

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5127 OF 2026

CSB Bank Ltd .. Petitioner
V/S.
The State of Maharashtra Thru G P .. Respondents
and Ors

Mr. Alok D. Mishra (through VC) with Anjali Nair and Sejal Tambe, for
Petitioner.

Ms. Tanu Bhatia, AGP, for Respondent No.1/State.

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

DATE : 28TH APRIL 2026.

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ORDER (PER SHREERAM V. SHIRSAT, J) :

1. The Petitioner is a secured creditor who is constrained to approach this Court, infuriated by the act of Respondent No. 3, who has, without any fear of law, re-entered into the property of which the possession was taken over by the Petitioner. The Petitioner is also aggrieved by the indifferent approach of Respondent Nos. 1 and 2, who have failed to act as per the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

2. The Respondent No. 3 is the borrower who has defaulted in payment of the loan obtained by her, pursuant to which, on

16/08/2018 her account was classified as NPA. It is submitted by the Ld. Counsel for the Petitioner that on 21/08/2018, a statutory notice under Section 13(2) of the said Act came to be issued by the Petitioner to the Respondent No. 3. As Respondent No. 3 failed to make the payments, after following due procedure, the Petitioner approached the learned Chief Metropolitan Magistrate (CMM) by filing an application under Section 14 of the said Act seeking direction to take physical possession of the mortgage property. The learned CMM appointed Respondent No. 2 as the Court Commissioner and vide order dated 26/06/2019 directed Respondent No. 2 to take physical possession of the secured asset with the help of Respondent No. 1. On 18/12/2024, Respondent No. 2 i.e. the Court Commissioner took physical possession of one of the said flats and prepared a panchnama, after taking physical possession of the said flat.

3. It is further submitted that the Petitioner scheduled the auction of the said flat on 5/09/2025 by an auction notice, which came to be challenged by the borrower by filing an Interim Application before the Debts Recovery Tribunal-II, Mumbai (DRT-II). The said application was disposed of on 19/09/2025. The said order dated 19/09/2025 passed by the learned DRT-II, Mumbai was challenged before this High Court by filing Writ Petition No. 13348 of 2025. The said Writ Petition came to be dismissed as infructuous.

4. It is further submitted by the Ld. Counsel for the Petitioner that in September 2025, the Respondent No. 3 broke open the lock of the said flat and re-entered the said flat. He further submitted that till date, the Respondent No. 3 is merrily occupying the same. He further submitted that the Petitioner immediately tried to register FIR with Respondent No. 1 which according to the Petitioner, the Respondent No. 1 did not immediately register the FIR, but, only on 10/03/2026, the FIR came to be registered under Section 329 of Bharatiya Nyaya Sanhita vide C.R. No. 0215 of 2026.

5. It is further the contention of Ld. Counsel for the Petitioner that after Respondent No. 3 barged into the property in question, the petitioner has been making fervent requests to Respondent No. 1 for taking action against Respondent No. 3 but all the efforts have not yielded any fruitful results.

6. It is the contention of Ld. Counsel for the Petitioner that a request was also made to Respondent No. 2 to issue a fresh notice for taking physical possession of the said flat, but Respondent No. 2 refused to issue notice, contending that Respondent No.2 has “surrendered” her right of taking possession of the said flat.

7. The Ld. Counsel for the Petitioner therefore submitted that till date Respondent No. 3 is occupying the said flat and the Petitioner, in absence of any support from Respondent Nos. 1 and 2, is unable to

take back the possession of the secured asset (said flat). The Ld. Counsel for the Petitioner has also submitted that as the property is occupied by Respondent No. 3 and the Petitioner is unable to sell the property in spite of having interested buyers and therefore submitted that appropriate directions be issued.

8. We find that the act of Respondent No. 3 of re-entering the property in question after the Petitioner had taken the possession, is in complete defiance of the order passed by the learned Magistrate under Section 14 of the SARFAESI Act and, therefore, to prevent further trampling of the Rule of Law at the hands of Respondent No. 3, immediate and appropriate directions are required to be issued to curb the tendencies of such borrowers who show scant regard to the rule of law.

9. We are of the opinion that when the secured creditor is seeking execution of the orders passed by the learned Magistrate under the provisions of Securitisation Act, such orders are required to be executed with utmost promptitude, as failure to do so encourages such borrowers to violate the Rule of Law.

10. It is submitted by the Ld. Counsel for the Petitioner that the Court Commissioner has refused to issue notice contending that she has “surrendered” her right of possession after taking possession of the said flat. We find such reasoning to be specious. It has been held 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)* 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. The natural corollary to this will be that once the Court Commissioner is appointed by the learned Magistrate for taking physical possession, till the physical possession is obtained, the appointment as a Court Commissioner will continue to operate till the possession is taken and no fresh orders will be required to appoint court commissioner, unless for any reasons the court commissioner has expressed inability to perform the act assigned.

11. In view of the above, we direct Respondent No. 2 i.e. the Court Commissioner to immediately take steps with the assistance of Respondent No.1. Further, the Respondent No. 1 shall provide appropriate police assistance to the Court Commissioner who shall take

physical possession of the secured asset (said Flat) on 11/05/2026. Needless to mention that Respondent No. 1 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 11/05/2026. If required, the police shall also video-graph the entire process of taking the possession and preserve the recording of the same.

12. It is made clear that the directions issued hereinabove are not complied with, the Senior PI, D.N Nagar 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.

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

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)