

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

**HON'BLE SHRI JUSTICE ANAND PATHAK
&
HON'BLE SHRI JUSTICE PUSHPENDRA YADAV**

WRIT PETITION NO.31051/2025

UCO BANK

Vs.

M/S ASHA OIL INDUSTRIES AND OTHERS

APPEARANCE:

*Shri Praveen Surange – Advocate for the petitioner.
Shri Santosh Agrawal – Advocate for the respondents.*

ORDER

{Pronounced on 28th January, 2026}

Per: Justice Anand Pathak,

1. The instant Writ Petition under Article 226(1) of the Constitution of India is filed seeking following reliefs:-

I. That the present writ petition may kindly be allowed.

II. That, the impugned orders dated 14.05.2025 and 28.09.2021 passed by the learned Debts Recovery Appellate Tribunal, Allahabad in Regular Appeal No.15/2022 titled as Uco Bank-V-M/s. Asha Oil Mills & Ors. and Debts Recovery Tribunal, Jabalpur in S.A. No.217/2019 titled as M/s. Asha Oil Mills & Ors. V. UCO Bank respectively may kindly be quashed and set aside.

III. That, the directions issued by Learned Tribunal and Appellate Tribunal in the impugned orders to the petitioner bank to return money deposited by auction purchaser may kindly be quashed, being contrary to the rules.

IV. That, the directions issued by learned DRT and thereafter by learned DRAT in the impugned orders to restore physical possession of the subject properties including the movable stock and machineries to the respondents may kindly be quashed, being impracticable to perform.

V. That, the respondents may kindly be directed to pay the expenses of present proceedings and other legal proceedings and

VI. Any other relief/ direction/ order which this Hon'ble Court deems fit in the interest of justice.”

2. Precisely stated facts of the case are that petitioner/ UCO Bank is a Government of India undertaking which is established under Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Respondent No.1 is a proprietorship concern acting through its proprietor Shri Pradeep Shivhare and respondent No.2- Smt. Poonam Shivhare. They availed the Cash Credit (Hypothecation) Limit to the extent of Rs.05 crores from the petitioner/ Bank from time to time. As a security of loan, respondents mortgaged their immovable properties comprising of Plot No.63 Malanpur Industrial Area, Bind Road, District Bind, M.P. (***Mortgage property no.1***) and plot no.58, Laxmibail Colony, Gwalior (M.P.) (***Mortgaged property no.2***). Respondents failed to comply with various terms of loan agreements and defaulted. Therefore, Loan Account of respondents was classified by the petitioner/ Bank as Non-Performing Assets (NPA) w.e.f. 31/10/2018 in accordance with the guidelines issued by the Reserve Bank of India from time to time. Chain of events precipitated filing of this petition.
3. Following list of dates and events are worth consideration and the same are as under:-

| Date | Events |
|--|---|
| 01/04/19 | The respondents filed an application under Section 17(1) of the SARFAESI Act, 2002 against respondent seeking quashment of entire proceedings initiated by the petitioner/ Bank. |
| 15/05/2019 | Petitioner/ Bank filed detailed reply denying all the allegations. Petitioner/ Bank filed an application for amendment in the application filed by the respondents and the same was allowed vide order dated 16.05.2019. |
| 04/06/19 | Respondents filed detailed additional reply to the amendment application filed by the petitioner/ Bank. |
| 17/08/2020 & 22/10/2020 | The respondents again filed an application for amendment. Respondents also filed an application dated 17/08/2020 for impleadment of auction purchaser M/s Shurti Corpotaion through its Proprietor Shri Pramod Gurjar as respondent No.3. The said application was allowed vide order dated 02/09/2021. |
| 13/09/2021 | The respondents filed amended securitisation application. |
| 22/09/2021 | Petitioner/ Bank filed a detailed additional reply to the amended securitisation application and denied all the allegations. |
| 27/09/2021 | Thereafter, petitioner/ Bank submitted written submissions and relevant citations in support of its claim. |
| 28/09/2021 | The learned Debt Recovery Tribunal (DRT) after considering the submissions advanced by both the parties passed the impugned order dated 28/09/2021 directing the petitioner/ Bank to restore the physical possession of the subject properties to the respondents within a period of one month and the money deposited by the auction purchaser be returned back to him as per law within 15 days. Being aggrieved by the said order, petitioner/ Bank filed an appeal before the learned Debts Recovery Appellate Tribunal (DRAT), Allahabad which was registered as Regular Appeal No.15/2022. |
| 14/05/2025 | The said appeal was dismissed by the learned Appellate Tribunal. Being aggrieved by the orders of the learned Debt Recovery Tribunal and Debt Recovery Appellate Tribunal, petitioner/ |

