IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.(L) 27824 OF 2026

Edelweiss Asset Reconstruction Company Limited
And Another …Petitioners
Versus
State of Maharashtra and Others ..Respondents

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Mr. Nikhil Rajani i/b. M/s V Deshpande & Co. for the Petitioners.
Ms. Anupama Pawar, AGP for Respondent Nos. 3 and 4 -State.

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VISHAL SUBHASH PAREKAR

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Date: 2026.09.10 12:40:10 +0530

CORAM : MANISH PITALE AND SHREERAM V. SHIRSAT, JJ.

DATE : 10th SEPTEMBER 2026

ORDER: *(Per Shreeram V. Shirsat, J)*

1. The Petitioner No.1 company is an Asset Reconstruction Company registered with the Reserve Bank of India as per Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"). The Petitioner No 1, has inherited the secured assets in this case from the original lender of the credit facility.

2. The Petitioner is aggrieved by the inaction on the part of the Respondent No. 2 and Respondent No. 4 in executing the order dated 02.05.2025 passed by the Chief Judicial Magistrate, Esplanade, Mumbai

and handing over the physical possession of the secured asset to the Petitioners.

3. The learned counsel for the Petitioners submitted that the Borrowers/ Co- Borrowers availed a credit facility in the form of a loan against property from the original lenders. The borrowers committed default in the payment, pursuant to which, the account was declared as Non-Performing Asset (NPA) on 31.08.2018. The learned counsel for the Petitioners further submitted that subsequently, vide assignment agreement dated 24.05.2021, the original lenders assigned the loan account to the Petitioner company. The Petitioners, having taken over the role of secured creditor, sent a demand notice dated 16.09.2022 under section 13(2) of the SARFAESI Act, 2002. The Petitioners in furtherance of the said notice proceeded to take symbolic possession under Section 13(4) of the SARFAESI Act on 25.04.2024. Upon non-payment as per the terms of the demand notice, the Petitioners were constrained to file a Securitisation Application, being Case No. 1293/SA/2024 under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate at Esplanade, Mumbai.

4. The learned counsel for the Petitioners submitted that the Chief Judicial Magistrate at Esplanade, Mumbai was pleased to pass an order

dated 02.05.2025 and appointed Advocate Commissioner, i.e Respondent No. 2, with a direction to take physical possession of the secured asset with the assistance of the police Pursuant to the said order, the Advocate Commissioner, Mumbai fixed the date of taking possession as 04.11.2025. However, on the said date the Borrowers adamantly refused to hand over the possession of the entire secured asset and therefore only the possession of the Ground Floor of the secured asset being Room No 14/107 was taken and the possession of first floor of the secured asset was retained by the borrower. The Respondent No 2 sealed the property by putting a lock on the property on the ground floor.

5. The learned counsel for the Petitioners further submitted that Petitioner had put the secured asset for sale by way of public auction which was once again stalled by the borrowers by filing a fresh application under the provisions of Insolvency and Bankruptcy Code, 2016. It was also submitted that the Petitioner cancelled the public auction since there was a moratorium operating in favor of the Borrower. The learned counsel for the Petitioners further submitted that after the moratorium was lifted, the Petitioners put up the secured asset for sale by public auction and after the bid was received, the secured asset was sold to an auction purchaser. The entire sale proceeds were deposited by the auction purchaser with the Petitioners.

6. The Ld. Counsel further submitted that the Petitioners had deployed its officers for the inspection of the secured asset prior to the registration of the sale certificate, when it was noticed that the seal affixed by Advocate Commissioner was removed, and the Borrowers/Co – Borrowers had trespassed into the secured asset and were unlawfully occupying it.

7. The learned counsel for the Petitioners further submitted that the Petitioners lodged FIR with Respondent No. 4 being FIR No. 0527 of 2026 against the Borrowers/ Co-Borrowers for the trespass. However, till date no action has been taken and the Borrowers/ Co-Borrowers continue to unlawfully occupy the secured asset. It was further submitted by the learned counsel for the Petitioners that there were persistent follow ups and personal visits to the office of the Respondent No 2, by the officials of the Petitioners, however no action was initiated by Respondent No. 2 to fix a date for taking re-possession of the secured asset. Even constant follow-ups with Respondent No. 4 for registration of FIR yielded no results.

8. We are of the opinion that the unreasonable and unexplained delay the part of Respondent no. 2 in taking physical possession has completely defeated the provisions of the SARFAESI Act. The Respondent No 4 has also failed to take effective steps pursuant to registration of FIR.

9. We, therefore direct Respondent No. 2, with the assistance of Respondent No.4, to take possession of the secured assets on **17/09/2026**. The Respondent No. 4 is directed to provide adequate police personnel as may be required to take physical possession of the secured asset, which shall include lady constables. The Respondent No. 4 shall use adequate, reasonable, proportionate and necessary force for taking physical possession of the secured asset from the Borrowers/ Co-Borrowers or whoever is unlawfully occupying it, to be handed over to the Petitioners (secured creditor). If required, the police shall also video graph the entire process of taking possession and preserve the same for further reference.

10. We also direct the Borrowers/ Co-Borrowers and all others who are illegally and unlawfully occupying the secured asset to immediately vacate with all their belongings and not to restrict and obstruct the Respondent No. 2 from taking lawful possession of the secured asset and also warn them that if they try to create any obstruction or do not comply with the orders of the Court, they shall be dealt with very sternly, including hauling them up for contempt of court.

11. It is made clear that if the directions issued hereinabove, are not complied with, Respondent No 4 shall personally remain present in this Court on the next date of hearing and file an affidavit as to why the

physical possession could not be taken. The Respondent No 4 shall also file an affidavit to indicate the steps taken after registration of FIR.

12. Copy of this order shall be handed over to Borrowers/ Co-Borrowers and any other occupiers of the said secured asset by the office of Respondent No. 4.

13. List under the caption of compliance on 23/09/2026.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**

Vishal