. VIBHA KANKANWADI AND
AJIT B. KADETHANKAR, JJ.

DATE : 06.05.2026

JUDGMENT :-

. Rule. Rule is made returnable fourthwith. With the consent of the learned counsel appearing for the parties, the petition is taken up for final

disposal at the stage of admission.

2. The petitioner, is a financial establishment engaged in the business of providing home loans, agricultural loans and other loan facilities, has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking directions against the respondent authorities to take possession of the secured assets situated at G.P. Milkat No.906, RCC construction admeasuring 1400 sq. ft., belonged to Gat No. 155, G.P.A. No.1102 of village Mauje Chimbhale, Tq.Shrigonda, Dist. Ahmednagar, which are alleged to be illegally occupied by respondent No.3. The petitioner has further sought a declaration that the acts of the borrowers are in blatant violation of the mandate of SARFAESI Act and in alternative has prayed for appointment of a Court Commissioner or Receiver or for issuance of appropriate directions to the authorities to repossess the secured assets with the assistance of police machinery.

3. The facts as borne out from the record are not in serious dispute. The petitioner had sanctioned a home loan facility to the borrowers, person to which the borrowers executed the necessary loan and security documents and created a registered mortgage in favour of the petitioner over the subject property. Upon the borrowers committing default, the loan account was

classified as non-performing asset. The petitioner, thereafter, issued a demand notice under Section 13(2) of the SARFAESI Act. As the borrowers fail to comply with the said notice within the stipulated period, the authorized officer of the petitioner initiated measures under Section 14 of the SARFAESI Act and approached the learned Additional Chief Judicial Magistrate seeking assistance for taking physical possession of the secured assets.

4. By order dated 30.07.2020, the learned Magistrate allowed the application and directed the concerned authority to take physical possession of the secured assets and hand over the same to the authorized officer of the petitioner. In pursuance of the said order, the Tahsildar fixed a date, visited the site, drew a panchanama and inventory, and took physical possession of the secured asset, which was thereafter handed over to the petitioner. The petitioner put its lock and seal on the premises and documented the entire process. After obtaining possession, the petitioner proceeded further under the SARFAESI Act and issued a sale notice in respect of the secured assets.

5. It is the specific grievance of the petitioner that, subsequent to these lawful steps, the borrowers forcibly broke open the lock and seal affixed by the authorized officer and illegally trespassed into the secured asset. When officials of the petitioner visited the premises, they were unlawfully restrained

and threatened. A complaint was lodged with the Police authorities; however, no effective action was taken. The petitioner contends that the borrowers have thus taken the law into their own hands, in complete disregard of the statutory process and judicial orders and are unlawfully enjoying the secured assets without making any payment towards the loan.

6. The learned counsel appearing for the petitioner submitted that the possession of the secured assets was obtained strictly in accordance with law and pursuant to an order passed by the competent Court under Section 14 of the SARFAESI Act. It was argued that once possession is lawfully taken by following due process, the borrowers cannot be permitted to nullify the effect of such judicial orders by resorting to force. It was further submitted that the petitioner had approached the police authorities, but no assistance was rendered, compelling the petitioner to invoke the jurisdiction of this Court.

7. Per contra, the learned AGP submitted that the petitioner ought to have approached the learned Magistrate by filing an application for restoration of possession and should not have directly approached this Court under Article 226 of the Constitution of India.

8. Having heard the learned counsel for the parties and having perused the record, it is evident that the petitioner was put in physical

possession of the secured assets strictly in accordance with law and in pursuance of an order passed under Section 14 of the SARFAESI Act. It is equally clear that the borrowers did not avail of any legal remedy to challenge either the measures taken or the order passed by the learned Magistrate. In such circumstances, the act of borrowers in breaking open the lock and seal and forcibly re-entering the secured assets amount to a patently illegal act, only contrary to the mandate of SARFAESI Act and in utter disregard of the rule of law. Such conduct cannot be countenanced by any Court of law.

9. At this stage, it is necessary to deal with the objection raised on behalf of the respondents regarding the maintainability of an application for restoration of possession. Though the SARFAESI Act does not expressly employ the phrase “restoration of possession”, the power to restore possession is inherent and incidental to the authority confirmed conferred under Section 14 of the Act. Once the Magistrate has exercised jurisdiction to assess the secured creditor in taking physical possession of a secured assets, the same authority is competent to ensure that its order is effectively implemented and is not rendered nugatory by illegal acts of the borrowers. An application seeking restoration of possession in such circumstances is not a fresh application for taking possession, but is in the nature of a consequential or ancillary application seeking enforcement and protection of possession already lawfully

delivered. Such an application is therefore clearly maintainable under the SARFAESI Act. A borrower who has forcibly reentered the secured asset cannot seek shelter under the statutory remedies provided by the act, and self-help by use of force is impermissible.

10. The maintainability of an application under Section 14 of the SARFAESI Act for restoration of possession, as stated above, does not mean that in appropriate cases the jurisdiction of the writ Courts is not available. The cases where there is a patent failure on the part of the authorities to act with promptitude and sensitivity; in such cases, the secured creditor is entitled to invoke the writ jurisdiction of this Court.

11. We are constrained to observe that in recent times this Court has been noticing an increasing tendency on the part of defaulting borrowers to take the law into their own hands by forcibly re-entering secured assets after possession is lawfully taken by secured creditors. What is more alarming is the apparent inaction on the part of police machinery and the authorities concerned, which has the effect of encouraging such unlawful conduct. Breaking open seals affixed pursuant to judicial orders and frustrating statutory proceedings strike at the very foundation of the rule of law and must be dealt with sternly ordinarily, in the facts of the present case, we would have

issued a writ of mandamus directing the police authorities and the revenue officials to forthwith repossess the secured assets from the borrowers and restore the same to the petitioner. However, we note that the borrowers have not been impleaded as party respondents in the present petition. In order to avoid passing ex parte directions affecting persons who are not before the Court, we deem it appropriate to mold the relief.

12. Accordingly, we direct the petitioner to file an application before the concerned Tahsildar seeking restoration of possession of the secured assets. Upon receipt of such application, the Tahsildar shall within a period of one week visit the secured assets along with the adequate police assistance. If the borrowers or any third party are found to be in possession of the secured assets, they shall be forcibly evicted and physical possession shall be restored to the petitioner.

13. The Police authorities are further directed to register appropriate offenses and initiate penal action against all persons responsible for breaking open the seal, committing trespass, and obstructing the lawful exercise of statutory powers by the secured credited. Necessary directions are given in the previous matters.

14. The Rule is made absolute in above terms. The writ petition stands disposed of. There shall be no orders has to cost.

15. The petitioner shall report compliance in respect of the action taken by the Tahsildar and the Police authorities to this Court on the next date.

16. Place the matter for compliance on 10.06.2026.

(AJIT B. KADETHANKAR, J.) **(SMT. VIBHA KANKANWADI, J.)**

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