

**AFR**

Neutral Citation No. - 2025:AHC-LKO:15469

**Court No. - 7****Case :-** MATTERS UNDER ARTICLE 227 No. - 1133 of 2025**Petitioner :-** M/S Durga Travels Thru. Proprietor Pankaj Sharma And 3 Others**Respondent :-** Debts Recovery Tribunal, Lko. And 2 Others**Counsel for Petitioner :-** Ashish Chaturvedi, Manoj Kumar Dwivedi, Vandana Singh**Counsel for Respondent :-** Abhishek Khare, Parul Sharma, Shivansh Shukla**Hon'ble Pankaj Bhatia, J.**

1. Heard Sri Manoj Kumar Dwivedi and Sri Ashish Chaturvedi, learned Counsel for the petitioner as well as Sri Abhishek Khare, Ms. Parul Sharma, Sri Shivansh Shukla and Sri Navneet Yadav, learned Counsel for the respondents.
2. The present petition has been argued by the petitioners alleging that the manner in which the possession has been taken violates the rights of the petitioners, which are vested by virtue of Article 300A of the Constitution of India. It was further alleged that the manner in which the possession was taken, was contrary to the mandate of Section 14 of The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 (hereinafter referred to as “the SARFAESI Act”) and in view of violation of the constitutional and statutory rights, the petitioners have approached this Court.
3. The facts as arises from the present petition are that the petitioner no.1 had taken a loan for purchasing of school buses sometime in the year 2015 and the petitioners no.2 to 4 were the guarantors to the said loan. It was argued that there was a default in payment of the outstanding amount as such, the loan was classified as Non-Performing Asset (NPA) and the Bank issued a notice on 29.10.2020 under Section

13(2) of the SARFAESI Act. Subsequently, the respondent no.3-Bank, assigned its rights to the respondent no.2, which is a Assets Reconstruction Company. It also appears from the record that the notices under Section 13(4) were also issued and thereafter, an application was filed under Section 14 of the SARFAESI Act before the Additional District Magistrate (ADM), Gautambudh Nagar for taking possession of the property.

4. The ADM, in terms of the order dated 21.04.2023 (Annexure-1 to the writ petition), directed the respondent no.2 for taking possession of the property in question. It was also noticed in the said order that in case, there was any order passed by any court contrary to the said order, the order shall also come to an end. It was also directed that the respondent no.2 can take the actual possession of the property in question with the help of police authorities. The order was sent to the Additional Commissioner of Police for taking the effective steps for implementation of the order. It was also directed that the Bank and the Police, prior to taking possession would give reasonable notice to the occupiers so that they can shift their goods elsewhere. The minimum notice prescribed was 48 hours upto one week in writing. It was also observed that at the time of taking possession, independent witnesses and an Officer appointed by the Police Commissioner shall be present. The petitioners challenged the said order dated 21.04.2023 by filing a Securitisation Application No.360 of 2023, on which, an order came to be passed disposing off the interim relief application holding that in view of the observations made by the Division Bench of High Court in Writ-C No.22594 of 2022, the ADM/ CMM (Chief Metropolitan Magistrate) was directed to issue at least 15 days prior notice before taking physical possession. The respondents were granted time to file objection.

5. It also appears from the record that certain directions were issued by the DRT for OTS proposal, which according to the petitioners was availed by depositing an amount of Rs.27/- lac, however, nothing appears to have transpired beyond that. Simultaneously, on 05.12.2023, a notice was issued for taking physical possession of the property in dispute on 27.12.2023 by the respondent no.2.
6. It is argued by the Counsel for the petitioners that no notice as was directed by the DRT to be given by the CMM/ADM was ever served upon the petitioners. It is stated that on 25.02.2025, the recovery agents of the respondent no.2 came and took the forceful possession of the property in question. It is argued that no Government Official of the ADM Office was present. It is stated that the muscleman of the respondent no.2 broke open the main gate and allegations of abuse etc. are also levelled. In sum and substance, it is argued that the manner in taking possession is neither sanctioned by law under Section 14 of the SARFAESI Act nor was it in consonance with the directions given by the DRT and thus clearly the rights of the petitioners under Article 300A of the Constitution of India stood violated. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *ICICI Bank Ltd. Vs Prakash Kaur and others; (2007) 2 SCC 711*.
7. In the light of the said submissions, this Court had called for a report from the police authorities through the Standing Counsel and from the ADM, and this Court had appointed a Court Commissioner in view of the allegations that even the essentials such as medicines, books etc. were lying in lock and were not accessible to the petitioners.
8. In terms of the abovesaid directions, the Court Commissioner has submitted his report, the learned Standing Counsel has forwarded the instructions received from the police authorities and an affidavit has also been filed by ADM. A short counter affidavit has been filed on

