

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

BEFORE

**HON'BLE SHRI JUSTICE ANAND PATHAK
&
HON'BLE SHRI JUSTICE HIRDESH**

WRIT PETITION NO. 1681 of 2025

CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LTD.

Vs.

THE DISTRICT MAGISTRATE, DISTRICT GWALIOR & ORS.

APPEARANCE:

Shri Ajay Sharma – Advocate for the petitioner.

*Shri Vivek Khedkar – Additional Advocate General for the
respondents/State.*

ORDER

(Delivered on 16th day of June, 2025)

Per: Justice Anand Pathak,

1. The present petition under Article 226 of the Constitution of India is preferred by the petitioner seeking following reliefs:

“i) That, this Hon’ble Court be pleased to issue directions to the respondent authorities to render necessary assistance with the aid and assistance of Police for restoration of secured assets in the hands of Authorised Officer of the petitioner;

ii) Authorities may be directed to take appropriate action against the borrowers for illegal act,

iii) Any other relief deemed fit and expedient in the facts of the case may also be granted to the petitioner.”

2. Precisely stated facts of the case, giving rise to the present petition are that petitioner is a financial institution as defined under the

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the Securitization Act”). Petitioner company extended the loan facility to the borrower in lieu of property mortgaged by the borrower. Thereafter, since borrower failed to pay the loan amount, therefore, petitioner issued a notice under Section 13(2) of the the Securitization Act but borrower did not chose to repay the loan amount. Therefore, petitioner moved an application under Section 14 of the the Securitization Act before the District Magistrate, Gwalior for taking possession of the property from the borrower. That application was allowed on 05-01-2023 directing the concerned Tahsildar to take possession of the property under mortgage.

3. Despite the order of District Magistrate, Gwalior, since possession of the property was not handed over to the petitioner, therefore, petitioner preferred writ petition No.17288/2023 and thereafter Contempt Petition 2252/2024 before this Court and ultimately possession was handed over to the petitioner on 30-07-2024. However, borrower and his family members again reentered into the possession of the mortgaged property on the pretext of removing their belongings from the mortgaged property and thereafter, not ready to vacate the mortgaged premises. Petitioner again approached the respondents authorities but they denied to help the petitioner on the pretext that the order of District Magistrate, Gwalior dated 05-01-2023 has already been executed and now they cannot re-execute the said order. Therefore, petitioner is before this Court.
4. It is the submission of learned counsel for the petitioner that respondents are not adhering to the provisions of the Securitization Act as they are under bounden duty to provide assistance to the

secured creditor to recover loan in case of default. The reason assigned by the respondents authorities for not executing the order of handing over of possession to the petitioner again, is unsustainable and amounts to mockery of rule of law. Petitioner is a financial institution having the money of public at large, therefore, as a secured creditor, respondents authorities are required to extend assistance to recover the loan from the borrower. Thus, prayed for suitable directions to the respondents authorities.

5. Learned counsel for the respondents/State opposed the submission and prayed that petitioner has been handed over the possession of the mortgaged property but it failed to maintain it and borrower again entered into the mortgaged property, therefore, once possession of the mortgaged property is handed over to the petitioner, provisions of the Securitization Act have been followed by the respondents. The plea of alternative remedy has also been raised. Thus, prayed for dismissal of this petition.
6. Heard learned counsel for the parties and perused the documents appended thereto.
7. This is a case where the petitioner which is a financial institution is seeking the relief of restoration of possession of secured creditor. Borrower reentered into the possession of the mortgaged property on the pretext of removing his belongings. Earlier the respondents authorities handed over possession of the mortgaged property to the petitioner but now they are not ready to dispossess the borrower from the mortgaged property ignoring the fact that borrower is under illegal possession of the mortgaged property.
8. The Aims and Objects of the Securitisation Act is worth consideration because this Act addresses the predicament of the creditors and

difficulties faced by them for realization of their debts/ dues from borrowers. For ready reference, Aims and Objects of the Act are reproduced as under:-

“The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on 21-06-2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance would enable banks and financial institutions to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for

recovery or reconstruction.”

9. Section 14 of the Securitization Act deals in respect of providing assistance to the secured creditor to recover its loan, which reads 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 [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.”

