HC-KAR
NC: 2026:KHC:64732
WP No. 15415 of 2025
CNR: KAHC010254402025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE B.PRAMOD

WRIT PETITION NO. 15415 OF 2025 (GM-RES)

BETWEEN:

M/S MBM CONSTRUCTIONS
A PARTNERSHIP FIRM
HAVING ITS REGISTERED OFFICE AT
NO.86, 3RD MAIN, 4TH CROSS,
DOLLARS LAYOUT, J.P.NAGAR,
4TH PHASE, BANGALORE-560 078.

REPRESENTED BY MANAGING PARTNER
ARUN KUMAR.M.

...PETITIONER

(BY SRI. B.R. VISWANATH, ADVOCATE)

Digitally signed by SHARADAVANI B
Location: HIGH COURT OF KARNATAKA

AND:

CHIEF MANAGER
BANK OF BARODA
SOUTH END ROAD BRANCH,
BASAVANAGUDI,
BANGALORE-560 004.

...RESPONDENT

(BY SRI. VIGNESH SHETTY, ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO-DIRECT THE RESPONDENT GO GIVE CREDIT THE SUM OF

RS.1,79,23,672.82 TO THE PERSONAL SB ACOUNT NO. 73980100000782, BANK OF BOARDA, SOUTH END ROAD BRANCH, BANGALORE, AS PER LETTER DTD 30.12.2024 AND THE SAME IS CLOSED AS ANNEXURE –E AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.11.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE B.PRAMOD

CAV JUDGMENT

The petitioner in the present writ petition has sought for issuance of a writ of mandamus directing the respondent-Bank to credit a sum of Rs.1,79,23,672.80/- (Rupees One Crore Seventy-Nine Lakhs Twenty-Three Thousand Six Hundred Seventy-Two and Eighty Paise only) to the personal Savings Bank Account No.73980100000782 maintained with Bank of Baroda, South End Road Branch, Bengaluru, in terms of the representation dated 30.12.2024, produced at Annexure-E.

2. The petitioner has also sought for a direction to the respondent-Bank to execute a deed of discharge and return the original title deeds pertaining to the house property bearing the north-eastern portion of Site No.86, PID No.117-W0189-19, situated at 3rd Main, 4th Cross, Dollars Layout, J.P. Nagar 4th Phase, within the limits of BBMP, Ward No.177, Bengaluru, measuring East to West 48.6 feet and North to South 58 feet, together with the existing residential building ("Schedule Property" for short).

3. Heard Sri B.R Vishwanath learned counsel appearing for Petitioner, and Sri Vignesh Shetty, learned counsel for the Respondent-Bank.

4. The factual matrix of the present case is that the petitioner, M/s. MBM Constructions, is a partnership firm represented by its Managing Partner, Sri Arun Kumar M. It is the case of the petitioner-firm that it had availed an overdraft facility from the respondent-Bank, which was

renewed from time to time since the year 2016. The petitioner-firm had offered certain immovable properties as collateral security for the said credit facility. Sri Arun Kumar M., in his capacity as the Managing Partner of the petitioner-firm, had offered the schedule property as security for the loan facility.

5. It is further contended that the petitioner had executed a mortgage deed dated 27.07.2017, registered as Document No.JAY-1-03749/2017-18, Book-I, stored in CD No.JAYD302, in the office of the Senior Sub-Registrar, Jayanagar, Bengaluru. Subsequently, a memorandum relating to enhancement of the credit facility was executed on 20.03.2018 and registered as Document No.JAY-1-11821/2017-18, Book-I, stored in CD No.JAYD332, in the office of the Senior Sub-Registrar, Jayanagar, Bengaluru. Further memoranda relating to enhancement of the credit facility were executed on 12.02.2019 and 06.06.2020.

Copies of the aforesaid documents are produced at Annexures-B1 to B4, respectively.

