

Mr. Anshul Anjarlekar, i/b. Raval-Shah & Co. for petitioner.

Ms. M. S. Bane, AGP for respondent Nos.1 and 15 – State authorities.

P.C. :

Heard learned counsel for the petitioner and the learned AGP appearing on behalf of respondent Nos.1 and 15 – State authorities.

2. By an order dated 24.02.2026, this Court had issued notice only to respondent Nos.1 and 15, considering the fact that the writ petition arises out of an application filed by the petitioner – bank (secured creditor) under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the said Act).

3. While exercising power under Section 14 of the said Act, as per settled law, the Magistrate performs a ministerial act and is not required to give hearing to the borrower or any third party. Hence, we have taken this petition for final disposal today.

4. The learned counsel for the petitioner submits that in the impugned order dated 17.01.2026, the Magistrate has committed a

grave error in rejecting the application filed by the petitioner – bank. It is submitted that the impugned order is passed by misreading the provisions of the said Act and the Security Interest (Enforcement) Rules, 2002 (the said Rules) framed thereunder. It is further contended that the judgement of the Supreme Court in the case of *Standard Chartered Bank vs. V. Noble Kumar and others*, (2013) 9 SCC 620, has also been misread by the Magistrate to hold against the petitioner. In support of the submissions, the learned for the petitioner invited attention of this Court to various provisions of the said Act and the said Rules, to impress upon this Court that the Magistrate could not have rejected the application, without examining the documents placed on record by the petitioner – bank.

5. The learned AGP appearing on behalf of respondent Nos.1 and 15 also assisted this Court in appreciating the provisions of the said Act and the said Rules.

6. A perusal of the impugned order shows that the reasoning of the Magistrate, while rejecting the application, under Section 14 of the said Act, is found in paragraph Nos.7 and 8. The said paragraphs of the impugned order read as follows:

“7. On a conjoint and harmonious reading of the provisions of section 13(4), 14 and 2(zc) of The securitisation and reconstruction of financial assets and enforcement of security interest Act, 2002, along with the Security Interest (enforcement) Rules, 2002, it becomes clear that although the expression 'secured assets' employed in section 14 is wide enough to include both movable and immovable properties, the legislative scheme consciously draws a procedural distinction between the two categories. While Rules 4 and 5 of the 2002 Rules provide a complete and self contained

mechanism for taking possession and effecting sale of movable secured assets directly by the secured creditor without intervention of the magistrate, Rule 8 and 9 governing immovable secured assets envisaged situations involving resistance, dispossession and maintenance of public order, thereby necessitating recourse to executive assistance under section 14. Section 14 is thus intended as an enabling provision to facilitate possession of immovable secured assets where peaceful possession cannot be taken and the role of the magistrate thereunder is limited and ministerial in nature as explained by the Hon'ble Supreme Court in *Standard Chartered Bank vs. V. Nobel Kumar* permitting routine invocation of section 14 for movable secured assets good render the distinct procedure prescribed under rule 4 and 5 otiose and would amount to enlarging the scope of section 14 beyond its contextual and functional purpose.

8. In the present case, the applicant is seeking assistance for taking possession of movable secured assets as described in para no. 4 of the main application i.e. for industrial shed and machinery. The assistance for recovery of the possession of movable secured asset cannot be granted, as the secure creditor has an adequate and efficacious statutory remedy under Rule 4 and 5 of The Security Interest (Enforcement) Rules, 2002 without requiring intervention of this court. Accordingly, the application under section 14 of SARFAESI Act is rejected as the secured asset is shown by the applicant as movable property. In result following order is passed:

ORDER

Application stands rejected.”

7. In order to appreciate the challenge raised to the said finding on behalf of the petitioner – bank, we have perused the relevant provisions of the said Act. Section 2(t) defines property, Section 2(zc) defines secured asset and Section 2(zf) defines security interest. In order to properly appreciate the contentions raised on behalf of the

petitioner, it would be appropriate to refer to Section 14 of the said Act also. Alongwith the said provisions, reference is also required to be made to Rules 4, 5 and 8 of the said Rules.

