



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR**

**CRIMINAL APPLICATION APL NO.1523/2025**

1. M/s.Shubham Flour Mill,  
A proprietorship concern through  
its proprietor Shri Rahul s/o  
Purushottam Tapdiya,  
aged about 32 years, occupation: business,  
r/o plot No.B-6, MIDC Mini Industry  
Lohari Road, Akot, district,  
Akola - 444 101.

2. Shri Rahul s/o Purushottam Tapdiya  
aged about 32 years, occupation : business,  
r/o Gajanan Nagar, Near Hanuman  
Mandir, Akola,  
district – Akola – 440 013.

..... **Applicants.**

**:: VERSUS ::**

1. State of Maharashtra,  
through Police Station Officer,  
Police Station, Akola.

2. Indian Bank,  
through its Chief Manager/Authorized  
Officer Shri Jaisheel Sharma,  
Zonal Officer at Palm Road,  
Civil Lines, Nagpur-440 001.

3. Shri Shubham s/o Purshottam Tapdiya,  
aged about 28 years, occupation : business,  
r/o plot No.93, Veer Chakra Colony,

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Nr.Sai Mandir, Katol Road,  
Nagpur - 440 030.

4. Shri Purshottam Mohanlal Tapdiya,  
aged about 60 years, occupation : business,  
r/o Gajanan Nagar, Hanuman Mandir,  
Akot, district Akola. .... **Non-applicants.**

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Shri S.M.Pande, Counsel for Applicants.  
Shri A.M.Kadukar, APP for the NA No.1/State.  
Shri Karan Sachdev, Counsel for NA No.2.  
Shri D.A.Sonwane, Counsel for NA No.3.  
Ms Sunita Paul, Counsel for NA No.4

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**CORAM** : **URMILA JOSHI-PHALKE, J.**  
**RESERVED ON** : **26/02/2026**  
**PRONOUNCED ON** : **04/03/2026**

**JUDGMENT**

1. Heard learned counsel appearing for respective parties.

**Admit.** Heard finally by consent.

2. The present application is preferred by applicants for quashing and setting aside the impugned order dated 26.9.2025 passed below Exh.5 in Criminal Revision No.113/2025 passed by learned Additional Sessions Judge, Akola and order dated 30.8.2025 passed by learned

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Additional Chief Judicial Magistrate, Akola in Criminal Case No.326/2025.

3. The applicants are proprietary concern and doing its business at Akola. Non-applicant No.2 is a financial institution (the bank). The applicants have obtained financial assistance from the bank in the nature of Term Loan-1 of Rs.14,28,521.60; Term Loan-2 of Rs.56,45,974.25; CECLS-1 of Rs.25,00,000/-; CECLS-3 of Rs.52,50,000/-, and OCC of Rs.7,50,00,000/-. Against the said loans, towards security for repayments of these loans equitable mortgage in 4 immovable properties was executed in favour of the bank. Three properties, which are subject-matter of the instant proceedings, include one residential plot at Akola and one property which includes three plots at Akot and one industrial plot with constructed factory at Akot. Whereas, fourth property is located at Nagpur. The bank has subsequently sanctioned ad-hoc cash credit limit of Rs.1,30,00,000/- to the applicants on 31.5.2024. As the applicants failed to repay the

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said loan amounts, it was classified as “Non Performing Assets” (NPA) and the bank has issued a Demand Notice in view of Section 13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act).

4. The applicants on 23.1.2025, in response to the notice dated 26.11.2024 made representation as per Section 13(3-A) of the SARFAESI Act. On 31.1.2025, the bank rejected representation made by applicants and on 11.2.2025 preferred an application under Section 14 of the SARFAESI Act before learned Additional Chief Judicial Magistrate at Akola for taking possession of the properties at Akot vide Criminal Case No.326/2025. Learned Chief Judicial Magistrate allowed the application and appointed Advocate Shri Mohd.Zaheeruddin Kabiruddin as Court Commissioner to take possession of the secured assets mentioned in the application by directing that the Court Commissioner to take such steps and use such force including breaking open the

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lock or any hurdle thereof by taking assistance of police if required at the expenses of the applicants and if any articles/documents found in the secured asset, deliver its possession to the authorized officer of the applicants after preparing panchanama and taking inventory. It was further directed to the bank to pay amount of Rs.10,000/- as fees to the Court Commissioner and directed the Court Commissioner to submit a report regarding taking and delivering possession of the secured assets to the authorized officer of the bank.

5. Being aggrieved and dissatisfied with the same, applicants preferred a revision bearing Criminal Revision No.113/2025 which came to be dismissed on 26.9.2025 and hence, the present application.

6. Learned counsel for applicants submitted that learned Additional Chief Judicial Magistrate at Akola was incompetent in view of unambiguous language of Section 14 of the

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SARFAESI Act and Section 10 of the BNSS 2023 which substituted CrPC 1974 containing *pari materia* provisions. It is submitted that Section 10 of the BNSS and Section 12 of the CrPC empower the High Court to appoint Judicial Magistrate First Class to the Chief Judicial Magistrate and Additional Chief Judicial Magistrate. However, sub-clause (2) of those Sections specifically stipulates that Additional Chief Judicial Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Sanhita or the CrPC or under any other law for the time being in force as the High Court may direct. He submitted that the Additional Chief Judicial Magistrate thus gets only such powers of the Chief Judicial Magistrate as the High Court may direct that as a matter of fact the High court issued two Notifications dated 27.12.2010 and 26.10.2016 under Section 12(2) of the Code and appointed Joint CJSD in Judicial Districts and Taluka Places as Additional Chief Judicial Magistrate. However, there is no direction about confer of powers of the Chief Judicial

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Magistrate on Additional Chief Judicial Magistrate in those Notifications. Thus, these Notifications are not covered under Section 10(2) of the BNSS till this date and, therefore, the order passed by learned Additional Chief Judicial Magistrate is without jurisdiction and, therefore, it vitiates the entire proceeding. It is submitted by him that learned Additional Sessions Judge, Akola has not considered this aspect and committed a serious error in rejecting the application for grant of stay by ignoring mandatory provisions contained in Section 10 of the BNSS 2023. He submitted that the main revision filed by the applicants is still pending before learned Additional Sessions Judge. He further submitted that this application is maintainable under Section 482 of the CrPC in view of inherent powers given to this court and prayed for quashing and setting aside the order passed by learned Additional Chief Judicial Magistrate as well as learned Additional Sessions Judge.

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7. Learned counsel for applicants placed reliance on following decisions:

**1. Capital First Ltd., Mumbai vs. State of Maharashtra and anr, reported in AIR 2018 Bombay 76;**

**2. Standard Chartered Bank and ors vs. V.Noble Kumar and ors, reported in ALL SCR 3025;**

**3. Ramchandra keshav Adke (dead) by Lrs vs. Govind Joti Chavare and ors, reported in 1975 AIR (SC) 915; and**

**4. M/s.R.D.Jain and Co. vs. Capital First Ltd., reported in AIR 2022 SC 4820.**

8. The application is strongly opposed by the bank on the ground that the instant application as framed and filed itself is not maintainable. There is no dispute that the bank has initiated the proceeding under the provisions of the SARFAESI Act against borrower. There is no dispute that the cash credit facility as well as the loan facilities are availed by applicants. Till date, amount Rs.9,87,73,574/- is due against the applicants. There is no dispute that the loan account was

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classified as NPA and the Demand Notice under Section 13(2) of the SARFAESI Act is already given to the applicants. Being his representation was not satisfactory one, it was rejected and application under Section 14 of the SARFAESI Act was filed. He submitted that learned Additional Chief Judicial Magistrate gets all powers which the Chief Judicial Magistrate is having. The Chief Judicial Magistrate is superior only for the administrative purpose and as far as judicial powers is concerned, Additional Chief Judicial Magistrate is not subordinate to the Chief Judicial Magistrate. He submitted that the application itself is not maintainable and, therefore, it deserves to be rejected.

9. Learned counsel for the bank has placed reliance on following decisions:

1. **M/s.Phoenix Arc Private Limited vs. V.Ganesh Murthy and anr, reported in 2023(3) PLR 329;**
2. **Sarojben d/o Raghuvir Yadav vs. State of Gujarat and ors, reported in Law Finder doc ID 1382606;**

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3. Kanaiyalal Lalchand Sachdev and ors vs. State of Maharashtra and ors, reported in (2011)2 SCR 602, and

4. M/s.R.D.Jain and Co. vs. Capital First Ltd., reported in AIR 2022 SC 4820.

10. I have given considerable thought to the submissions made by learned counsel for applicants and learned counsel for the bank and gone through the records carefully.

11. Before entering into the merits of the case, it is necessary to refer relevant provisions.

Section 12 of the CrPC deals with Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc. The said Section is reproduced below for reference as under:

**“12. Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.**

(1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to the Chief Judicial Magistrate.

(2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief

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Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

(3) -

(a) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.

(b) Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.”

12. The *pari materia* provisions are in newly Amended Act i.e. Section 10 of the BNSS 2023. The said Section is reproduced below for reference as under:

“10. (1) In every district, the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

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(2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Sanhita or under any other law for the time being in force as the High Court may direct.

(3) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.

(4) Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.”

13. Issue raised by applicants is that the Additional Chief Judicial Magistrate is incompetent to deal with application filed under Section 14 of the SARFAESI Act as the Notification issued by this High Court not confers powers on him of the Chief Judicial Magistrate.

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14. The Notification issued by the High Court is reproduced as under:

“(For insertion in the Maharashtra Government Gazette, Part-1, Central Section)

**NOTIFICATION BY THE HIGH COURT OF  
JUDICATURE APPELLATE SIDE AT BOMBAY.**

**NO.A-3902/2016**

**Dated: 26 October 2016**

By virtue of powers conferred under section 12(2) of the Code of Criminal Procedure, 1973 the High Court hereby appoints **Joint Civil Judges, Senior Division and Judicial Magistrate, First Class** working at the Taluka Places in the **Judicial District as Additional Chief Judicial Magistrate.**

Hereinafter the Joint Civil Judges, Senior Division and Judicial Magistrate, First Class posted at the Taluka Places in the Judicial District shall carry designation as **Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate.**

This Notification shall come into force with immediate effect.

High Court, Bombay ) S/d  
Date 26 October, 2016 ) (Mangesh S.Patil)  
Registrar General”

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15. Section 15 of the CrPC deals with subordination of Judicial Magistrate, which states that every Chief Judicial Magistrate shall be subordinate to the Sessions Judge and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

16. Section 17 of the CrPC deals with Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate, which reads as (1) the High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area, and (2) the High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

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17. Before proceeding further, it is also necessary to refer the powers to be exercised by the Additional Chief Judicial Magistrate.

18. It is pertinent to mention here that Section 10(2) of the BNSS and old Section 12(2) of the CrPC provide that the High Court may appoint any Judicial Magistrate of the First Class to be an Additional Chief Judicial Magistrate, and as such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Sanhita or under any other law for the time being in force as the High Court may direct.

19. Thus, in this regard, the High Court in its administrative side is required to pass an order under Section 10(2) of the BNSS 2023 as to the extent of powers of the Additional Chief Judicial Magistrate.

20. Section 13(2) of the BNSS 2023 also makes it clear that the Chief Judicial Magistrate has been authorized as to

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the distribution of business among the judicial Magistrate subordinate to him.

21. Thus, the Legislature though has not conferred this power on the Additional Chief Judicial Magistrate, the Chief Judicial Magistrate has made empowered as to the distribution of business.

22. Thus, it is pertinent to note that the subordination of the Additional Chief Judicial Magistrate is only in regard to administrative functions. In regard to the judicial functions, Section 10(2) of the BNSS 2023 specifically provides that the Addition Chief Judicial Magistrate shall have all the powers of the Chief Judicial Magistrate.