6. It is the further case of the petitioner that the respondent-Bank had filed a statement of account dated 01.10.2023 pertaining to the overdraft facility before the Debts Recovery Tribunal-II, Bengaluru, in S.A.No.91/2024, as Annexure-R7, reflecting an outstanding balance of Rs.2,93,89,685.90/- (Rupees Two Crores Ninety Three Lakhs Eighty Nine Thousand Six Hundred Eighty Five and Ninety Paise) only. It is contended that the respondent-Bank demanded payment of the said amount and threatened to initiate coercive measures in the event of non-payment. In order to avoid such measures and to secure discharge of the mortgage over the schedule property, the petitioner paid the amount demanded by the Bank.

7. It is further contended that, as per the statement of account dated 30.09.2023, the actual outstanding

liability of the petitioner-firm was only Rs.1,14,66,013.08/- (Rupees One Crore Fourteen Lakhs Sixty Six Thousand Thirteen and Eight Paise) only. According to the petitioner, the respondent-Bank collected Rs.2,93,89,685.90/- (Rupees Two Crores Eighty Ninety Three Lakhs Eighty Five Thousand Six Hundred Eighty Five and Ninety Paise) only, resulting in an alleged excess payment of Rs.1,79,23,672.82/- (Rupees One Crore Seventy Nine Lakhs Twenty Three Thousand Six Hundred Seventy Two and Eighty Two Paise) only, being the difference between the aforesaid amounts. The petitioner, however, has sought refund of Rs.1,79,23,672.80/- in the present writ petition. It is further contended that the excess amount was reflected as a credit balance in the overdraft account of M/s. MBM Constructions. Notwithstanding the payment of the entire outstanding dues and the existence of the alleged excess credit balance, the respondent-Bank closed the overdraft account

by showing a nil balance, without refunding the amount or discharging the security.

8. It is further stated that certain immovable properties, including the schedule property, had also been offered as security in respect of the loan facility availed by M/s. MBM Constructions. According to the petitioner, the entire outstanding liability pertaining to the said loan account, amounting to Rs.2,08,59,000/- (Rupees Two Crores Eight Lakhs and Fifty Nine Thousand) only was discharged, whereupon the respondent-Bank issued a loan closure letter, produced at Annexure-D. It is contended that there was an understanding that upon closure of the said loan account, the securities furnished in respect thereof would be discharged. However, despite closure of the loan account, the respondent-Bank failed to discharge the security and release the original title deeds.

9. It is further contended that the petitioner submitted a representation dated 30.10.2024 requesting

the respondent-Bank to credit the alleged excess amount to the personal savings bank account of the petitioner. However, despite repeated requests, the respondent-Bank has neither refunded the amount nor taken steps to discharge the mortgage and return the original title deeds. Hence, the present writ petition.

10. Learned counsel for the petitioner contends that the respondent-Bank has failed to give credit for the excess amount paid by the petitioner and has not adhered to the assurance given that the loan account pertaining to the petitioner-firm would be regularised upon payment of the outstanding dues. It is submitted that the respondent-Bank had assured the petitioner that, upon repayment of the entire outstanding amount, the mortgage created over the schedule property would be discharged and the original title deeds would be returned. Acting upon the said assurance, the petitioner proceeded to sell the schedule property and utilized the sale proceeds towards repayment of the outstanding dues to the respondent-

Bank. However, notwithstanding the repayment of the amount demanded, the respondent-Bank has failed to discharge the mortgage and return the original title deeds pertaining to the schedule property.

11. It is further contended that the respondent-Bank had permitted the petitioner to sell the schedule property for a total sale consideration of Rs.3,30,00,000/- (Rupees Three Crores and Thirty Lakhs only), on the assurance that the mortgage would be discharged upon payment of the said amount to the Bank. Relying upon such assurance, the petitioner sold the schedule property in favour of a third party under a registered sale deed dated 09.12.2024 and paid the entire sale consideration of Rs.3,30,00,000/- (Rupees Three Crores and Thirty Lakhs only) to the respondent-Bank. It is therefore contended that, having received the entire amount, the respondent-Bank cannot refuse to execute the deed of discharge and return the original title deeds pertaining to the schedule property.