8. The relevant portions of the said Act read as follows:

“2. Definitions.—(1) In this Act, unless the context otherwise requires, -

(t) “property” means—

- (i) immovable property;
- (ii) movable property;
- (iii) any debt or any right to receive payment of money, whether secured or unsecured;
- (iv) receivables, whether existing or future;
- (v) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature [as may be prescribed by the Central Government in consultation with Reserve Bank];

(zc) “secured asset” means the property on which security interest is created;

(zf) “security interest” means right, title or interest of any kind, other than those specified in section 31, upon property created in favour of any secured creditor and includes—

- (i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or
- (ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred

or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset;

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 further 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 recorded reasons in writing for the same, pass the order within such also 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.”

9. The relevant portions of the said Rules read as follows:

- “4. **Procedure after issue of notice.**—If the amount mentioned in the demand notice is not paid within the time specified therein, the authorised officer shall proceed to realise the amount by adopting any one or more of the measures specified in sub-section (4) of section 13 of the 4[Act] for taking possession of movable property, namely:—
 - (1) Where the possession of the secured assets to be taken by the secured creditor are movable property in possession of the borrower, the authorised officer shall take possession of such movable property in the presence of two witnesses after Panchnama drawn and signed by the witnesses as nearly as possible in Appendix I to these rules.
 - 2) After taking possession under sub-rule (1) above, the authorised officer shall make or cause to be made an inventory of the property as nearly as possible in the form given in Appendix II to these rules and deliver or cause to be delivered, a copy of such inventory to the borrower or to any person entitled to receive

on behalf of borrower.

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5. **Valuation of movable secured assets.** -After taking possession under sub-rule (1) of rule 4 and in any case before sale, the authorised officer shall obtain the estimated value of the movable secured assets and thereafter, if considered necessary, fix in consultation with the secured creditor, the reserve price of the assets to be sold in realisation of the dues of the secured creditor.

8. **Sale of immovable secured assets.-**
 - (1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.
 - (2) The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers], one in vernacular language having sufficient circulation in that locality, by the authorised officer.
 - (2-A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8.
 - (3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.
 - (4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold

or otherwise disposed of.

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10. A perusal of the above-quoted provisions from the said Act and the said Rules, show that Section 14 refers to ‘secured asset’, when a secured creditor seeks assistance of a Magistrate for taking possession thereof. A perusal of the definition of the secured asset, as per Section 2(zc) of the said Act quoted hereinabove, shows that secured asset means a property on which security interest is created. Section 2(zf) defines security interest, which in turn also specifically refers to the word ‘property. Section 2(t) of the said Act quoted hereinabove defines property and crucially includes ‘movable property’.

11. Rules 4 and 5 of the said Rules prescribe the procedure for taking possession of the movable property and also, the procedure to be followed for determining valuation of the movable asset. Rule 8 pertains to rules for immovable secured asset.

12. In this context, when we perused the judgement of the Supreme Court in the case of **Standard Chartered Bank vs. V. Noble Kumar and others** (*supra*), it becomes obvious that the Supreme Court was concerned with the question as to whether the secured creditor is required to necessarily make an attempt to take possession of the secured asset, before invoking the authority of the Magistrate, under Section 14 of the said Act. We have perused the contents of the said judgement and we find that there is no reference to Rules 4 and 5 of the said Rules in juxtaposition to Rule 8 thereof. This is crucial in order to consider the reasoning of the Magistrate in the impugned order, particularly in paragraph No.7 thereof.

13. The relevant portion of the aforesaid judgement of the Supreme Court reads as follows:

“8. The High Court recorded the submissions made before it as follows:

‘3. The learned counsel appearing for the petitioner raised two contentions viz.:

(i) The Bank cannot bypass Section 13(4) of the Sarfaesi Act and invoke the provisions of Section 14. He would submit, before invoking Section 14, that notice under Section 13(4) is necessary, otherwise the provisions of appeal under Section 17 will become illusory, particularly when the proceedings under Section 14 cannot be questioned by filing appeal before the Tribunal or before a court.

(ii) In the event the procedures contemplated under Rule 8 of the Security Interest (Enforcement) Rules, 2002, are not followed before Section 14 is invoked, the order passed by the Chief Judicial Magistrate would be contrary to the said Rules and consequently, the order passed under Section 14 is liable to be set aside.’

