IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3201 OF 2026

PETITIONER(S) : 1) M/S Himmatlal Agrawal, Through its authorized partner, Shri Kishor Himmatlal Agrawal, aged about 45 years, Occu: Business, having office at Krishna House, Ganeshpeth, Nagpur.

2) Shivkumar Bhishamberdayal Agrawal, Aged about 69 years; Occu: Business, r/o Sharma Layout, Plot No. 5, Gopal Nagar, Shankar Nagar, Nagpur-440010

..**VERSUS**..

RESPONDENT(S) : 1) Collector & District Magistrate, Nagpur, Collector Office, Civil Lines, Nagpur

2) HDFC Bank Limited, through its Authorized Officer, Down Mills Compound, GK Marg, Lower Parel West, Mumbai-400013

3) Pegasus Assets Reconstruction Private Limited, through its Authorised Officer, Office at 55-56, 5th Floor, Free Press House, Nariman Point, Mumbai -400021.

4) Chief Recovery Officer, Department of Special Operations,

HDFC Bank Limited, 4th Floor, Down Mills Compound, GK Marg, Lower Parel West, Mumbai-400013

5) Branch Manager cum Recovery Officer, HDFC Bank Limited, 4th Floor, Fidvi Tower, Sadar, Nagpur.

Ms Gauri Venkatraman, Advocate for petitioners
Mr. N.S. Rao, AGP for the respondent No.1/State
Mr. S.N. Kumar, Advocate for the respondent No.3
Mr. S.D. Ingole, Advocate for the respondent Nos.2, 4 and 5

CORAM : ANIL S. KILOR AND RAJ D. WAKODE, JJ.
DATE : 06/08/2026

ORAL JUDGMENT : (Per : Anil S. Kilor, J.)

1. Heard.

2. **Rule**. The Rule is made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

3. In the present petition, the petitioners have raised a challenge to the legality and correctness of the order dated 23.02.2026 passed by the District Magistrate, Nagpur, directing the Tahsildar, Saoner to handover possession of the mortgaged property to the respondent No.3-Asset Reconstruction Company (ARC) instead of respondent No.2-

Bank.

4. This order was passed by the District Magistrate in the backdrop of the following facts:

a) The petitioner No.1, a proprietorship firm availed a credit facility from the respondent No.2-Bank. The properties which were mortgaged against such credit facility are owned by the petitioner No.2.

b) On declaration of account of the petitioner No.1 as 'Non Performing Assets' (NPA), the respondent No.2-Bank approached the District Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act").

c) The District Magistrate/Additional Collector accordingly, passed the order dated 04.12.2019, directing the Tahsildar to take possession of the mortgaged property in question.

5. Thereafter, the respondent No.2-Bank executed an assignment agreement in favour of the respondent No.3-ARC and in the change circumstances, the impugned order dated 23.02.2026 came to be passed by the District Magistrate/ Additional Collector, directing the Tahsildar to handover the possession to the ARC. Hence, this petition.

6. We have heard the learned counsel for the respective parties.

7. The learned counsel for the petitioners argues that the District Magistrate, after passing order under Section 14 of the SARFAESI Act becomes *functus officio* and thus, he has no power to review, modify, or amend such orders. In the present case, the District Magistrate could not have entertained the application of the respondent No.3-ARC for substitution of its name in place of the respondent No. 2 in the earlier order dated 04.12.2019. To support her contentions, she has placed reliance upon the judgment of the Co-ordianate Bench of this Court in the case of *Union Bank of India Vs. State of Mah.* reported in **2010(5) Mh.L.J. 270** and the judgment of the Gujarat High Court in *India Resurgence Arc Private Limited Vs. District Magistrate (Valsad),* dated 12.10.2021 in R/Special

Civil Application No.10533/2021.

8. It is further argued that the Respondent No.3-ARC was mandated by law to prefer a fresh application under Section 14 of the SARFAESI Act after it was purportedly assigned the petitioners' Firm's loan account and mortgaged properties by the Respondent No.2-Bank. Mere substitution of the Respondent No.3's name in the earlier order dated 04.12.2019 passed under Section 14 is unlawful, illegal, and without any authority of law.

9. On the other hand, the learned counsel for the respondent No.2-Bank argues that, till the possession is taken by the Bank with the help of the District Magistrate, under Section 14 of the SARFAESI Act, the proceeding under Section 14 is to be considered as pending. The District Magistrate is therefore, empowered to pass the order, as passed in the present matter. He therefore, submits that no illegality has been committed by the District Magistrate in the present case.

10. It is submitted that under sub-section (5) of Section 5 of the SARFAESI Act, on acquisition of financial assets under sub-section (1), the ARC, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings. It is argued that the substitution of name of the respondent No.3-ARC in place of the respondent No.2-Bank, is thus permissible. To substantiate his arguments, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *R.D. Jain and Company Vs. Capital First Ltd.* reported in **2013 (1) SCC 675.**

11. Having heard the rival contentions and having perused the record, it is evident that on 04.12.2019, the District Magistrate, on a request of the respondent No.2-Bank passed the order under section 14 of the SARFAESI Act, directing the Tahsildar to take possession of the secured assets/mortgaged properties in question and hand it to the respondent No.2-bank, secured creditor.