12. Per contra, learned counsel appearing for the respondent-Bank submits that there were two distinct loan transactions secured by the mortgage of the property in question. It is contended that the first loan was secured by a memorandum of deposit of title deeds, produced at Annexure-R1, to the extent of Rs.1,50,00,000/-. Subsequently, another memorandum of deposit of title deeds dated 12.12.2019 was executed in respect of the very same property to secure the credit facility availed by M/s. Power Systems from the erstwhile Vijaya Bank, to the extent of Rs.10,00,00,000/- (Rupees Ten Crores) only.

13. Learned counsel for the respondent-Bank submits that, although the outstanding liability pertaining to the first loan account has been discharged, the dues in respect of the second loan account remain unpaid. It is specifically contended that the respondent-Bank had neither granted permission nor issued any no-objection certificate authorizing the petitioner to sell the schedule property.

The alleged assurance that the mortgage would be discharged upon sale of the property and payment of the sale consideration is specifically denied. It is submitted that the petitioner's assumption regarding such assurance is contrary to the material available on record. Consequently, the respondent-Bank is entitled to retain the mortgage security until the outstanding liability secured under the second mortgage is discharged.

14. Learned counsel for the respondent-Bank further submits that Sri Arun Kumar had earlier approached this Court in W.P.No.12521/2026 and filed an affidavit undertaking to comply with the payment schedule stipulated by the Debts Recovery Tribunal under its order dated 07.04.2026, without seeking any extension of time. It was further undertaken that, in the event of failure to comply with the said payment schedule, he would voluntarily surrender possession of the schedule property.

15. Learned counsel further submits that, in the earlier writ petition filed by the petitioner in W.P.No.12521/2026, the petitioner had furnished an affidavit undertaking to surrender possession of the schedule property in the event of failure to comply with the payment schedule stipulated by the Debts Recovery Tribunal and, pursuant to the said undertaking, the respondent-Bank had handed over physical possession of the schedule property to the petitioner, Sri. Arun Kumar M, Managing Partner.

16. Learned counsel for the respondent-Bank further draws the attention of this Court to the affidavit filed by Sri. Arun Kumar in the aforesaid writ petition, wherein he categorically undertook to comply with the payment schedule stipulated under the order dated 07.04.2026:

> *"2…In view of the fact that I and my family have no alternative house to reside, by the virtue of the present affidavit, I hereby reiterate my absolute undertaking that I will comply with the payment timeline directed under the order dated 07.04.2026 without seeking any extension.*

3. I state that in view of my categorical undertaking to comply with the order dated 07.04.2026, the schedule property may be directed to be redelivered in my favor from the Respondent. In the unlikely event that I do not comply with the payment timeline, I shall voluntarily surrender the possession of the schedule property in favor of the Respondent Bank without causing any difficulty. I also declare that I shall not come in the way of the Respondent to seek repossession of the schedule property through coercive means, in the event I don't comply with the order dated 07.04.2026…"

16. It is also contended that, in respect of the second loan transaction, the respondent-Bank had initiated proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'), and had taken possession of the secured asset by invoking Section 14 of the said Act. The said proceedings were challenged before the Debts Recovery Tribunal. It is submitted that, in W.P.No.12521/2026, Sri. Arun Kumar had represented that the schedule property was the only residential property available to his family and had undertaken to comply with the payment schedule fixed by

the Debts Recovery Tribunal, without seeking any extension of time.

17. Learned counsel further submits that the undertaking furnished before this Court has not been complied with. Consequently, the respondent-Bank has initiated contempt proceedings in C.C.C.No.594/2026, wherein a bailable warrant is stated to have been issued against the accused therein. It is therefore contended that, in view of the subsisting liability under the second loan transaction and the earlier proceedings, the petitioner is not entitled to the reliefs sought in the present writ petition.

