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SARFAESI

Restoration of Possession Under Section 14 SARFAESI: Bombay High Court Rules Forcible Re-entry by Borrowers Impermissible

Introduction The recovery of secured assets under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) has long been a subject of judicial scrutiny. In a significant ruling delivered on 6 May 2026, a Division Bench of the High Court of Bombay comprising Smt. Justice Vibha Kankanwadi and […]

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The recovery of secured assets under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) has long been a subject of judicial scrutiny. In a significant ruling delivered on 6 May 2026, a Division Bench of the High Court of Bombay comprising Smt. Justice Vibha Kankanwadi and Mr. Justice Ajit B. Kadethankar has unequivocally reaffirmed that borrowers who resort to self-help by forcibly re-entering secured assets after lawful possession has been taken by a secured creditor pursuant to judicial orders cannot be permitted to benefit from their own illegality. The judgment in Motilal Oswal Home Finance Ltd. v. State of Maharashtra and Ors. is an important precedent on the maintainability of restoration applications under Section 14 of the SARFAESI Act and the concurrent availability of writ jurisdiction under Article 226 of the Constitution of India.

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Background and Factual Matrix

The petitioner, Motilal Oswal Home Finance Ltd. (formerly known as Aspire Home Finance Corporation Ltd.), a financial institution engaged in the business of providing home loans and allied credit facilities, had sanctioned a home loan to certain borrowers who, in furtherance thereof, executed the requisite loan and security documents and created a registered mortgage over the subject property an RCC construction admeasuring 1,400 sq. ft. at Gat No. 155, village Mauje Chimbhale, Tq. Shrigonda, District Ahmednagar.

Upon the borrowers committing default, the loan account was classified as a Non-Performing Asset. The petitioner duly issued a demand notice under Section 13(2) of the SARFAESI Act. The borrowers having failed to comply within the stipulated period, the petitioner's authorised officer initiated measures under Section 14 of the Act and approached the learned Additional Chief Judicial Magistrate for assistance in taking physical possession of the secured assets.

By order dated 30 July 2020, the learned Magistrate allowed the application and directed the Tahsildar to take possession and hand over the same to the petitioner's authorised officer. In due compliance, the Tahsildar visited the site, drew a panchanama and inventory, and physically handed over possession to the petitioner, who affixed its lock and seal on the premises and documented the entire process. A sale notice was thereafter issued under the SARFAESI Act.

Notwithstanding these lawful steps, the borrowers subsequently broke open the lock and seal, illegally trespassed into the secured asset, and unlawfully re-occupied the property. When the petitioner's officials visited the premises, they were restrained and threatened. A complaint lodged with the police authorities yielded no effective action. Compelled by the inaction of the authorities and left without an efficacious alternative remedy, the petitioner invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution seeking restoration of possession, a declaration of illegality, and appropriate directions for repossession with police assistance.

Issues for Consideration

The principal issues that fell for consideration before the Court were: first, whether the petitioner was entitled to directly approach the High Court under Article 226, or was obliged to first seek restoration before the learned Magistrate; and second, whether an application for restoration of possession is maintainable under Section 14 of the SARFAESI Act when a borrower forcibly re-enters a secured asset after lawful possession has been delivered.

Submissions of the Parties

The learned counsel for the petitioner submitted that possession of the secured assets had been obtained strictly in accordance with law and in pursuance of a competent court's order under Section 14 of the SARFAESI Act. It was argued that once possession is lawfully taken following due process, borrowers cannot be permitted to nullify the effect of judicial orders by resorting to force. It was further submitted that the petitioner had approached the police authorities, but no assistance was rendered, which compelled it to invoke the jurisdiction of this Court.

Per contra, the learned Additional Government Pleader submitted that the petitioner ought to have approached the learned Magistrate by filing an application for restoration of possession and that direct recourse to the High Court under Article 226 was not the appropriate remedy in the circumstances.

The Court's Analysis

The Court, having carefully examined the record, held that the petitioner had been put in physical possession of the secured assets strictly in accordance with law and pursuant to the Magistrate's order. It noted with equal clarity that the borrowers had not availed themselves of any legal remedy to challenge either the measures taken or the order passed by the learned Magistrate. In such circumstances, the act of breaking open the lock and seal and forcibly re-entering the secured asset amounted to what the Court described as 'a patently illegal act, contrary to the mandate of the SARFAESI Act and in utter disregard of the rule of law.'

On the question of maintainability, the Court held that while the SARFAESI Act does not expressly employ the phrase 'restoration of possession', the power to restore possession is incidental and ancillary to the authority conferred under Section 14. Once a Magistrate exercises jurisdiction to assist the secured creditor in taking physical possession, the same authority is competent to ensure that its order is not rendered nugatory by the illegal acts of the borrowers. Accordingly, such an application is not a fresh application for taking possession but rather a consequential application seeking enforcement of possession already lawfully delivered and is clearly maintainable under the Act. The Court further held that a borrower who forcibly re-enters cannot seek shelter under the statutory remedies of the SARFAESI Act.

On the concurrent availability of writ jurisdiction, the Court held that where there is a patent failure on the part of the authorities to act with promptitude and sensitivity, the secured creditor is entitled to invoke the writ jurisdiction of this Court. The Court expressed serious concern over the increasing tendency of defaulting borrowers to take the law into their own hands and the alarming inaction on the part of police machinery, which has the effect of encouraging such unlawful conduct. The Court observed that breaking open seals affixed pursuant to judicial orders strikes at the very foundation of the rule of law and must be dealt with sternly.

Final Directions and Operative Order

The Rule was made absolute and the writ petition was disposed of with the following directions: The petitioner was directed to file an application before the concerned Tahsildar seeking restoration of possession, upon receipt of which the Tahsildar was required to visit the secured assets within one week along with adequate police assistance and to forcibly evict any person found in unlawful occupation, restoring physical possession to the petitioner. The police authorities were further directed to register appropriate offences and initiate penal action against all persons responsible for breaking open the seal, committing trespass, and obstructing the lawful exercise of statutory powers. The matter was placed for compliance on 10 June 2026, with a direction to the petitioner to report compliance before the Court.

Significance and Practical Implications

This judgment carries considerable significance for secured creditors, financial institutions, and practitioners engaged in debt recovery law. It authoritatively settles the position that a restoration application is maintainable before the Magistrate under Section 14 of the SARFAESI Act even in the absence of an express provision, being an incidental power flowing from the exercise of the primary jurisdiction. It equally makes clear that where authorities fail to act, the writ jurisdiction of the High Court is available as a remedy. The Court's stern observations concerning police inaction are equally instructive.

Conclusion

The Bombay High Court's ruling in Motilal Oswal Home Finance Ltd. v. State of Maharashtra and Ors. is a firm and timely affirmation that the rule of law admits no exception not even for those in financial distress. The judgment reinforces that self-help by force in the context of SARFAESI proceedings is not merely impermissible but carries criminal consequences.

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