2026:AHC:227451-DB

# HIGH COURT OF JUDICATURE AT ALLAHABAD

**WRIT - C No. - 42965 of 2026**

Ram Kripa @ Ram Kripa Yadav

.....Petitioner(s)

Versus

State Of Uttar Pradesh And 6 Others

.....Respondent(s)

| | | |
|---|---|---|
| Counsel for Petitioner(s) | : | Kumar Kartikeya, Vivek Kumar Singh |
| Counsel for Respondent(s) | : | Rajesh Kumar Srivastava, Sanjay Kumar Gupta, C.S.C., Santosh Kumar Giri |

**Court No. - 2**

**HON'BLE J.J. MUNIR, J.**
**HON'BLE VIVEK SARAN, J.**

1. This writ petition has been instituted seeking multiple reliefs, all directed to ensure that physical possession of the secured asset, the petitioner's residential house, taken from him by the Advocate Commissioner, appointed in proceedings under Section 14 of the SARFAESI Act is restored to him.

2. Mr. Sanjay Kumar Gupta, learned counsel appearing on behalf of respondent no.7 states that he waives of opportunity of filing a counter affidavit.

3. A short counter affidavit is already on record. All parties agree, is sufficient to hear the matter finally.

4. Admit.

5. Heard Mr. Kumar Kartikeya, learned counsel for the petitioner, Mr. Rajesh Kumar Srivastava, learned counsel for the respondent nos.4 and 5, Mr. Sanjay Kumar Gupta, learned counsel appearing on behalf of respondent no.7 and Mr. Girijesh Kumar Tripathi, learned counsel appearing on behalf of respondent nos.1, 2 and 3 and Mr. Amar Deep, the Advocate Commissioner in person.

6. Mr. Amar Deep, the Advocate Commissioner, appointed by the Bank to take possession pursuant to the order dated 10.8.2026 passed by the Special C.J.M., District Kanpur Nagar, is present in Court.

7. When we asked the learned Advocate Commissioner whether the original device, where the GPS photograph, a copy whereof is placed at page no.118 of the short counter affidavit was captured, was available with him, he tells us that the device belonged to one of the professional

photographers who do business in Court and that the device is no longer available nor the primary data on it. We asked him to produce the original of the notice issued by him which according to the petitioner is a notice dated 29.9.2026, but according to the Bank a notice of 26.9.2026, what he produces before us is a photostat copy and not a properly maintained office copy. The notice in his record, is a photostat copy, printed on two loose sheets. It does not have any dispatch number or markings of dispatch or anything to show that it is a copy of the notice retained on record that was sent in due course of business of his chamber or of the Bank's office. There is nothing so regular about the copy of this notice which Mr. Amar Deep has produced, even if we regard it to be a part of record maintained by the Authorized Officer, where a presumption of regularity may attach to it on account of it being a record maintained in due course of official business.

8. Learned counsel for the petitioner, on the other hand, insists that the notice issued to him is a document dated 26.09.2026. We must remark that the date at the top of this document appears to have been slightly tampered with. The copy of the notice, relied upon by the petitioner shows that the petitioner was asked to vacate on or before 15.10.2026, failing which, possession would be taken on 16.10.2026 but possession was taken a day earlier on 14.10.2026, as averred in paragraph 24 of the writ petition. The copy of the notice which the respondents relies, shows that 15 days' time was granted to the petitioner to vacate i.e. up to 11.10.2026 and possession was indicated to be taken with the assistance of the police on 12.10.2026. This is a document which the petitioner has scathingly impugned and from the record shown to us by the Respondent-Bank, we ourselves are not satisfied that the notice dated 26.9.2026, that is the respondent's version of it, is a very dependable document. Our attention has been drawn to the fact that initially an order under Section 14 was passed by the Special Chief Judicial Magistrate, Kanpur Nagar on 12.1.2024 authorizing physical possession to be taken within 15 days with a direction to the concerned Station House Officer to assist the Authorized Officer in taking possession. This order was passed in Case No.2429 of 2021, under Section 14 of the SARFAESI Act. This order was challenged before the Debts Recovery Tribunal, Allahabad by means of Securitisation Application No.100 of 2024, wherein by an order dated 4.4.2024, the Debts Recovery Tribunal passed the following interim order:-

> *"In view of above, I find prima facie case existing in favour of the S. Applicants and the balance of convenience also lies in their favour. Accordingly, the respondent Bank is, hereby,*

*restrained from taking physical possession of the property in question on 08.04.2024."*

9. Now in the face of this interim order, which is said to be still continuing, possession could not have been taken by the respondent Bank. The respondent-Bank moved a Misc. Application bearing number 259 of 2026 in case no.2429 of 2021, before the Special Chief Judicial Magistrate, Kanpur Nagar seeking modification of the earlier order dated 08.02.2024 seeking delivery of possession through an Advocate Commissioner. On this order, the Special Chief Judicial Magistrate, Kanpur Nagar passed an order dated 10.08.2026 appointing an Advocate Commissioner to take possession of the secured asset after referring to a direction of this Court made in Matter under Article 227 No.1133 of 2025. The police were also directed to assist the Advocate Commissioner.

10. Apparently in the application made to secure this order, it was never brought to the notice of the Special Chief Judicial Magistrate, Kanpur Nagar that the Debt Recovery Tribunal, Allahabad had already restrained the taking of possession vide order dated 04.04.2024. Therefore, when possession was taken on 14.10.2026, it was directly in teeth of the injunction granted by the Debt Recovery Tribunal, Allahabad vide order dated 04.04.2026 in S.A. No.100 of 2024. Possession was also taken on 14.10.2026 in violation of the injunction granted by the Debt Recovery Tribunal, Allahabad.

11. It has been argued by learned counsel for the petitioner that the order of the Debt Recovery Tribunal, Allahabad was one that restrained the taking of physical possession of the secured asset on 08.04.2024 but did not operate thereafter. This is a absurd interpretation of the interim order passed by the Debt Recovery Tribunal. A reading of the entire order shows that the Debt Recovery Tribunal restrained delivery of possession and it was only because possession at the relevant time was being taken on 08.04.2024 that the interim order in worded that way, what the interim order really means is that possession is not to be taken till some other order is passed by the Debt Recovery Tribunal. The respondent Bank do not dispute the fact that this order has not been vacated by the Debt Recovery Tribunal. If the interim order dated 04.04.2024 has not been vacated by the Debt Recovery Tribunal and was in force on the date when possession was taken pursuant to a subsequent order secured from the Special Chief Judicial Magistrate. The subsequent order of the Special Chief Judicial Magistrate, passed on the Modification Application that is to say the order dated 10.08.2026 as well as the act of taking possession on 14.10.2026, are both void. The reason is that it is beyond cavil that

anything done in violation of the judicial order, is a nullity. The order passed under Section 14 of the SARFAESI Act on the modification application is a ministerial in nature. Any proceeding or action taken in violation of the judicial order, would render such action nugatory.

12. In the circumstances, all proceedings of taking possession from the petitioner has already remarked null and void and of no consequence in law. On the foot of these proceedings, the taking of possession by the Bank cannot be permitted to continue.

13. In the circumstances, this writ petition succeeds and is **allowed**.

14. A mandamus is issued to the Authorized Officer, the Asset Reconstruction Company known as ARCIL Retail Loan, Lucknow to forthwith return the petitioner's secured asset, along with the household articles to him as per inventory done of which possession was taken on 14.10.2026. The order will be carried out within a period of three days, if not today itself.

15. The Station House Officer, Police Station Barra and the Commissioner of Police, Kanpur Nagar, will assist the petitioner in recovering possession of the secured asset.

16. The order dated 10.08.2026 passed by the Special Chief Judicial Magistrate, Kanpur Nagar in Misc. Application No.259 of 2026, is hereby **quashed**.

17. The petitioner after re-entering possession, will not sell or transfer the secured asset in favour of any third party or dissipate or encumber it in any manner and keep the same in good repair. It will be open to the respondent Bank to proceed and enforce their security interest in accordance with law.

18. It is made clear that the Debt Recovery Tribunal, Allahabad will proceed with the hearing of Securitisation Application No.100 of 2024 fixing two dates of effective hearing every week and decide the Securitisation Application expeditiously, after hearing respondent no.7 as well.

19. The records produced before us by Mr. Amar Deep, Advocate are being returned to him forthwith. His personal appearance and that of the Authorized Officer is exempted.

**(Vivek Saran,J.)  (J.J. Munir,J.)**

**November 2, 2026**
Gaurav Kuls

Digitally signed by :-
GAURAV KULSHRESTHA
High Court of Judicature at Allahabad