18. In reply, learned counsel for the petitioner submits that the schedule property has already been sold to a third party and, consequently, the respondent-Bank is under an obligation to execute the deed of discharge and release the original title deeds. In support of the aforesaid contention, learned counsel places reliance upon a decision stated to have been rendered by the Apex Court in a

matter involving Central Bank of India and an order passed by the High Court of Bombay, Nagpur Bench, in W.P.No.32/2022, to contend that the petitioner is entitled to the reliefs sought in the present writ petition.

19. In view of the rival submissions and the material placed on record, the following point arises for consideration:

> *"Whether the petitioner is entitled to a writ of mandamus directing the respondent-Bank to refund the alleged excess amount and execute a deed of discharge and return the original title deeds pertaining to the schedule property, notwithstanding the admitted subsistence of the second mortgage and the outstanding liability secured there under?"*

20. Having heard the learned counsel appearing for the parties and upon perusal of the material placed on record, it is evident that the principal controversy revolves around the petitioner's entitlement to refund of the alleged excess amount and the release of the mortgage security in respect of the schedule property.

21. It is not seriously in dispute that the petitioner-firm had availed an overdraft facility from the respondent-

Bank and that the schedule property had been offered as collateral security. The petitioner contends that the entire outstanding liability pertaining to the said facility has been discharged and that an excess amount remains payable by the Bank.

22. On examination of the material placed on record, it is evident that there are two distinct loan transactions secured by separate mortgages created over the very same schedule property. The first transaction relates to the credit facility availed by the petitioner-firm, M/s. MBM Constructions, from the respondent-Bank, for which the schedule property was offered as collateral security. The respondent-Bank has referred to a credit facility of Rs.1,50,00,000/- secured by the memorandum of deposit of title deeds produced at Annexure-R1. The petitioner contends that the entire outstanding liability pertaining to the said transaction has been discharged.

23. The second transaction relates to the credit facility of Rs.10,00,00,000/- (Rupees Ten Crores) only availed by

M/s. Power Systems. In respect of the said facility, a separate memorandum of deposit of title deeds dated 12.12.2019 was executed, whereby the very same schedule property was offered as mortgage security. It is not in dispute that the outstanding liability pertaining to this second loan transaction has not yet been discharged.

24. Thus, although the two loan transactions are distinct and relate to separate credit facilities, the schedule property constitutes security for both transactions. The discharge of the liability pertaining to the first loan transaction does not, by itself, result in extinguishment of the mortgage created in respect of the second loan transaction, particularly when the liability secured there under admittedly remains outstanding.

25. Insofar as the contention of the petitioner that the respondent-Bank had permitted the sale of the schedule property is concerned, it is relevant to note that the letter dated 26.09.2024 issued by the respondent-

Bank, produced at Annexure-H, does not disclose any permission, consent or no-objection granted by the Bank for sale of the schedule property. The petitioner has not placed any material on record to establish that the respondent-Bank had assured discharge of the mortgage upon sale of the property for a consideration of Rs.3,30,00,000/- (Rupees Three Crores and Thirty Lakhs) only. Merely because the petitioner claims to have sold the schedule property under a registered sale deed dated 09.12.2024 and paid the entire sale consideration to the respondent-Bank, it cannot be presumed that the Bank had consented to the sale or agreed to discharge the subsisting mortgage. The contention that the sale was effected pursuant to an assurance given by the respondent-Bank is therefore contrary to the material available on record and cannot be accepted. The execution of the sale deed and the alleged payment of the sale consideration, by themselves, do not extinguish the security interest created under the second mortgage,

particularly when the liability secured thereunder admittedly remains outstanding. Accordingly, the petitioner cannot claim execution of a deed of discharge and return of the original title deeds on the basis of such alleged assurance.

