Case Citation: (2026) ibclaw.in 6118 HC



# IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 30488 of 2026

*SMT. SIYADEVI*

*Versus*

*ADDITIONAL COLLECTOR AND OTHERS*

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Appearance:

*Shri Harish Dixit - Senior Advocate alongwith Shri Parth Dixit - Advocate for the petitioner.*

*Shri Sohit Mishra - Govt. Advocate for the State.*

*Shri Vivek Shukla - Advocate (through VC) for respondnets 3 and 4.*

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RESERVED ON :- 11/09/2026

DELIVERED ON :- 6/10/2026

ORDER

The present petition, under Article 226/227 of the Constitution of India, has been filed by the petitioner seeking following reliefs:-

*"(i) Quashing the Notice under Section 13(2) of the SARFAESI Act dated 18.10.2023 (Annexure P-3) issued by Respondent No. 4;*

*(ii) Quashing the Order dated 08.04.2026 (Annexure P-7) passed by Respondent No.1, Additional Collector, District Bhind, in Case No. 10/B-121/2025-26 under Section 14 of the SARFAESI Act;*

*(iii) Quashing the Notice dated 27.07.2026 (Annexure P-8) issued by Respondent No. 2, Tehsildar, Tehsil Gohad,*

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*District Bhind, fixing 04.08.2026 for taking physical possession of the Suit Property;*

*(iv) Quashing the entire proceedings taken in pursuance of the Notice dated 18.10.2023, together with all other notices, orders, measures and proceedings initiated or issued by Respondent Nos.3 and 4 under the SARFAESI Act in respect of the Suit Property, as being void ab initio, illegal, arbitrary and without jurisdiction;*

*(v) Directing the Respondents to set free the Suit Property of the Petitioner from all attachments, symbolic/paper possession, encumbrances and distress created in purported exercise of powers under the SARFAESI Act;*

*(vi) Any other relief which this Hon'ble Court may find appropriate in the facts and circumstances of the matter;*

*(vii) Costs."*

## FACTS

Short facts of the case are that the petitioner claimed to be the owner of residential House/Plot No.06, Ward No.14, Kila Road, Gohad, District Bhind, ad-measuring approximately 1,485 sq.ft. (138.06 sq.m.), which was her sole residential dwelling. The property was stated to stand mutated in her name in the municipal records. In January, 2018, her son, namely, Sanjeev Kumar, approached respondent No.3, then known as Fullerton India Home Finance Company Limited and presently known as SMFG India Home

Finance Company Limited, for financial assistance. A housing loan of Rs.9,79,992/- was sanctioned on 25.01.2018 under Loan Account No.604307510259544, repayable in 133 monthly instalments of Rs.16,007/-. The petitioner was arrayed as a co-borrower and her property was mortgaged by deposit of title deeds. The memorandum of deposit of title deeds was registered on 20.02.2018. On account of default in repayment, the loan account was classified as NPA with effect from 31.10.2021. An earlier notice under Section 13(2) of the SARFAESI Act was issued on 22.11.2021 and was subsequently recalled. Thereafter, respondent No.4 issued a fresh notice dated 18.10.2023 under Section 13(2), claiming an outstanding amount of Rs.8,99,581/- as on 16.10.2023. A third-party civil suit for permanent injunction was instituted by one Rajesh Kumar Dubey. In the written statement filed therein, respondent No.3 was stated to have disclosed the outstanding amount as Rs.11,34,396/- as on 12.07.2024. The secured creditor thereafter claimed to have taken symbolic possession of the property on 20.01.2024 and proceeded to invoke Section 14 of the SARFAESI Act. The application, under Section 14 of the Act, was registered as Case No.10/B-121/2025-26 before respondent No.1, the Additional Collector, District Bhind. By order dated 08.04.2026, respondent No.1 directed the Tehsildar, Gohad to verify the ownership and hand over physical possession of the secured property to the authorised officer of respondent No.3 within the stipulated period, with police assistance. Thereafter, the Tehsildar, Gohad issued notice dated 22.07.2026, fixing 04.08.2026 for taking physical possession of the property with the assistance of police force. Hence, the

present petition.

**ARGUMENTS**

Learned counsel for the petitioner submitted that respondent No.3 is a Housing Finance Company having assets exceeding Rs.100 crores and is therefore governed by the notifications issued by the Central Government under Section 2(1)(m)(iv) of the SARFAESI Act. By notification dated 24.02.2020, the Central Government had prescribed a threshold of Rs.50 lakhs for enforcement of security interest by NBFCs having assets of Rs.100 crores and above. By subsequent notification dated 12.02.2021, the said threshold was reduced to Rs.20 lakhs.

It was further submitted that since the amount claimed by the respondent was admittedly below Rs.20 lakhs, respondent No.3 lacked jurisdiction to invoke the machinery of the SARFAESI Act and consequently, the notice under Section 13(2), symbolic possession, proceedings under Section 14 and the consequential notice for physical possession were all without jurisdiction.

It was next submitted that the subsequent regulatory framework of the Reserve Bank of India treats Housing Finance Companies as falling within the NBFC regulatory framework. Reliance was placed upon the notification dated 17.06.2021 and the RBI list of HFCs/NBFCs. The subsequent regulatory developments distinguish the present case from the earlier decision of this Court in the case of Virendra Rathore and Others v. Tehsildar, District Mandsaur and Another, passed in W.P. No.3745/2024. Reliance was also placed upon the judgment of the Division Bench of the

Calcutta High Court in the case of Piramal Capital & Housing Finance Ltd. & Others v. Golam Sabir & Others, F.M.A. No.161/2026, decided on 09.04.2026, wherein the Division Bench considered the subsequent RBI regulatory framework and held that the Rs.20 lakh threshold was applicable to the Housing Finance Company concerned.

It was further argued that respondent No.1, namely, the Additional Collector, had no jurisdiction to exercise the powers under Section 14 of the SARFAESI Act, which were vested only in the District Magistrate. No order of delegation by the District Magistrate in favour of respondent No.1 had been placed on record.

It was also submitted that the impugned order under Section 14 was passed without issuing notice to the petitioner and without affording her an opportunity of hearing, thereby violating the principles of natural justice. The petitioner had also relied upon the fact that the secured asset was her residential house. It was thus submitted that the very foundation of the SARFAESI proceedings was absent and all consequential proceedings were liable to be quashed.

*Per contra*, learned counsel appearing for the respondents submitted that the writ petition is not liable to be entertained in view of the efficacious statutory remedy available to the petitioner under Section 17 of the SARFAESI Act.

It was further submitted that respondent No.3 was a Housing Finance Company registered under Section 29-A of the National Housing Bank Act and was specifically notified as a financial institution for the purposes of the

SARFAESI Act. Therefore, the notifications prescribing the monetary threshold for NBFCs didn't curtail the power of an HFC to invoke the SARFAESI Act.

Learned counsel placed reliance upon the Division Bench judgment of this Court in Virendra Rathore (supra), wherein, in an identical issue, this Court held that Housing Finance Companies/Housing Finance Institutions constituted a distinct class of financial institutions under Section 2(1)(m)(iv) of the SARFAESI Act and Rs.20 lakh threshold prescribed in the notifications relating to NBFCs was not applicable to HFCs. The Division Bench consequently dismissed the writ petition while reserving liberty to the petitioners to avail the remedy under Section 17 of the SARFAESI Act on other grounds.

It was also submitted that the challenge to the competence of the Additional Collector was misconceived in view of the judgment of the Hon'ble Supreme Court in M/s R.D. Jain & Co. vs. Capital First Ltd. & Others, repoted in (2023) 1 SCC 675, wherein the Hon'ble Supreme Court has held that the expression “District Magistrate” occurring in Section 14 of the SARFAESI Act includes an Additional District Magistrate who is exercising powers at par with the District Magistrate by virtue of delegation and/or special order. It was therefore contended that the proceedings initiated by respondent No.3 were within jurisdiction and the petitioner had an efficacious alternative remedy under Section 17 of the SARFAESI Act.

Heard learned counsel for the parties and perused the material available on record.

DISCUSSION AND CONCLUSION

The principal question which arises for consideration is whether, in the facts of the present case, respondent No.3 could invoke the provisions of the SARFAESI Act in respect of a secured debt which, according to its own demand notice, was below Rs.20 lakhs.

At the outset, the objection regarding availability of an alternative remedy under Section 17 of the SARFAESI Act cannot be accepted as an absolute bar to the maintainability of the present petition. The challenge raised by the petitioner goes to the very jurisdiction of the secured creditor to initiate proceedings under the SARFAESI Act. Where the foundational jurisdictional condition for invoking the statutory machinery itself is questioned, the existence of an alternative statutory remedy would not necessarily prevent the High Court from examining the matter under Article 226 of the Constitution. The principle had been reiterated by the Supreme Court in Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority, reported in 2023 AIR SC 781 wherein the distinction between a challenge involving disputed factual issues and a challenge founded upon a pure question of jurisdiction or legality has been recognised.

Now, coming to the merits of teh matter, herein case, applicability of the statutory scheme of the SARFAESI Act assumes significance. Section 2(1)(m)(iv) contemplates such other institutions or institutions as the Central Government may specify by notification as a financial institution for the purposes of the Act. The Central Government had thereafter issued notifications specifying the categories of NBFCs and Housing Finance

Companies, which could enforce security interest under the SARFAESI Act, subject to the conditions prescribed therein.