10. From perusal of the aforesaid provision, it is clear that there is no legal bar on re-executing the order of possession or providing re-assistance to the secured creditor as tried to be projected by the respondents through their return. As such there is no legal impediment to dispossess the borrower from the mortgaged property once he has illegally entered into it.
11. Illegality cannot be permitted to be perpetuated. Here, in the present

case, the borrower with their family members, reentered into the mortgaged property on the pretext of removing their belongings and thereafter if they are not vacating the mortgaged property, then the petitioner being secured creditor has remedy to again approach the respondents authorities to provide assistance and aid to take possession back from the borrower by dispossessing him from the property in question.

12. The tricks adopted by the borrower in entering into the mortgaged property after taking over possession by the petitioner, cannot be permitted to be rewarded. Once the borrower failed to repay the loan amount then the property which is under mortgage should be taken over by the petitioner as petitioner falls under the category of secured creditor. *In fact*, by the action of borrowers, while re-entering into the premises, legally owned by petitioner, made themselves vulnerable. Now, petitioner may initiate criminal proceedings also for criminal trespass and other related offences.
13. So far as the plea of respondents in relation to petitioner having other alternative remedy is concerned, since the Securitization Act itself provides mechanism for recovery of loan amount, therefore, in the attending facts and circumstances of the case, no effective legal remedy is available to the petitioner.
14. The High Court of Bombay in **W.P. No.6805/2023 Kotak Mahindra Bank Vs. State of Maharashtra & Ors.**, has decided in similar matter and vide order dated 30/06/2023, directed the State Authority to restore the possession to the secured creditor.

Relevant para 13 of the judgment is reproduced as under:-

13. Considering the law laid down by the Division Bench of this court and referred to by us above, we are unable to agree with the submission made by the learned AGP that

the District Magistrate does not have the power to re-execute his own order or that he has become functus officio. If we were to take the view as propounded by the learned AGP it would lead to a complete chaos. We have no hesitation in stating that the borrowers have devised a novel, unimaginable and unsustainable modus operandi to defeat the ends of justice. It is not only the matter of physical altercation by assaulting the security guard appointed by the Petitioner Bank and breaking open the lock and seal affixed on the secured asset which is wholly illegal, but the same would also tantamount to an assault on the law and the statute itself. If, after orders are passed under section 14 for dispossession of the borrower, and the same are inter-meddled with by any person including the borrower, the same would result in a mockery of the rule of law. In such a situation the Court cannot and should not remain a mute spectator and allow the illegality to continue. The tendency of trying to overreach the law as well as the orders passed by Judicial Authorities has to be nipped in the bud right away, lest the rule of law shall suffer.”

15. In the case of **HDB Financial Services Limited Vs. The State of Maharashtra & Ors. (W.P. 1080/2024)**, The High Court of Bombay directed the authorities to re-execute the order. In many similar cases where the possession of the secured assets are wrongfully taken from the secured creditor, authorities are directed by the Hon'ble High Court to restore the possession and take appropriate action against the persons who committed this wrong.
16. The Full Bench of this Court in **W.P. No.11500/2020** also observed that “Therefore,, it is clear that the action taken under section 14 of the Act by the District Magistrate or Chief Metropolitan Magistrate is not adjudicatory but merely ministerial, consequent to the action taken by the secured creditor requiring the District Magistrate or Chief Metropolitan magistrate to assist the secure creditor to take possession of the secured asset and their action would in effect be

deemed to be an action for and on behalf of the secured creditors.”

17. If one can see powers of the revenue Authorities/ Executive Magistrate while keeping Section 14 of the SARFAESI Act in juxtaposition to Section 248 of the MPLRC then it appears that authorities deserve to execute the work again in case of such event as referred above.
18. In the conspectus of facts and circumstances of the case, this Court is of the considered view that the respondent authorities are required to provide assistance and aid to the petitioner in dispossessing the borrower from the mortgaged property (in question). Accordingly, the writ petition preferred by the petitioner is allowed. Respondents are directed to provide necessary assistance to the petitioner to dispossess the borrower from the mortgaged property and hand over the possession of the property in question to the petitioner in accordance with law.
19. Writ Petition stands **allowed and disposed of in above terms.**

VC

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE