

03.08.2023

This case is called and orders pronounced in the Open Court as under

ORDERS

This petition is filed under Section 14 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 by the petitioner against the respondents seeking an order for taking possession of the Eastern Portion of the property bearing No.52, Present No.66/1, Dr.Rajkumar, BBMP Ward No.106, BBMP 2nd Division, situated at Magadi Main Road, Agrahara Dasarahalli Village, Bengaluru, PID No.21-77-66/1, including all rights, privileges and appurtenances thereto constructed on the site measuring East to West 16-04 ½ feet and North to South 90 feet and bounded on East by Property of Narayan Shetty, West by Western Portion of the property belongs to Balaraju bearing No.5, Present No.52-56, North by Road and South by Magadi Main Road (hereinafter called as the petition schedule property) by exercising the powers conferred under Section 14 of the Act; to give suitable directions or orders to the Police Authority/Station House Officer to assist the petitioner/Court Commissioner in evicting the occupants of the petition schedule property; the petitioner/Court Commissioner may also be empowered to break

open the locks of the petition schedule property if situation warrants so and deliver the vacant possession of the petition schedule property to the petitioner.

2. According to the petitioner, the respondents have availed Mortgage loan of Rs.65,00,000/- from the petitioner by offering the mortgage of the petition schedule property. The respondents have created mortgage by way of deposit of title deeds. They have executed the loan documents in favour of the petitioner. After availing the loan facility, the respondents have failed to repay the loan amount and they became defaulters. On 12.08.2022, their loan account classified as NPA. Hence, on 02.02.2023, the petitioner issued Demand Notice under Section 13(2) of the Act to the respondents granting 60 days time to discharge the dues to the petitioner. As on 31.01.2023, the respondents were due to pay Rs.69,02,963/- to the petitioner. The said notices were duly served on the respondents. But, they have not complied with the demand. Therefore, the petitioner took symbolic possession of the petition schedule property and issued Possession Notice on 05.04.2023 under Section 13(4) of the Act. The Possession notice was also published in the New Indian Express and Kannada Prabha newspapers dated 07.04.2023. When the petitioner tried to take physical possession of the petition schedule property, the petitioner sensed law and order problem. Hence, the present petition is filed.

3. The petition is supporting with the affidavit of the Authorized Officer of the petitioner. The learned Counsel for the petitioner filed Original documents relied by the petitioner.

4. I have carefully read the petition averments, its annexed affidavit and the documents placed before this Court in support of the case of the petitioner .

5. On careful perusal of the available materials, this Court is satisfied that the petitioner is a secured creditor, the respondents are the secured obliger and that the petition schedule property is a secured asset for the debts borrowed within the meaning of the provisions of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. I am also satisfied that the petitioner has issued 60 days Demand Notice as per Section 13(2) of the Act and the respondents have not paid the said due loan amount to the petitioner in spite of due service of the said demand notice. Therefore, the petitioner being the secured creditor is entitled to enforce security interest against the respondents for recovery of the loan dues. Under these circumstances, the petitioner is entitled for the relief under Section 14 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. Accordingly, a Court Commissioner is to be appointed to execute the order of the Court. Hence, I proceed to pass the following:-

ORDERS

The petition filed by the petitioner under Section 14 of Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 is hereby allowed as prayed.

The petitioner is entitled to take possession of the petition schedule property towards satisfaction of its due from the respondents as prayed in the petition.

Since appointment of Sheristedar or any officers of this Court as Court Commissioner is leading to hampering of public duty of this Court, it is just and necessary to appoint Sri.Siddaraju G., Advocate, Enrollment No.KAR/269/2022 as Court Commissioner to take possession of the petition schedule property.

The Court Commissioner is hereby directed to take possession of the petition schedule property towards the satisfaction of the due of the petitioner from the respondents with the assistance of jurisdictional police, to break open the lock of the petition schedule property if situation warrants, by conducting inventory and Panchanama and to report the

same as early as possible as per the memo of instruction.

Further, petitioner is directed to forthwith furnish memo of instructions to the Court Commissioner.

It is hereby further ordered that direct the jurisdictional Station House Officer to give necessary assistance to the petitioner while taking possession of the petition schedule property from the respondents.

The petitioner shall bear the legal expenses if any incurred in this regard.

Commissioner fee is fixed at Rs.5,000/-, which will be forthwith deposited by the petitioner.

Office is directed to issue Commissioner Warrant and return the original documents to the authorized person of petitioner or to its counsel on due verification.

(Typed by the Stenographer in the Court computer on my direct dictation, printout taken, corrected, signed and then pronounced by me in the open court on 03.08.2023)

(VEDAMOORTHY B.S.)
II Addl. Chief Metropolitan Magistrate,
Bengaluru.