9. It is argued before the High Court as well as before us by the respondent that a secured creditor before invoking the authority of the Magistrate under Section 14 must necessarily make an attempt to take possession of the secured asset. Only when the creditor faces resistance to such an attempt the creditor could resort to the procedure under Section 14 of the Act. According to the first respondent, Section 17 of the Act provides an “appeal” only against the measures taken by the creditor under Section 13(4) of the Act and no such appeal is available against an action taken by the Judicial Magistrate under Section 14 of the Act. Therefore, permitting the creditor to invoke Section 14 without first resorting to the procedure under Section 13(4) would deprive the owner of the secured asset an

opportunity to prefer an “appeal” to have his grievances adjudicated. It is further argued that Rule 8 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as “the Rules”) contemplates a procedure to be followed which includes a certain mode of publicity of taking possession to be made, and therefore, even a Magistrate exercising power under Section 14 of the Act is also required to follow the procedure contemplated under Rule 8 though the rule does not expressly say so. Failure to comply with the requirement of Rule 8 in the instant case vitiated the order of the Magistrate.”

14. After considering the various provisions of the said Act, the Supreme Court further observed as follows:

- “20. In every case where the objections raised by the borrower are rejected by the secured creditor, the secured creditor is entitled to take possession of the secured assets. In our opinion, such action—having regard to the object and scheme of the Act—could be taken directly by the secured creditor. However, visualising the possibility of resistance for such action, Parliament under Section 14 also provided for seeking the assistance of the judicial power of the State for obtaining possession of the secured asset, in those cases where the secured creditor seeks it.
21. Under the scheme of Section 14, a secured creditor who desires to seek the assistance of the State's coercive power for obtaining possession of the secured asset is required to make a request in writing to the Chief Metropolitan Magistrate or District Magistrate within whose jurisdiction, the secured asset is located praying that the secured asset and other documents relating thereto may be taken possession thereof. The language of Section 14 originally enacted purportedly obliged the Magistrate receiving a request under Section 14 to take possession of the secured asset and documents, if any, related thereto in terms of the request received by him without any further scrutiny of the matter.

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25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset.
 26. It is in the abovementioned background of the legal frame of Sections 13 and 14, we are required to examine the correctness of the conclusions recorded by the High Court. Having regard to the scheme of Sections 13 and 14 and the object of the enactment, we do not see any warrant to record the conclusion that it is only after making an unsuccessful attempt to take possession of the secured asset, a secured creditor can approach the Magistrate. No doubt that a secured creditor may initially resort to the procedure under Section 13(4) and on facing resistance, he may still approach the Magistrate under Section 14. But, it is not mandatory for the secured creditor to make attempt to obtain possession on his own before approaching the Magistrate under Section 14. The submission that such a construction would deprive the borrower of a remedy under Section 17 is rooted in a misconception of the scope of Section 17.”
15. Thereafter, the Supreme Court referred to Rule 8 of the said Rules, in the context of immovable properties and eventually, concluded as follows:
- “36. Thus, there will be three methods for the secured creditor to take possession of the secured assets:
 - 36.1. (i) The first method would be where the secured creditor gives the requisite notice under Rule 8(1) and where he does not meet with any resistance. In that case, the authorised officer will proceed to take steps as stipulated under Rule 8(2) onwards to take possession and thereafter

for sale of the secured assets to realise the amounts that are claimed by the secured creditor.

36.2.(ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under Rule 8(1) is given. In that case he will take recourse to the mechanism provided under Section 14 of the Act viz. making application to the Magistrate. The Magistrate will scrutinise the application as provided in Section 14, and then if satisfied, appoint an officer subordinate to him as provided under Section 14(1-A) to take possession of the assets and documents. For that purpose the Magistrate may authorise the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.

36.3.(iii) The third situation will be one where the secured creditor approaches the Magistrate concerned directly under Section 14 of the Act. The Magistrate will thereafter scrutinise the application as provided in Section 14, and then if satisfied, authorise a subordinate officer to take possession of the assets and documents and forward them to the secured creditor as under clause 36.2.(ii) above.

36.4. In any of the three situations above, after the possession is handed over to the secured creditor, the subsequent specified provisions of Rule 8 concerning the preservation, valuation and sale of the secured assets, and other subsequent rules from the Security Interest (Enforcement) Rules, 2002, shall apply.”

