IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14138 OF 2025

Mogaveera Co-operative Bank Ltd. .. Petitioner

V/S.

State of Maharashtra and Ors. .. Respondents

Mr. C.M. Jadhav i/by S.C. Legal, for petitioner.

Ms. Kativa N. Solunke, Addl. G.P. with R.S. Pawar, AGP, for Respondent/State.

VARSHA DEEPAK GAIKWAD Digitally signed by VARSHA DEEPAK GAIKWAD Date: 2026.05.05 14:18:07 +0530

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

DATE : 5TH MAY 2026.

ORDER (PER SHREERAM V. SHIRSAT, J) :

1. The Petitioner is a secured creditor who is constrained to approach this Court, enraged by the misdeeds of Respondent Nos. 6 and 7 who have with impunity, barged into the property of which the possession was lawfully taken over by the petitioner. To add insult to injury, the non-action on the part of Respondent Nos. 3 and 4 who have failed to abide by the provisions of the SARFAESI Act, have further aggravated the said situation.

2. The Ld. Counsel for the Petitioner submitted that Respondent No.5, a proprietorship firm through its proprietor, Respondent Nos.6 and Respondent No.7 who is the co-owner of the secured asset had availed mortgaged loan from the petitioner bank by mortgaging the secured asset in question. He further submitted that as respondent

Nos. 5 to 7 defaulted in payment of the loan obtained, the account was classified as NPA w.e.f. 1/10/2019. It is submitted by the learned counsel for the petitioner that on 15/11/2019, statutory notice under Section 13(2) of the said Act came to be issued by the petitioner to the respondent nos 5 to 7 and thereafter also published a demand notice in two local newspapers on 21/11/2019. As the Respondent Nos. 5 to 7 failed to comply with the demand notice, the petitioner was constrained to approach the District Magistrate, Alibaug under Section 14 of the SARFAESI Act for taking physical possession of the secured asset.

3. The learned counsel for the Petitioner further submitted that the District Magistrate, vide order dated 21/11/2019 allowed the said application and directed Respondent No.3, Tahsildar to take physical possession of the secured asset and hand it over to the authorized officer of the petitioner. The Learned counsel further submitted that, Tahsildar, Panvel issued a letter dated 07/06/2024 for taking physical possession of the secured asset on 24/07/2024 and on 24/07/2024, Respondent No.3 in the presence of the authorised officer of the petitioner and police authorities of the Kalamboli Police Station took physical possession of the secured asset and hand it over to the authorised office.

4. The Learned counsel for the Petitioner further submitted that the Petitioner after taking possession, attempted to sell the secured asset and accordingly issued auction notice. He further submitted that when the officer of the petitioner visited the secured asset for inspection and fixing the auction notice, the Petitioner was shocked

to find that respondent Nos. 6 and 7 had illegally trespassed into the said property and were occupying the same. He further submitted that a complaint was lodged with the Respondent No. 4 police on 27/07/2024 and as there was no progress with the complaint which was filed, the petitioner once again filed a complaint on 20/05/2025 with Respondent No.4 against the borrowers.

5. It is further submitted by learned counsel for the petitioner that, the Respondent Nos. 3 and 4 have expressed their inability to once again hand over the possession by citing some flimsy reasons and therefore the Petitioner is constrained to approach this Court praying for appropriate directions to Respondent Nos. 3 and 4 to hand over the possession to the petitioner.

6. No doubt, the act of Respondent Nos. 6 and 7 of re-entering the property-in question after the petitioner had taken possession by following due process of law is in complete defiance of the order passed by the District Magistrate under Section 14 of the SARFAESI Act and cannot be countenanced, however it is equally reprehensible that Respondent Nos. 3 and 4 have failed in their duties to regain the possession from Respondent Nos. 6 and 7 and hand it over to the petitioner. Therefore, to prevent further abuse of the rule of law at the hands of Respondent Nos. 6 and 7, immediate directions are required to be issued. So also necessary directions will also be required to be issued to Respondent Nos. 3 and 4 who have without any rhyme or reason and on the basis of untenable grounds failed to once again regain the possession of the secured asset, despite fervent request by the petitioner.

7. We are of the opinion that when the secured creditor is seeking execution of the orders passed by the learned Magistrate under provisions of Securitisation Act, such orders are required to be executed with the utmost promptitude and seriousness, as failure to do so encourages such unscrupulous borrowers who get emboldened to take law in their own hands. What we find shocking is that Respondent Nos. 3 and 4 have expressed their inability to once again take the physical possession of the secured asset after Respondent Nos. 6 and 7 have entered into the property. The letter at Exhibit-G dated 4/07/2025 issued by the Tahsildar, Panvel records that physical possession was handed over on 24/07/2024 and thereafter it is the duty and responsibility of the petitioner-bank to take proper measures to secure asset and has further advised to lodge an appropriate complaint for the same. Even Respondent No.4 i.e. PI Kalamboli Police Station vide letter dated 05/07/2025 has advised the Petitioner - bank to approach the Tahsildar, as according to the police, the Respondent Nos. 6 and 7 have committed contempt of Court and therefore appropriate remedy according to Respondent No.4 is to approach the same Court which had passed an order under Section 14 of the SARFAESI Act.

8. The approach of Respondent No 3 and 4 of abdicating their responsibilities cannot be countenanced. We find that the approach of Respondent Nos. 4 and 5 which is reflected by their letters is in teeth of the law laid down in the case of ***Smt. Mishri Bai W/o Late Shri Nirmal Kumar and others Vs Shubh Laxmi Mahila Cooperative Bank*** reported in ***(2022) SCC Online MP 5883*** and referred to by this

Court in the matter of ***The Nashik Merchant Co-operative Bank Vs The District Collector, Jalna in Writ Petition No 10069 of 2022 (BHC)*** wherein it has been observed that the secured creditor is not required to approach again and again before the District Magistrate or DRT for recovery of the amount and once the order has been passed under Section 14 of the SARFAESI Act, unless and until the entire amount which is outstanding is recovered, the order remains valid. Therefore, the secured creditor is not required to approach the District Magistrate for any fresh orders if the earlier attempt has failed.

9. Therefore, Respondent Nos.3 and 4 cannot shirk their responsibilities by advising the petitioner in the manner in which they have so advised.

10. In view of the above, we direct Respondent No. 3 to immediately take steps with the assistance of Respondent No.4 to take physical possession of the secured asset and to handover the same to the petitioner. The Respondent No. 4 without any demure, shall provide appropriate police assistance to Respondent No. 3 who shall take physical possession of the secured asset (said Flat) on 10/05/2026. Needless to mention that Respondent No. 4 shall ensure that adequate police force is provided, which shall include lady constables as well. The police shall use adequate, reasonable, proportionate and necessary force to take physical possession of the secured asset (said flat) to be handed over to the Petitioner (secured creditor) on 10/05/2026. The police shall also video-graph the entire process of taking the possession and preserve the recording of the same with them.

11. It is made clear that the directions issued hereinabove are not complied with, the Tahsildar, Panvel and the Senior P I, Kalamboli Police Station shall personally remain present on the next date in this Court to give an explanation as to why the possession could not be taken on the specified date.

12. List under the caption 'for compliance' on 10th June 2026.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**