12. Subsequent to the same, the assignment agreement was executed by the respondent No.2 with the respondent

No.3 on 30.06.2025. Thereupon, the District Magistrate directed the Tahsildar vide impugned order dated 23.02.2026 to handover the possession of the mortgaged properties to the respondent No.3-ARC in place of the respondent No.2-Bank, secured creditor.

13. It is the case of the petitioners that once the order is passed under Section 14(1) of the SARFAESI Act, by the Chief Metropolitan Magistrate/District Magistrate (CMM/DM), he becomes *functus officio*.

14. Let's therefore refer to Section 14 of the SARFAESI Act, which reads thus:

> *"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.—(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—*
> *(a) take possession of such asset and documents relating thereto; and;*
> *(b) forward such asset and documents to the secured creditor:*
> *[Provided that any application by the secured creditor shall be*

accompanied by an affidavit duly affirmed by the authorised 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 non-performing asset;
(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (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]:
[Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period

but not exceeding in aggregate sixty days.] Provided also that the requirement of filing affidavit stated in the first proviso shall not apply toproceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.]

[(1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—
(i) to take possession of such assets and documents relating thereto; and
(ii) to forward such assets and documents to the secured creditor.]
(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.
(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority."

15. From the language of Section 14 of the SARFAESI Act, it is evident that it is enacted with a sole purpose to assist the secured creditor in taking possession of the secured assets and while doing so, the first step is the District Magistrate shall pass order under sub-section (1) for taking possession of the secured assets. Once such order is passed, under sub-section (2) for the purpose of securing compliance with the provisions of sub-section (1), CMM/DM may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

16. Thus, from the language of Section 14 of the SARFAESI Act, it is evident that till the time the possession is taken over by the CMM/DM, of a secured asset, it cannot be said that the proceeding is concluded.

17. The Hon'ble Supreme Court of India in the case of *R.D. Jain* (supra) had an occasion to analyze the statement of objects and reasons of the SARFAESI Act and the scope of Section 14 of the SARFAESI Act. The Hon'ble Supreme Court of India, in the said judgment, has observed as follows:

> *"18. Now so far as the powers exercisable by DM and CMM under Section 14 of the Sarfaesi Act are concerned, Statement of Objects and Reasons for which the Sarfaesi Act has been enacted reads as under:*
>
> *"Statement of Objects and Reasons*
>
> *The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions.*

Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on 21-6-2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance would enable banks and financial institutions to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction."

19. Thus, the underlying purpose of the Sarfaesi Act is to empower the financial institutions in India to have similar powers as enjoyed by their counterparts, namely, international banks in other countries. One such feature is to empower the financial institutions to take possession of securities and sell them. The same has been translated into provisions falling under Chapter III of the Sarfaesi Act. Section 13 deals with enforcement of security interest. Sub-section (4) thereof envisages that in the event a default is committed by the borrower in discharging his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the measures provided in sub-section (4). One of the measures is to take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset. That, they could do through their "authorised officer" as defined in Rule 2(a) of the Security Interest (Enforcement) Rules, 2002.

20. After taking over possession of the secured assets, further steps to lease, assign or sell the same could also be taken by the secured creditor. However, Section 14 of the Sarfaesi Act predicates that if the secured creditor intends to take possession of the secured assets, it must approach the CMM/DM by way of an application in writing, and on receipt of such request, the CMM/DM must move into action in right earnest. After passing an order thereon, he/she

(CMM/DM) must proceed to take possession of the secured assets and documents relating thereto for being forwarded to the secured creditor in terms of Section 14(1) read with Section 14(2) of the Sarfaesi Act. As noted earlier, Section 14(2) is an enabling provision and permits the CMM/DM to take such steps and use force, as may, in his opinion, be necessary.

21. At this stage, it is required to be noted that along with insertion of sub-section (1-A), a proviso has also been inserted in sub-section (1) of Section 14 of the Sarfaesi Act whereby the secured creditor is now required to comply with certain conditions and to disclose that by way of an application accompanied by affidavit duly affirmed by its authorised officer in that regard. Sub-section (1-A) is in the nature of an explanatory provision and it merely restates the implicit power of the CMM/DM in taking services of any officer subordinate to him. As observed and held by this Court in NKGSB Coop. Bank [NKGSB Coop. Bank Ltd. v. Subir Chakravarty, (2022) 10 SCC 286 : (2023) 1 SCC (Cri) 157] , the insertion of sub-section (1-A) is not to invest a new power for the first time in the CMM/DM as such.

22. ...

23. However, for taking physical possession of the secured assets in terms of Section 14(1) of the Sarfaesi Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under Section 14(1) of the Sarfaesi Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the Sarfaesi Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity.

