

(2026) 01 MP CK 1775

In the Madhya Pradesh High Court, Indore Bench

Case No : Writ Petition No. 9036 Of 2025

Ravi Joshi

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 14-01-2026

Acts Referred:

Constitution Of India, 1950 — Article 226
Security Interest (Enforcement) Rules, 2002 — Rule 2(A), 8
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(4), 14, 14(1), 14(1)(1A), 14(2)

Citation : (2026) 01 MP CK 1775

Hon'ble Judges : Vijay Kumar Shukla, J;Alok Awasthi, J

Bench : Division Bench

Advocate : Yashi Maheshwari, Bhaskar Agrawal, Abhijit Chakrabarti Thakur

Judgement

1. The present petition has been filed under Article 226 of the Constitution of India seeking quashment of the order under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as "SARFAESI Act, 2002").

2. At the outset, learned counsel raised point regarding maintainability of the application under Section 14 of the SARFAESI Act, 2002 on the ground that an earlier application under Section 14 of the SARFAESI Act, 2002 in respect of the same secured asset had already been filed and disposed of. It is contended that a repeated application is not maintainable.

3. Counsel for the respondent bank argued that there is no bar under Section 14 of the SARFAESI Act, 2002 to file repeated application. The principle of res judicata would not apply.

4. The similar issue came up for consideration before the Division Bench at Hyderabad in the case of M/s Sri. Balaji Centrifugal Castings V/s M/s ICICI Bank Limited rep. by its Authorized Officer, Nanakramguda, Hyderabad and another, 2018 SCC OnLine Hyd 368 that whether the bank has a right to invoke Section

14 of SARFAESI Act, 2002 as one time measure or it is open for the bank to file successive applications under the said provision.

5. In order to appreciate the aforesaid issue, it is apposite to refer the provisions of Section 14 of SARFAESI Act, 2002, which is quoted as under:

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.-

(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset 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 asset, 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 assets 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 to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(1A) 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."

6. From the plain reading of the provision, it is clear that the Magistrate does not play adjudicatory role while deciding the said application and the same is in the nature of execution and is an administrative action. It is axiomatic from the 'Statements of Objects and Reasons' for which SARFAESI Act has been enacted, which is quoted as under:

"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."

7. 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 leases 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.

8. 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.

9. 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, the insertion of sub-section (1-A) is not to invest a new power for the first time in the CMM/DM as such.

10. Thus, considering the scheme of the SARFAESI Act, it is explicit and crystal clear that possession of the secured assets can be taken by the secured creditor before confirmation of sale of the secured assets as well as post-confirmation of sale. For taking possession of the secured assets, it could be done by the "authorised officer" of the Bank as noted in Rule 8 of the Security Interest Enforcement) Rules, 2002.

11. 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.

12. 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 This is the of the special enactment.

13. The Hon'ble Apex Court in the case of Standard Chartered Bank V/s V. Noble Kumar, (2013) 9 SCC 620 has held that the role of Magistrate under Section 14 of the SARFAESI Act, 2002 is limited to verifying compliance of statutory requirement and rendering assistance to the secured creditor. In the case of NKGSB Coop. Bank Ltd. V/s Subir Chakravarty, (2022) 10 SCC 286, the Hon'ble Apex Court has held that the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the Advocate Commissioner who is considered as an officer of his/her court. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. Thus, we reiterate that the step to be taken by the CMM/DM under Section 14 of the SARFAESI Act, is a ministerial step. While disposing of the application under Section 14 of the SARFAESI Act, no element of quasi-judicial function or application of mind would require. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets.

14. A Coordinate Bench at Gwalior in the case of Capri Global Housing Finance Ltd. V/s The State of Madhya Pradesh & Ors. (Writ Petition No.21222 of 2025, decided on 01.07.2025) was considering an issue that whether the competent authority can re-execute the order under Section 14 of the SARFAESI Act, 2002 or not. In Para 10, the Court held that there is no legal bar on re-executing the order of possession or providing re-assistance to the secured creditor as tried to be projected by the respondents through their return. As such there is no legal impediment to dispossess the borrower from the mortgaged property once he has illegally entered into it.

15. The Hon'ble Apex Court in a catena of judgments i.e. M/s. R.D. Jain and Co. Vs. Capital First Ltd. and other Civil Appeal 175/2022 dated 27.07.2022, Balkrishna Rama Tarle Dead Thr. LRS & another Vs. Private Limited and others, SLP 16013/2022 dated 26.09.2022 has categorically held that the powers exercisable by District Magistrate/Chief Metropolitan Magistrate under section 14 of the Act are ministerial steps and Section 14 does not involve any adjudicatory process. A Division Bench of this Court in the case of Indusland Bank Limited V/s The State of Madhya Pradesh (Writ Petition No.49777 of 2025, decided on 14.01.2026) has held that for deciding an application under Section 14 of SARFAESI Act, 2002, notices are not required to be issued to the borrowers and the authority has to consider only two aspects i.e. (i) Whether the secured assets fall within the territorial jurisdiction ? and, (ii) Whether notice under Section 13(2) of the SARFAESI Act has been furnished or not ?

16. Thus, from the aforesaid provision of Section 14 of SARFAESI Act, 2002 and aforesaid judgments, it is manifest that the provisions under Section 14 of the SARFAESI Act, 2002 is not of adjudicatory nature and they are not the

proceedings of quasi judicial nature, it is only an administrative action for handing over the possession to the secured creditor. Since the provisions under Section 14 of the SARFAESI Act, 2002 is not of adjudicatory nature. In view of the above discussion it is held that a repeated application under Section 14 of the SARFAESI Act, 2002 is maintainable provided it is justified by reasonable grounds for filing the same.

17. The matter is directed to be listed on 20.01.2026 for hearing on admission.