behalf of the respondent no.2. On the basis of the short counter affidavit, it has been argued that the petitioners as guarantors were liable to pay the outstanding loan amount. The petitioner had earlier approached the DRT by filing an securitisation appeal against the order passed under Section 14, as such, the present writ petition is not maintainable in view of the judgment of the Hon'ble Supreme Court in the case of ***CELIR LLP vs Bafna Motors (Mumbai) Private Limited and others; (2024) 2 SCC 1*** and in the case of ***PHR Invent Educational Society vs UCO Bank and Others: 2024 SCC OnLine SC 528*** and the petitioners should be relegated to avail the remedy prescribed under the statute.

9. It is further argued by the Counsel for the respondents that after the order was passed under Section 14, the respondent no.2 took the physical possession of the property with the assistance of the police officials as per the law. It is further argued that the respondent no.2 is not a 'State' within the meaning of Article 12 of the Constitution of India and therefore, the writ should not lie against him. With regard to the OTS, it is stated that the OTS was not acceptable in the form it was submitted. He thus argues that the writ petition filed is liable to be dismissed. Reliance is also placed upon the judgment of the Hon'ble Supreme Court in the case of ***United Bank of India vs Satyawati Tondon: (2010) 8 SCC 110***. The other allegations with regard to force being used are denied. Interestingly, the affidavit filed on behalf of the respondent no.2 has been sworn by one Yogesh Srivastava, who is in private job serving as authorized representative of respondent no.2 and claims that the Board resolution has been passed in favour of the deponent which is on record as Annexure-CA-1.
10. The personal affidavit filed by ADM through the Standing Counsel indicates that the ADM had passed an order on 21.04.2023 under Section 14 of the SARFAESI Act. In terms of the said order, the

Deputy Commissioner of Police, Gautam Budh Nagar had to execute the said order after nominating a suitable police officer to whom a letter was written on 06.03.2025.

11. After passing of the interim order by this Court, a report was sought from the police officer. In terms of the said report, it was stated that the Advocate of the respondent no.2-Company had served a legal notice on petitioner no.1 and after the notice was served, 5-6 officials of the respondent-Bank contacted the Police Station Sector 39 Noida and Sub-Inspector, Sachin Tomar, Chauki In-charge Sector 41; Sub-Inspector Yashwant Singh; Lady Sub-Inspector Priya; Constable Sudhir and Lady Constable Anjali were sent in the presence of the officials of the company along with videographer to the immovable property wherein, the proceedings were conducted. It is further argued that the property consists of three stories house, on which, ground floor was taken in possession but in view of the request made by the occupant, in view of the Board Examination of the child, two days time were granted and the possession of the first floor was not taken. The said Officer, who has sworn the affidavit, also states that he was not present at the site when the possession was taken. It is also stated that in view of the Board Examination, half of the first floor portion was not taken.
12. The report of the Court Commissioner has been filed wherein after a visit, he reported that goods belonging to the petitioners are lying inside the premises when the Court Commissioner visited the premises. At the time of inspection, some goods were taken by the petitioners for their use. It is stated that lock with seal of the respondent no.2 were found on the locks and some locks were not sealed. It is stated that in terms of the direction issued, the necessary medicines and medical equipments belonging to the father of the petitioner and some medicines lying on the first floor were handed

over to the petitioner and some books were handed over to the children of the petitioners.