26. The material question is not merely whether the first loan account has been closed, but whether the mortgage created over the schedule property continues to secure any other subsisting liability. The discharge of one loan account, by itself, does not extinguish the mortgage where the same property has also been offered as security for another loan transaction and the liability secured thereby remains undischarged.

27. The right of a mortgagor to seek redemption and return of the original title deeds is governed by the terms of the mortgage and the applicable provisions of law. Where the mortgage secures more than one liability, the entitlement to discharge of the security must necessarily

be examined with reference to the mortgage documents and the outstanding liabilities secured thereunder.

28. In the present case, the respondent-Bank has relied upon the memorandum of deposit of title deeds dated 12.12.2019, under which the schedule property was also offered as security for the second loan transaction. The existence of the said mortgage and the non-discharge of the liability secured thereunder are not in dispute. In such circumstances, the petitioner cannot claim release of the mortgage security merely on the ground that the liability pertaining to the first loan account has been cleared.

29. The petitioner seeks discharge of the mortgage and return of the original title deeds principally on the ground that the liability pertaining to the first loan transaction has been cleared. However, the petitioner has not disputed the existence of the second mortgage or the outstanding liability secured thereunder. Consequently,

the respondent-Bank cannot be directed to release the schedule property from the subsisting mortgage merely because the first loan account has been closed.

30. It is therefore clear that the petitioner has failed to establish any enforceable right to seek discharge of the entire mortgage security and return of the original title deeds when the very same property continues to remain mortgaged in respect of the second loan transaction. Accordingly, no corresponding legal obligation arises on the part of the respondent-Bank warranting issuance of a writ of mandamus.

31. It is also relevant to note that the respondent-Bank has already initiated proceedings under Section 13 of the SARFAESI Act for recovery of the outstanding dues pertaining to the second loan transaction and has taken recourse to Section 14 of the said Act for obtaining possession of the secured asset. The measures initiated by the respondent-Bank have also been the subject matter of

proceedings before the Debts Recovery Tribunal. Thus, the respondent-Bank has taken recourse to the statutory remedies available under the SARFAESI Act for enforcement of its security interest. In such circumstances, the petitioner cannot seek release of the secured property by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, without establishing discharge of the subsisting secured liability.

32. It is further pertinent to note that Sri. Arun Kumar had earlier approached this Court in W.P.No.12521/2026 and furnished an affidavit undertaking to comply with the payment schedule fixed by the Debts Recovery Tribunal, without seeking any extension of time, and to voluntarily surrender possession of the schedule property in the event of default. However, the said undertaking has not been complied with, according to the respondent-Bank, resulting in initiation of contempt

proceedings in C.C.C.No.594/2026, wherein a bailable warrant is stated to have been issued. The conduct of Sri. Arun Kumar in furnishing such an undertaking before this Court and thereafter failing to honour the same is a relevant consideration while examining his entitlement to discretionary relief under Article 226 of the Constitution of India. Without expressing any opinion on the merits of the pending contempt proceedings, this Court is of the considered view that such conduct, coupled with the admitted subsistence of the second mortgage and the outstanding liability thereunder, disentitles the petitioner to the discretionary reliefs sought in the present writ petition.

33. Having regard to the earlier proceedings in W.P.No.12521/2026, wherein Sri Arun Kumar M. had personally filed an affidavit undertaking to comply with the payment schedule and voluntarily surrender possession of the schedule property in the event of default, the

petitioner, having taken such a categorical stand before this Court, cannot now approbate and reprobate by taking a contrary stand in the present proceedings and seeking execution of a deed of discharge and return of the original title deeds. More particularly, when the second mortgage continues to subsist and the liability secured thereunder remains outstanding, the relief sought by the petitioner is untenable.

34. Insofar as the claim for refund is concerned, the petitioner contends that the amount of Rs.1,79,23,672.82/- represents the difference between the amount allegedly collected by the respondent-Bank and the actual outstanding liability. The entitlement to refund of the alleged excess payment is disputed, and the respondent-Bank relies upon the existence of another outstanding loan liability secured by the schedule property.

35. The determination of the amount actually due, the adjustment of payments made by the petitioner, the correctness of the entries in the statement of account and the entitlement to refund of the alleged excess amount would require examination and reconciliation of the relevant accounts and supporting documents. Such disputed questions cannot appropriately be adjudicated in the present proceedings merely on the basis of the rival assertions made by the parties.

36. It is well settled that the extraordinary jurisdiction under Article 226 of the Constitution of India is discretionary in nature. Where the controversy involves disputed questions relating to adjustment of loan accounts and enforcement of security interest, and where the statute provides a mechanism for adjudication of grievances arising out of measures taken by a secured creditor, this Court would ordinarily decline to undertake such adjudication in exercise of writ jurisdiction.

37. In the present case, the respondent-Bank has already invoked the provisions of the SARFAESI Act.

38. Insofar as the judgments relied upon by learned counsel for the petitioner are concerned, the same are distinguishable on facts and have no application to the peculiar facts and circumstances of the present case. In the present case, admittedly, there are two distinct mortgage transactions in respect of the very same schedule property, securing two separate loan liabilities. Though the liability pertaining to the first loan transaction is stated to have been discharged, the second mortgage continues to subsist and the outstanding liability secured thereunder remains unpaid. Further, the letter dated 26.09.2024 issued by the respondent-Bank, produced at Annexure-H, does not disclose any consent or permission for sale of the schedule property. Therefore, the petitioner cannot derive any benefit from the judgments relied upon to contend that discharge of the first loan account

automatically entitles him to release of the property, notwithstanding the subsisting second mortgage. Accordingly, the said judgments are distinguishable on facts and do not advance the case of the petitioner.

39. In the light of the aforesaid admitted facts, particularly the subsistence of the second mortgage, the non-discharge of the outstanding liability secured thereunder and the absence of any permission granted by the respondent-Bank for sale of the schedule property under its letter dated 26.09.2024, this Court is of the considered view that the petitioner has failed to establish any enforceable legal right to seek discharge of the mortgage and return of the original title deeds. Consequently, no corresponding legal obligation can be fastened upon the respondent-Bank warranting issuance of a writ of mandamus.

40. Similarly, in the absence of an undisputed and crystallised entitlement to refund of the amount claimed,

namely, Rs.1,79,23,672.80/-, no direction for payment of the said amount can be issued in the present writ petition. The petitioner has failed to establish entitlement to the said relief in the present proceedings.

41. In view of the foregoing discussion, particularly the admitted subsistence of the second mortgage, the non-discharge of the outstanding liability secured thereunder, the absence of any permission granted by the respondent-Bank for sale of the schedule property, the statutory proceedings already initiated by the Bank under the SARFAESI Act and the conduct of Sri. Arun Kumar in failing to honour the undertaking furnished before this Court, this Court is of the considered opinion that the petitioner has neither established any enforceable legal right warranting issuance of a writ of mandamus nor made out any equitable ground for exercise of the discretionary jurisdiction under Article 226 of the Constitution of India. Accordingly, the petitioner is not entitled to the reliefs

sought in the present writ petition. The point framed for consideration is answered in the ***negative***.

42. For the foregoing reasons, this Court finds no merit in the writ petition, which is accordingly liable to be dismissed.

43. It is made clear that the findings and observations recorded in the present judgment are confined to the adjudication of the issues arising for consideration in the present writ petition and shall not have any bearing on, or prejudice the rights and contentions of the parties in, any other proceedings pending before any Court, Tribunal or competent authority. Such proceedings shall be considered and decided independently, on their own merits and in accordance with law, uninfluenced by the observations made herein.

ORDER

i) The writ petition is ***dismissed***.

ii) No order as to costs.

Sd/-
(B.PRAMOD)
JUDGE