The notification dated 24.02.2020 specified, *inter alia*, the threshold of Rs.50 lakhs in respect of secured debts for the class of NBFCs covered thereby. The subsequent notification dated 12.02.2021 amended the earlier notification and substituted the figure of Rs.20 lakhs in place of Rs.50 lakhs. Thus, the statutory notifications themselves imposed a monetary threshold in respect of the class of entities to which they applied.

The controversy regarding the applicability of the said notifications to Housing Finance Companies came before this Court in Virendra Rathore *(supra)*. It is necessary to notice the said decision with some care. The Division Bench therein considered the contention that an HFC, being an NBFC, was governed by the notification prescribing the Rs.20 lakh threshold, but had rejected the said contention and held that the HFC in that case was entitled to invoke the provisions of the SARFAESI Act notwithstanding the secured debt being below Rs.20 lakhs. The said judgment, being a decision of a Division Bench of this Court, is binding upon this Cour, except for it being distinguished.

Thus, the subsequent regulatory framework governing Housing Finance Companies is required to be analyzed, which assumes considerable significance. The Reserve Bank of India, pursuant to the changes introduced in the regulatory architecture of HFCs, issued the applicable directions and thereafter brought Housing Finance Companies within the framework of the Scale Based Regulation applicable to NBFCs. The 2023 Scale Based

Regulation expressly placed HFCs within the Middle Layer of NBFCs, while continuing to subject them to the specific HFC Directions wherever applicable.

This regulatory development was specifically considered by the Division Bench of the Calcutta High Court in Piramal Capital & Housing Finance Ltd. (*supra*). The Division Bench examined the earlier decision in Virendra Rathore (supra) as well as the subsequent RBI framework and held that, in view of the later regulatory classification, Housing Finance Companies were within the domain of NBFCs for the purpose under consideration. The Court consequently held that the notifications dated 24.02.2020 and 12.02.2021 were applicable and an HFC could not proceed under the SARFAESI Act where the secured debt was below Rs.20 lakhs.

The decision of the Himachal Pradesh High Court in the case of Gupta Hardware Store and others Vs. Union of India and others reported in 2025 HHC 2294 also proceeded on the basis of the notification dated 12.02.2021 and held that where the secured claim was below Rs.20 lakhs, proceedings under the SARFAESI Act were not maintainable. The Court accordingly quashed the demand notice and the consequential possession proceedings.

At the same time, it is necessary to notice that there are decisions taking a different view. In Prabhakaran v. Hinduja Housing Finance, passed in WP.(MD)Nos.13025 & 14160 of 2026, decided on 23.06.2026, the Division Bench of the Madras High Court considered the question in the light of Virendra Rathore (*supra*) and held that an HFC could invoke the SARFAESI Act notwithstanding the amount being below Rs.20 lakhs. The

existence of such contrary persuasive authority demonstrated that the issue had received differing judicial consideration in different jurisdictions.

The question, therefore, is whether the decision in Virendra Rathore (supra) governs the controversy in the present case in the same manner. In Virendra Rathore, the Division Bench had considered the status of Housing Finance Companies in the context of the regulatory framework then placed before it and had held that the notifications prescribing the monetary threshold for NBFCs were not applicable to Housing Finance Companies.

The present case, however, is required to be examined in the light of the subsequent regulatory developments concerning Housing Finance Companies. The record before this Court contains the subsequent RBI regulatory framework, including the 2023 Scale Based Regulation, under which Housing Finance Companies have been brought within the regulatory framework of NBFCs, while continuing to remain subject to the specific directions applicable to HFCs. This subsequent regulatory position was not the basis on which the question was considered by the Division Bench in Virendra Rathore.

More importantly, the subsequent Division Bench judgment of the Calcutta High Court in Piramal Capital & Housing Finance Ltd. v. Golam Sabir (supra) has specifically considered the effect of the subsequent RBI regulatory framework and the decision in Virendra Rathore. After considering the later regulatory classification of HFCs as falling within the NBFC regulatory framework, the Division Bench held that the notifications dated 24.02.2020 and 12.02.2021 prescribing the monetary threshold were

applicable to the HFC concerned. Thus, the subsequent regulatory framework and the judicial consideration thereof constitute the distinguishing feature of the present case.

This Court is conscious that Virendra Rathore is a judgment of a Division Bench of this Court and is binding. This Court, therefore, cannot express any view regarding the correctness of the said judgment, but finds that the said judgment is not applicable to the facts and circumstances of the present case. The issue before this Court is whether, in view of the subsequent regulatory framework placed on record and the subsequent judicial consideration of that framework, the ratio of Virendra Rathore can be applied to the present case without examining the subsequent developments. In the considered opinion of this Court, the subsequent regulatory developments require the issue to be examined on the basis of the legal position applicable to Housing Finance Companies in the present regulatory framework.