16. We have extensively quoted from the aforementioned judgement of the Supreme Court to understand as to what was the issue considered by the Supreme Court in the said judgement and the factual background in which the findings were rendered. A perusal of the judgement further shows that the questions that arose for consideration were considered in the backdrop of mortgage of immovable property. Thus, the Supreme Court nowhere considered

the question of physical possession of movable properties being taken, which form part of the secured asset and there is no reference to any distinction in the procedure to be adopted, when the secured creditor proceeds against immovable property on the one hand and movable property on the other.

17. In this backdrop, a perusal of the above-quoted paragraph Nos.7 and 8 of the impugned order, shows that the Magistrate misread the aforesaid judgement of the Supreme Court. There was no reason for the Magistrate to reach the conclusion about the Supreme Court having noticed distinct procedures, with regard to the manner in which the secured creditor would have to take possession of the movable and immovable properties. There was no reason for the Magistrate to reach the conclusion that when the secured asset happens to be a movable property, recourse can be taken only to Rules 4 and 5 of the said Rules and that in the facts and circumstances of the present case, the application filed by the secured creditor under Section 14 of the said Act, was required to be rejected.

18. It appears that the Magistrate failed to consider the contents of the affidavit filed on behalf of the petitioner – bank, in support of its application. The relevant portion of the said affidavit reads as follows:

- “10) I say that, thus the statutory notice dated 30.03.2024 was sent under section 13(2) of the Securitisation Act 2002 to the Respondent Nos. 1 to 13. The Respondent Nos. 1 to 13 have failed to discharge in full their liability to the secured creditors the Bank within 60 days from the date of the receipt of notice dated 30.03.2024.
- 11) I say that the applicant thereafter AUTHORISED OFFICER of the Bank on 02.07.2024 visited the said

moveable properties to take possession of the said secured assets and took Constructive possession of the property. Possession Notice dt.01.07.2024 U/Rule 4(1) of Security Interest (enforcement) Rule, 2002 has been served by the Applicant and also has been published in the daily newspaper i.e. The Free Press Journal & Business Standard (English) & Navshakti & Maza Raigad (Marathi) on 06.07.2024.

- 12) I say that, therefore it is entitled to make the present application before this Hon'ble Court under Section 14 of Securitisation Act with request to this Hon'ble Court to take possession of the above mentioned property under Section 14(1)(b) of the said act after taking possession thereof. The Applicant is also entitled to pray before this Hon'ble Court to direct the Respondents to comply with the orders of this Hon'ble Court under the provisions of Section 14(2) of the said act.
- 13) I say that, despite the receipt or deemed to have been received of the aforesaid Demand Notice, the Respondent/s have neither discharged their liability within stipulated period of 60 days nor raised any kind of objection/representation u/sec. 13 (3-A) of SARFAESI Act.
- 14) I say that, the Respondents has not made any repayment of the said financial assistance in spite of the aforesaid Demand Notice and the Authorised Officer is, therefore, entitled to take possession of the aforesaid secured asset/s under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act.”

19. We find that while passing the impugned order, the Magistrate committed an error in rejecting the application filed by the petitioner – bank under Section 14 of the said Act. The above-quoted portion of the affidavit of the petitioner – bank shows that it had taken necessary steps under Rule 4 of the said Rules and yet, there was resistance with regard to physical possession. It is brought to our notice that four attempts were made for auction sale of the movable assets that formed part of the security interest of the petitioner –

bank. The attempts were made as per notices dated 10.01.2025, 11.03.2025, 06.05.2025 and 01.01.2026. All the four attempts failed in the light of resistance of the borrowers and in the absence of physical possession of the movable assets being taken by the petitioner – bank.

20. In such circumstances the Magistrate ought to have entertained the application filed by the petitioner – bank under Section 14 of the said Act and an appropriate order should have been passed, after performing the ministerial act of verifying the documents and affidavit placed on record by the petitioner – bank.

21. In view of the above, the writ petition is allowed. The impugned order dated 17.01.2026 passed by respondent No.1 – Magistrate is quashed and set aside. The matter is remanded back to the Magistrate for consideration afresh of the application filed by the petitioner – bank under Section 14 of the said Act. The Magistrate shall consider the documents and affidavit placed on record by the petitioner – bank to pass appropriate order, in accordance with law. The said exercise shall be completed within a period of four weeks from today.

22. Pending applications, if any, also stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)