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| Bank has preferred the instant petition. |
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4. It is the submission of learned counsel for the petitioner/ Bank that learned Debt Recovery Tribunal, Jabalpur (DRT) as well as learned Debt Recovery Appellate Tribunal (DRAT), Allahabad caused illegality in passing the impugned orders. According to learned counsel, Tribunals below erred in giving conclusion that once notice under Rule 8 (1) of the (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) (hereinafter referred as “SARFAESI Act”) is issued, affixed and delivered then there is obligation on part of the Bank either to resort Section 14 proceedings of the SARFAESI Act before taking physical possession or the borrower/ mortgagor/ guarantor should be present there for handing over peaceful possession.
5. According to learned counsel, said approach is erroneous. As submitted, it is not required that secured creditor has to approach Chief Metropolitan Magistrate (CMM)/ District Magistrate (DM) for taking possession from the borrower necessarily. Scheme of SARFAESI Act specially Section 13(4) provides that in case of failure of borrower to discharge his liability in full within the period specified in sub-section (2) of the SARFAESI Act, the secured creditor **may** take recourse to take possession of the secured assets of the borrowers.
6. Similarly, Section 14 of the SARFAESI Act contemplates that if possession of any secured asset is **required to be taken** by the secured creditor then secured creditor **may** approach CMM/ DM. Role of these authorities is to assist secured creditor in taking possession of the secured asset.
7. It is further submitted that Rule 8 of the Security Interest

(Enforcement) Rules, 2002 (hereinafter referred as “2002 Rules”) also provides that authorized officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property. Meaning thereby it is not required that possession can only be handed over once proceedings under Section 14 of the SARFAESI Act is undertaken by the secured creditor.

8. In the present case, notice under Section 13(2) and Section 13(4) of SARFAESI Act were given on 13/11/2019 and 30/11/2019 and same were published in two newspapers on 05/02/2019 and 05/04/2019. Notice was also issued to the borrower on 17/04/2019 before taking physical possession therefore, findings of both the tribunals below are perverse and contrary to the law.
9. Learned counsel for the petitioner/ Bank relied upon the judgment passed by the Hon'ble Apex Court in the case of **Standard Chartered Bank Vs. Noble Kumar and Others (2013) 9 SCC 620**, **Transcore Vs. Union of India and Another (2008) 1 SCC 125** and judgment of the High Court of Jammu & Kashmir and Ladakh in the case of **Ablum Electrical Industries and Ors. Vs. Authorised Officer, Cluster Head, J & K Bank, Pulwama, 2024 (6) JKJ 71**.
10. Learned counsel for the respondents on the other hand opposed the prayer. According to learned counsel on 30/01/2019 symbolic possession was taken by the Bank under Section 13(4) of the SARFAESI Act. Thereafter, on 19/04/2019, Bank Manager (petitioner) with the help of police took forcible possession of the mortgaged properties. Thereafter, a private complaint was filed by the

respondents against officers of the petitioner/ Bank before the Special Sessions Judge District-Gohad, which was dismissed on 13/01/2022 prompting respondents to file CRR No.3075/2023 (M/s Asha Oil Industries Vs. Rohan Tuteja & Ors.). He supported the impugned orders of the Tribunals below and prayed for dismissal of the petition.

11. Heard the learned counsel for the parties and perused the documents appended thereto.
12. This is a case where petitioner/Bank is aggrieved by the orders passed by the DRT and DRAT. Prime ground on which case of respondents was allowed by the learned tribunals below is that if the possession was taken by the petitioner/ Bank without resorting to Section 14 of the SARFAESI Act, then the same is illegal.
13. In other words, as per learned tribunals, secured creditor has to resort to proceedings under Section 14 of the SARFAESI Act mandatorily. However, the scheme of SARFAESI Act does not provide so. While interpreting different provisions of SARFAESI Act, the Hon'ble Apex Court has also given guidance in this regard.
14. Aims and Objects of the SARFAESI Act is to Regulate Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest and to provide Central Data Base of Security Interest created on property rights, etc.
15. Section 13 of the SARFAESI Act is worth consideration in this regard:-

*“13. **Enforcement of Security Interest**—(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor **may** be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.*

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

Provided that— (i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and (ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.”