In the demand notice dated 18.10.2023, the amount claimed as outstanding as on 16.10.2023 was Rs.8,99,581/-. Even the subsequent figure referred to in the proceedings i.e., Rs.11,34,396/- as on 12.07.2024, remained below the threshold of Rs.20 lakhs. Thus, on either reckoning, the secured debt forming the foundation of the SARFAESI proceedings was below Rs.20 lakhs.

Once it is held that the statutory monetary threshold applied to respondent No.3 in the regulatory framework governing the present case, the very initiation of proceedings under the SARFAESI Act becomes

unsustainable. The defect is not merely procedural or irregular, it goes to the jurisdiction of the secured creditor to invoke the special machinery of the Act. Consequently, the demand notice under Section 13(2) cannot provide a lawful foundation for the subsequent measures under Section 13(4), and the proceedings under Section 14, being consequential in nature, cannot independently survive.

The contention concerning the competence of the Additional Collector also does not require an independent adjudication in the present case. The Apex Court in M/s R.D. Jain & Co. v. Capital First Ltd. (*supra*) has clarified that the expression "District Magistrate" in Section 14 was not confined to the individual holding that office and an Additional District Magistrate may exercise such powers where the statutory requirements relating to delegation and exercise of powers are satisfied. Therefore, the proposition that an Additional Collector can never exercise jurisdiction under Section 14 cannot be accepted in such absolute terms. In the present case, however, since the very foundation of the SARFAESI proceedings is found to be unsustainable, it is unnecessary to finally determine the precise question of delegation or competence of the authority who passed the order dated 08.04.2026.

The plea of violation of natural justice also requires consideration. The order under Section 14 proceeds on the basis that no separate notice to the borrower or other affected person is necessary. However, once the foundational SARFAESI proceedings themselves are held to be without jurisdiction on account of the monetary threshold, the consequential question as to the adequacy of opportunity before the Section 14 authority loses much

of its independent significance. Nevertheless, the absence of notice assumes relevance in assessing the manner in which possession of the residential property of the petitioner was sought to be taken.

The Court is conscious that the SARFAESI Act is intended to provide an expeditious mechanism for enforcement of security interests and recovery of secured debts. At the same time, the secured creditor must act strictly within the limits of the statutory authority conferred upon it. The object of expeditious recovery cannot enlarge the jurisdiction conferred by the statute or permit recourse to the SARFAESI machinery where the statutory conditions for its invocation are not satisfied.

The fact that the property in question is stated to be the residential dwelling of the petitioner also cannot, by itself, determine the validity of the SARFAESI proceedings. The rights under Articles 21 and 300-A of the Constitution have to operate within the statutory framework governing deprivation of property. The relevance of these constitutional considerations in the present case lies in the requirement that deprivation of possession must have the authority of law. Where the statutory machinery itself is unavailable on account of failure to satisfy the prescribed jurisdictional condition, consequential deprivation of possession cannot be sustained.

Upon an overall consideration of the statutory scheme, the notifications issued by the Central Government, the subsequent RBI regulatory framework, the material placed on record regarding the status of respondent No.3 as a Housing Finance Company, the amount claimed in the demand notice, and the subsequent judicial consideration of the issue in

Piramal Capital v. Golam Sabir (*supra*) and Gupta Hardware Store (*supra*), this Court is of the considered view that the SARFAESI proceedings initiated by respondent No.3 in the facts of the present case cannot be sustained where the secured debt was admittedly below Rs.20 lakhs.

The judgment in Virendra Rathore (supra) does not require a contrary conclusion in the present case. The said decision is a binding prcedent of a Division Bench of this Court in the circumstance it is/was applicable. The present conclusion restes upon the subsequent regulatory developments placed before the Court and the later judicial consideration of those developments, particularly the decision in Piramal Capital v. Golam Sabir (supra). The distinction is therefore one arising from the subsequent regulatory framework and the material available for consideration in the present proceedings.

Consequently, the demand notice dated 18.10.2023 issued under Section 13(2) of the SARFAESI Act, the consequential measures taken under Section 13(4), the order dated 08.04.2026 passed by the Additional Collector, Bhind under Section 14 of the SARFAESI Act in Case No.10/B-121/2025-26, and the consequential possession notice dated 27.07.2026 issued by the Tehsildar, Gohad cannot be sustained and are hereby quashed.

It is, however, clarified that this order shall not preclude respondent No.3 from pursuing such other remedies as may be available to it in law for recovery of the outstanding amount, subject to the rights and defences available to the petitioner and other concerned parties. No opinion is expressed on the merits of any such independent remedy.

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The writ petition is accordingly **allowed** in the aforesaid terms.

There shall be no order as to costs.

(MILIND RAMESH PHADKE)
JUDGE

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