13. In the instructions submitted by the learned Standing Counsel across the Bar that a letter of the respondent no.2 was received on 19.05.2024 in the office of the Additional Commissioner of Police, Noida and on the said, the officers as noted were sent. It was stated that they were also paid, one day's salary through the respondent no.2. The factum with regard to the possession was also disclosed.
14. In the light of the pleadings and the facts as recorded above, the first issue to be decided is "*whether the writ petition would lie or not as argued by the Counsel for the respondent*"?
15. In view of the law laid down by Hon'ble Supreme Court that generally with regard to the steps taken under the SARFAESI Act by the creditor, a remedy is prescribed under the SARFAESI Act also. The Hon'ble Supreme Court in the case of *CELIR LLP vs Bafna Motors (Supra)* had noticed the observations made by the Hon'ble Supreme Court in the case of *United Bank of India vs Satyawati Tondon (Supra)*, wherein, it was observed that the acts provides for a comprehensive procedure and also for redressal of the grievances by the *quasi judicial* bodies and the court should insist upon availing the said remedy. It was also observed that although under Article 226 of the Constitution of India, the High Court has wide powers for issuance of writs for enforcement of any of the rights conferred by Part-III or for any other purpose, however, a self restraint should be observed by the High Court while exercising power under Article 226 of the Constitution of India. It was also observed that although the exhaustion of alternative remedy is a rule of discretion, the same should be exercised cautiously. The Hon'ble Supreme Court also noticed the law with regard to the alternative remedy in the cases and the conclusions as under were recorded:

*“110. We summarise our final conclusion as under:*

*110.1. The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act.*

*110.2. The confirmation of sale by the Bank under Rule 9(2) of the 2002 Rules invests the successful auction-purchaser with a vested right to obtain a certificate of sale of the immovable property in the form given in Appendix V to the Rules i.e. in accordance with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002.*

*110.3. In accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction-sale of the secured asset itself and remained alive till the transfer was completed in the favour of the auction-purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the 2002 Rules. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the 2002 Rules and not till the completion of the sale or transfer of the secured asset in favour of the auction-purchaser.*

*110.4. The Bank after having confirmed the sale under Rule 9(2) of the 2002 Rules could not have withheld the sale certificate under Rule 9(6) of the 2002 Rules, and entered into a private arrangement with a borrower.*



*110.5. The High Court under Article 226 of the Constitution could not have applied equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the SARFAESI Act.*

*110.6. The two decisions of the Telangana High Court in Concern Readymix and Amme Srisailam do not lay down the correct position of law. In the same way, the decision of the Punjab and Haryana High Court in Pal Alloys & Metal India (P) Ltd. Vs Allahabad Bank: 2021 SCC OnLine P&H 2733 also does not lay down the correct position of law.*

*110.7. The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers vs Canara Bank: 2018 SCC OnLine Hyd 178 and the decision of the Telangana High Court in K.V.V. Prasad Rao Gupta vs SBI 2021 SCC OnLine TS 328 lay down the correct position of law while interpreting the amended Section 13(8) of the SARFAESI Act”*

16. It is also essential to notice at this stage, the law with regard to the manner of taking possession as prescribed under Section 14 came for consideration before the Hon’ble Supreme Court in the case of ***NKGSB Co-operative Bank Limited vs Subir Chakravarty and others: (2022) 10 SCC 286***, in which, the Hon’ble Supreme Court confronted with the question as to whether the physical possession in terms of the order under Section 14 can be taken by an Advocate Commissioner appointed under Section 14 or not. In view of the language contained in Section 14(1-A) of the SARFAESI Act, the Hon’ble Supreme Court noticing the different views taken by the High Courts held that an advocate has to be regarded as an Officer of the Court and thus subordinate to CMM/ DM for the purpose of Section 14 (1-A) of the SARFAESI Act. The Hon’ble Supreme Court applied the test of ‘*functional subordination*’ to hold that an advocate was subordinate to the CMM/ DM, being an officer of the court. In the



light of the said two judgments, it is also essential to note the mandate of Section 14 along with Section 14(1-A) of the SARFAESI Act, which are 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 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 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 or 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.”*