23. This aspect is considered by the Hon'ble Apex Court in the case of **M/s.R.D.Jain and Co. supra**, relied upon by learned counsel for the applicant and learned counsel for the bank, wherein it is held that the judicial powers and the powers, under the CrPC which may be exercised by the Chief

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Metropolitan Magistrate, can be exercised by the Additional Chief Metropolitan Magistrate.

It is pertinent to note that it was further *inter alia* held that the Additional Chief Metropolitan Magistrate can be said to be at par with the Chief Metropolitan Magistrate in so far as the powers to be exercised under the CrPC are concerned.

The Hon'ble Apex Court further stated that the Chief Metropolitan Magistrate in addition, may have administrative powers. However, for all other purposes and more particularly the powers to be exercised under the CrPC both are at par. Therefore, the Additional Chief Metropolitan Magistrate cannot be said to be subordinate to the Chief Metropolitan magistrate insofar as the exercise of judicial powers are concerned.

24. Thus, it is no more *res integra* that as far as judicial powers are concerned, the Additional Chief Judicial

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Magistrate is not subordinate to the Chief Metropolitan Magistrate.

25. In relation to the administrative functions to be exercised by the Chief Judicial Magistrate under the BNSS, 2023, the same can be exercised by the Additional Chief Judicial Magistrate only to the extent, an order to this effect is passed by the High Court. In this regard reference may again be made to Section 10(2) of the BNSS, 2023 which *inter alia* provides that an Additional Chief Judicial Magistrate "shall have all or any of the powers of a Chief Judicial Magistrate", "as the High Court may direct". Therefore, an order of the High Court in its administrative side is required to be passed regarding "all or any of the powers" to be exercised by the Additional Chief Judicial Magistrate.

26. The Notification issued by the High Court in the present case specifically shows that "by virtue of powers conferred under Section 12(2) of the Code of Criminal

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Procedure, 1973 the High Court hereby appoints Joint Civil Judges, Senior Division and Judicial Magistrate, First Class working at the Taluka Places in the Judicial District as Additional Chief Judicial Magistrate.

27. Thus, the powers of the Chief Judicial Magistrate are already conferred on the Additional Chief Judicial Magistrate.

28. Thus, the contention of learned counsel for the applicants that the Additional Chief Judicial Magistrate is incompetent to deal with the application filed under Section 14 of the SARFAESI Act is not sustainable.

29. The provisions of Section 13 of the SARFAESI Act enable the secured creditors, such as banks and financial institutions, not only to take possession of the secured assets of the borrower but also to take over the management of the business of the borrower, including the right to transfer by way of lease, assignment or sale for realizing secured assets, subject to the conditions indicated in the two provisos to

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clause (b) of sub-section (4) of Section 13. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

30. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for the recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession

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even though possession may have been made over to the transferee.

31. Therefore, it is apparent that the remedy of the applicants was before the Debt Recovery Tribunal under the SARFAESI Act and not before this Court.

32. It is submitted by learned counsel for the applicants that in view of Section 14 of the SARFAESI Act only the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction may such secured assets or other documents relating thereto may be situated or found to take possession thereof and the Chief Metropolitan Magistrate or the District Magistrate shall on such request being made to him take possession of such assets and documents relating thereto and forward such assets to the secured creditor, provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor.

33. For the purpose of reference, Section 14 of the SARFAESI Act is reproduced 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 asset is required to be taken by the secured creditor or if any of the secured asset 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 asset, 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 authorized officer of the secured creditor, declaring that-

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(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 nonperforming asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding

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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 Authorized 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 Authorized 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] *[Inserted by Act No. 1 of 2013]*:-

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.] *[Substituted by Act No. 44 of 2016.]*

[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 recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.] *[Inserted by Act No. 44 of 2016.]*

(1A) (The District Magistrate or the Chief Metropolitan Magistrate may authorize 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 authorized by the Chief Metropolitan Magistrate or District Magistrate] [*Inserted by Act No. 1 of 2013*] done in pursuance of this section shall be called in question in any Court or before any authority.