24. As mandated by Section 14 of the Sarfaesi Act, the CMM/DM has to act within the stipulated time-limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the *aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment."*

18. The Hon'ble Supreme Court of India, in a clear term, thus, held that:

a) Underlying purpose of the SARFAESI Act is to empower the financial institutions in India to have similar powers as enjoyed by their counterparts, namely, international banks in other countries. One such feature is to empower the financial institutions to take possession of securities and sell them.

b) Section 14 of the SARFAESI Act predicates that if the secured creditor intends to take possession of the secured assets, it must approach the CMM/DM by way of an application in writing, and on receipt of such request, the CMM/DM must move into practical application in right earnest.

c) After passing any order thereon, the CMM/DM must proceed to take possession of the secured assets and the documents relating thereto, for being forwarded to the secured creditor in terms of Section 14(1) read with Section 14(2) of the SARFAESI Act. Section 14(2) is an enabling provision and permits

CMM/DM to take or cause to take steps and use force, as may, in his opinion be necessary.

d) The step taken by the Chief Metropolitan Magistrate/District Magistrate (CMM/DM), while taking possession of secured assets and documents relating to the assets, it is a ministerial step and it could be taken by CMM/DM itself /herself or through any officer subordinate to him/her, including the Advocate Commissioner, who is considered as an Officer of his/her Court.

e) While disposing the application under Section 14 of the SARFAESI Act, no element of quasi judicial function or application of mind would be required. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more.

f) Therefore, Section 14 of the SARFAESI Act does not involve the adjudicatory process *qua* points raised by the borrower against the secured creditor, taking possession of the secured assets.

19. It is thus amply clear that the CMM/DM is duty bound to take possession after the order is passed under Section 14 (1) of the SARFAESI Act and till the possession is taken over, the proceeding under Section 14 cannot be considered and treated as concluded.

20. In the circumstances, we do not find any favour with the arguments made by the learned counsel for the petitioners that once the order under Section 14 (1) of the SARFAESI Act is passed, the CMM/DM becomes *functus officio*.

21. The said argument is misconceived in light of the provision of sub-section (2) of Section 14 of the SARFAESI Act, which is an enabling provision, which permits the CMM/DM to take or cause to take steps or use force as may in his opinion be necessary for a purpose of securing compliance with the provision of sub-section (1) of Section 14.

22. It is important to note here that Section 5 of the SARFAESI Act, relates to the acquisition right or interest in financial assets.

23. Sub-section (2) of Section 5 of the SARFAESI Act says that if the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the asset reconstruction company, such asset reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

24. Similarly, the important provision is sub-section (4) of Section 5 of the SARFAESI Act, provides that if, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of the financial asset by the asset reconstruction company, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the asset reconstruction company, as the case may be.

25. Thus, sub-section (5) Section 5 of the SARFAESI Act provides remedy for asset reconstruction company to apply for substitution of its name in place of secured creditor. Sub-section (5) of Section 5 provides that on acquisition of financial assets under sub-section (1), the asset reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings.

26.

27. In the matter at hand, admittedly, the respondent No.3 stepped into shoes of the respondent No.2-Bank after execution of the assignment agreement.

28. Thus, in light of sub-section (5) of Section 5 of the SARFAESI Act, the Collector directed the Tahsildar to handover possession to the respondent No.3-ARC in place of respondent No.2-Bank.

29. No doubt, there is no substitution of name of the respondent No.3-ARC with the respondent No.2-Bank, but it directs the Tahsildar to handover the possession of the properties to the respondent No.3-ARC.

30. The ultimate purpose of substituting the name of the secured creditor by the name of the ARC is to hand over possession to the ARC under Section 14 of the SARFAESI Act.

31. In the circumstances, even in absence of 'substitution', directing the Tahsildar by the District Magistrate to handover the possession to the respondent No.3 in place of the respondent No.2 will not make the impugned order bad in law.

32. It is a settled law that substances prevail over the format. The important thing is the lawful intent and not the format.

33. In the judgment of *Union Bank of India* (supra), relied upon by the petitioners, the challenge was to the order of the District Collector/Magistrate, which directed the petitioners therein to cancel the auction, remove the properties from the purview of auction under the SARFAESI Act, and hand over the possession of two lands.

34. While considering the scope of Section 14 of the SARFAESI Act, which is very limited and ministerial in nature.

It is held that the Collector has no power to adjudicate the claim or counterclaim raised in the application under Section 14. In the said context, finality given to the order under Section 14 of the SARFAESI Act is the correct position of law, and there cannot be any dispute about the same.

35. However, in the said judgment, it has not been held, as argued by the petitioners that, in case of asset reconstruction or assignment agreement, a fresh application will be required at the behest of the ARC under Section 14 of the SARFAESI Act. Hence, the judgment of *Union Bank of India* (supra), is of no help to the petitioners.

36. In the judgment *India Resurgence Arc Private Limited* (supra) passed by the Gujarat High Court, it is held that once the order under Section 14 of the SARFAESI Act is passed by the CMM/DM, it cannot be said the proceeding is pending on the date of acquisition of assets.

37. Having considered the judgment in *India Resurgence Arc Private Limited* (supra), we are of the opinion that the ratio laid down in the said judgment is not a correct law. Therefore, the said judgment is of no help to the petitioners.

38. In the above circumstances, as there is no merit in the present matter, the petition is **dismissed.**

Rule is discharged accordingly.

(RAJ D. WAKODE, J.) **(ANIL S. KILOR, J.)**

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