17. On a plain reading of the abovesaid two provisions, it is clear that Section 14 empowers the District Magistrate or the Chief Metropolitan Magistrate to take possession of the property concerned. Section 14(1-A) further empowers the District Magistrate or the Chief Metropolitan Magistrate to “*authorized any Officer subordinate to him*” to take possession of the said assets and thereafter to forward such assets to the secured creditor. Thus, in terms of the mandate of Section 14 (1-A), it is clear that the District Magistrate or the Chief Metropolitan Magistrate can either take the possession himself or can authorize any officer subordinate to him.

18. In the present case, admittedly, the ADM did not take the possession himself and delegated the Additional Commissioner of Police with a further power to delegate it to a Police Officer for taking the possession. The question that arises “*whether the Additional Commissioner of Police is an officer subordinate to the District Magistrate and whether, the District Magistrate was within his power further allow the delegation of powers by the Additional Commissioner of Police or not*”. There is no material on record by either of the parties to suggest or argue that the Additional Commissioner of Police, can be termed as an officer subordinate to the Additional District Magistrate, even if the functional subordination test is accepted for interpreting Section 14(1-A) as held by the Hon’ble Supreme Court in the case of *NKGSB Co-operative Bank Limited (Supra)*.
19. Admittedly as per the pleadings, the possession of immovable property (mortgaged) was taken by an Officer who was delegated the authority by the Additional Commissioner of Police and the officer delegated by him are neither functionally subordinate to the Additional District Magistrate nor can be termed as an officer of the court. In addition, the petitioners were also deprived of their possession over movable assets (which were not hypothecated/ mortgaged).
20. As, the possession of immovable and movable assets have been taken contrary to the mandatory provisions, I have no hesitation in holding that the remedy of issuance of a writ court be available as *prima facie*, there was a violation of the rights vested by virtue of Article 300A of the Constitution of India, which have been on the face of it not followed and thus a writ petition would lie. Thus, this conclusion deals with the argument of the Counsel for the respondents that a writ would not lie.

21. Another aspect to be observed in the matter that even the directions of the ADM in its order dated 21.04.2023 were not complied, as no notice was ever served to the guarantors i.e. the petitioners no.2 and 4. The notice admittedly was served only on the petitioner no.1, thus, the intent of the order dated 21.04.2023 of giving prior notice so that the goods can be removed well in time, was also not observed. It is also to be noticed that the directions given by the DRT in its order dated 12.05.2023 directing the ADM to issue at least 15 days prior notice before taking possession have also not observed in the present case.
22. In view of the infirmities as noticed above, clearly there is a infraction of the rights guaranteed under Article 300A of the Constitution of India, the manner of taking the possession is not in accordance with the mandate of Section 14 (1-A) of the SARFAESI Act and taking of possession of movable assets was without any authority of law, thus, I have no hesitation in holding that the manner in which the possession was taken, was contrary to law.
23. As regards the submission of the Counsel for the respondents that a writ would not lie as it is not a “State” within the meaning of Article 12 of the Constitution of India, the said argument merits rejection for the sole reason that in the present case, the possession of the immovable and the movable assets have been taken by the Government Authorities and thus a writ would lie.
24. Needless to emphasize that the Hon’ble Supreme Court in the case of *ICICI Bank Ltd. Vs Prakash Kaur (Supra)* has emphasized that any violation of the supremacy of rule of law has to be deprecated, the procedure prescribed under law should be scrupulously followed which has not been done in the present case. Thus, the present writ petition deserves to be allowed and is accordingly ***allowed***.

25. However, the respondent no.2 would be at liberty to take possession in accordance with law strictly in terms of the mandate of Section 14 (1-A) of the SARFAESI Act. The ADM shall ensure that the possession should be taken strictly in terms of the mandate of Section 14 (1-A) of the SARFAESI Act.

**Order Date:**12.03.2025  
akverma/Arun

**(Pankaj Bhatia,J.)**