34. Thus, perusal of Section 14 of the SARFAESI Act shows that for taking physical possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (the secured creditor) for further action. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under Section 14(1) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance with all formalities by the secured creditor referred to in the proviso in Section

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14(1) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto.

35. Thus, the underlying purpose of the SARFAESI is to empower the financial institutions to have similar powers as enjoyed by their counterparts, namely, international banks in other countries. One such feature is to empower financial institutions to take possession of securities and sell them. After taking over possession of the secured assets, further steps to lease, assign or sell the same could also be taken by the secured creditor. However, Section 14 of the SARFAESI Act indicates that if the secured creditor intends to take possession of the secured assets, it must approach the CMM/DM by way of an application in writing, and on receipt of such request, the CMM/DM must move into action. After passing an order thereon, they must proceed to take possession of the secured assets and documents relating thereto for being forwarded to the secured creditor in terms

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of Section 14(1) read with Section 14(2) of the SARFAESI Act.

36. Thus, considering the scheme of the SARFAESI, it is explicit and crystal clear that possession of the secured assets can be taken by the secured creditor before confirmation of the sale of the secured assets as well as post-confirmation of the sale. For taking possession of the secured assets, it could be done by the "authorized officer" of the bank as noted in Rule 8 of the Security Interest (Enforcement) Rules, 2002.

37. Learned counsel for the bank submitted that the application before this court itself is not maintainable.

38. The Hon'ble Apex Court in the case of **M/s.Phoenix Arc Private Limited** *supra*, held that remedies against orders under the SARFAESI Act should be sought under the provisions of Act itself rather than invoking Section 428 of the CrPC and action under Section 14 of the SARFAESI Act constitutes an action taken after the stage of Section 13(4) of

the SARFAESI Act and, therefore, the same would fall within the ambit of Section 17(1) of the Act.

39. Thus, the SARFAESI Act itself contemplates an efficacious remedy for the borrower or the any person affected by an action under Section 13(4) of the SARFAESI Act by providing for an appeal before the DRT.

40. The SARFAESI Act is a complete code in itself which provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. In such circumstances, as already taken note of if there is any discrepancy in the manner of classifying the account of the appellants as NPA or the action taken under Section 13(2) or Section 14 of the SARFAESI Act, DRT is vested with the power to set aside such auction or the order passed under Section 14 of the SARFAESI Act at the stage after the secured creditor invokes the power under Section 13 of the SARFAESI Act.

41. The said view is fortified by the Hon'ble Apex Court in the case of **Indian Overseas Bank and anr vs. M/s. Ashok Saw, reported in AIR 2009 SC 2420** wherein it is observed, as under:

"34. The provisions of Section 13 enable the secured creditors, such as banks and financial institutions, not only to take possession of the secured assets of the borrower but also to take over the management of the business of the borrower, including the right to transfer by way of lease, assignment or sale for realizing secured assets, subject to the conditions indicated in the two provisos to clause (b) of sub-section (4) of Section 13.

35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

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**36.** The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for the recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

**37.** The consequences of the authority vested in the DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr Gopalan and Mr Altaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4) situation, cannot be accepted."

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42. In view of the above discussion, the contentions of learned counsel for the applicants that the Additional Chief Judicial Magistrate is incompetent is not sustainable.

43. The present application is also not maintainable in view of efficacious remedy is already available to the applicants.

44. In this view of the matter, the application fails and deserves to be rejected and the same is **rejected**.

Application stands **disposed of**.

45. At this stage, learned counsel for the applicants seeks stay to the impugned order. In fact criminal application under Section 482 of the Code itself is not maintainable.

46. Appropriate remedy is not sought by the present applicant.

47. At this stage, no case is made out for staying of the impugned order. The order for taking possession is passed by

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learned Additional Chief Judicial Magistrate. In view of the provisions of the SARFAESI Act, against the said order, efficacious remedy is not sought.

48. In view of that, oral prayer of present applicants to stay the further proceeding is hereby rejected.

**(URMILA JOSHI-PHALKE, J.)**

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