(3)XXXXXXXXXXXX

*(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:— (a) **take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;** (b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:*

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt: Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt; (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been

taken over by the secured creditor; (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5)XXXXXXXXXXXX

(6)XXXXXXXXXXXX

(7)XXXXXXXXXXXX

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,— (i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

16. Similarly, relevant provisions of Section 14 of the SARFAESI Act are 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 assets and documents to the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor; declaring that:-*

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 assets1 [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 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. Similarly, Rule 8 of Rules, 2002 are reproduced as under:-

“8. Sale of immovable secured assets- (1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspaper one in vernacular language having sufficient circulation in that locality, by the authorised officer.

(2A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8.

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(3) xxxxxxxxxxxxxxxx

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed off.”

18. From combined reading of Section 13(4)(a), 14(1)(b) of the SARFAESI Act and Rule 8 (1) (2) and (4) and Appendix IV of Rules, 2002, it is clear that authorized officer of the Bank can take physical possession of the secured asset by his own and there is no requirement under the SARFAESI Act and Rules, 2002 made thereunder that presence of borrower/ mortgagor/ guarantor is required while taking possession of the mortgaged property and in absence of such presence, it cannot be presumed that possession was taken forcibly. Only requirement under the law is to give notice under Section 13(2) & 13(4) of the SARFAESI Act to the borrower, which

was admittedly given in the present case on 13/11/2019 and 30/11/2019. Same was also published in two newspapers dated 05/02/2019 and 05/04/2019. Notice was also issued to the borrower on 17/04/2019 before taking physical possession. Said facts are admitted by the learned Tribunals and referred in the impugned orders but finding given by learned Tribunals below are perverse and contrary to law.

19. Section 13 of the SARFAESI Act contemplates certain contingency, which may require active intervention by the secured creditor. In other words, secured creditor has the option as provided in Section 13 of the Act. However, exhaustion of options leads to remedy as provided under Section 14 of the Act, however, once secured creditor reaches CMM/ DM, then it is mandatorily on them to facilitate taking possession of the assets/ documents and forward it to the secured creditor.
20. One fact deserves consideration is that secured asset no.1 (factory) was closed since past many years and secured asset no.2 (house property) was under construction and no one was residing thereunder. Therefore, no resistance was offered and said fact is confirmed by the Panchnama duly drawn by the petitioner/Bank.
21. The Apex Court in the case of **Standard Chartered (supra)** has held as under:-

“36. Thus, there will be three methods for the secured creditor to take possession of the secured assets:

36.1. (i) The first method would be where the secured creditor gives the requisite notice under Rule 8(1) and where he does not meet with any resistance. In that case, the authorised officer will proceed to take steps as stipulated under Rule 8(2) onwards to take possession

and thereafter for sale of the secured assets to realise the amounts that are claimed by the secured creditor. ”

36.2. (ii) *The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under Rule 8(1) is given. In that case he will take recourse to the mechanism provided under Section 14 of the Act viz. Making application to the Magistrate. The Magistrate will scrutinize the application as provided in Section 14, and then if satisfied, appoint an officer subordinate to him as provided under Section 14(1-A) to take possession of the assets and documents. For that purpose the Magistrate may authorise the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.*

36.3. (iii) *The third situation will be one where the secured creditor approaches the Magistrate concerned directly under Section 14 of the Act. The Magistrate will thereafter scrutinise the application as provided in Section 14, and then if satisfied, authorise a subordinate officer to take possession of the assets and documents and forward them to the secured creditor as under clause 36.2(ii) above.*

36.4. *In any of the three situations above, after the possession is handed over to the secured creditor, the subsequent specified provisions of Rule 8 concerning the preservation, valuation and sale of the secured assets, and other subsequent rules from the Security Interest (Enforcement) Rules, 2002, shall apply.”*

22. Similarly, in the case of **Transcore (supra)** has held as under:-

“As stated above, the NPA Act provides for recovery of possession by non-adjudicatory process; therefore, to say that the rights of the borrower would be defeated without adjudication would be

erroneous. Rule 8, undoubtedly, refers to sale of immovable secured asset. However, Rule 8(4) indicates that where possession is taken by the authorised officer before issuance of sale certificate under Rule 9, the authorised officer shall take steps for preservation and protection of secured assets till they are sold or otherwise disposed of. Under Section 13(8), if the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the creditor before the date fixed for sale or transfer, the asset shall not be sold or transferred. The costs, charges and expenses referred to in Section 13(8) will include costs, charges and expenses which the authorised officer incurs for preserving and protecting the secured assets till they are sold or disposed of in terms of Rule 8(4). Thus, Rule 8 deals with the stage anterior to the issuance of sale certificate and delivery of possession under Rule 9. Till the time of issuance of sale certificate, the authorised officer is like a Court Receiver under Order XL Rule 1 CPC. The Court Receiver can take symbolic possession and in appropriate cases where the Court Receiver finds that a third-party interest is likely to be created overnight, he can take actual possession even prior to the decree. The authorised officer under Rule 8 has greater powers than even a Court Receiver as security interest in the property is already created in favour of the banks/FIs. That interest needs to be protected. Therefore, Rule 8 provides that till issuance of the sale certificate under Rule 9, the authorised officer shall take such steps as he deems fit to preserve the secured asset. It is well settled that third-party interests are created overnight and in very many cases those third parties take up the defence of being a bona fide purchaser for value without notice. It is these types of disputes which are sought to be

avoided by Rule 8 read with Rule 9 of the 2002 Rules. In the circumstances, the drawing of dichotomy between symbolic and actual possession does not find place in the scheme of the NPA Act read with the 2002 Rules.”

23. Even otherwise, Section 13(4) of the SARFAESI Act itself mandates the secured creditors to take possession of the secured assets of the borrower and requirement of Section 14 comes when possession of any secured asset is required to be taken with the help of authority as provided in Section 14 of the Act. Meaning thereby, if possession is already taken by the secured creditor from borrower then resorting to proceeding under Section 14 of the SARFAESI Act is not required.
24. The very object of the SARFAESI Act is to regulate securitisation (acquisition of financial assets by any asset reconstruction company) and reconstruction of financial asset as defined in Section 2(l) and enforcement of security interest as defined in Section 2(z)(f) of the SARFAESI Act.
25. If arguments advanced by counsel for the respondents is accepted then it will give premium to the borrower, who is neither paying the loan amount, nor permitting secured creditor to get the possession of the secured/mortgaged asset. This would render the object and provision of SARFAESI Act in-effective and secured creditor would run into cob web of procedural *inertia*. That was never the Aims and Objects of the SARFAESI Act.
26. Even the Division Bench of **Jammu & Kashmir** in the case of **Ablum Electrical (supra)** in para 46, 46, 51 and 71 has held that secured creditor can himself take possession of the secured asset under Section 13 of the SARFAESI Act. Therefore, it is clear that for taking possession of the secured asset, only recourse available to the

petitioner/ Bank is to file an application under Section 14 of the SARFAESI Act before CJM/ DM is contrary to the language of Section 14 of the SARFAESI Act itself. As discussed above Section 14 of the SARFAESI Act comes into play when “assistance” is required to the authorized officer (for the secured creditor) for taking possession of the secured asset.

27. One more fact deserves consideration is that despite account being declared Non-Performing Asset (NPA) and proceedings initiated under Section 13 of the SARFAESI Act in the year 2018, seven years have passed. During this period, respondents/ borrowers did not avail the remedy provided under Section 13(8) of the Act and has not settled the amount. Acceptance of arguments of respondents/borrowers would give premium to the borrower for the default committed by him.
28. In fact, petitioner/ Bank is also entitled to recover the outstanding amount from the respondents by executing the decree duly passed by the DRT vide judgment dated 18th July, 2022 (Annexure P/3). Therefore, in the facts and circumstances of the case, the learned Tribunal erred in passing the impugned judgments and caused illegality. Judgments passed by the learned DRT dated 18th July, 2022 passed in OA. No.223/2020 and DRAT dated 14/05/2025 passed in Regular Appeal No.15/2022 are hereby set aside.
29. Petitioner/ Bank may proceed in accordance with law from the stage where they are required to proceed as per law.
30. Petition stands allowed and *disposed of* accordingly.

(ANAND PATHAK)
JUDGE

(PUSHPENDRA YADAV)
JUDGE