

Filed On	28	02	2023
Registered On	28	02	2023
Decided On	03	03	2023
Duration	Y	M	D

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,

KATHOR, TA : KAMREJ, DIST : SURAT

CRMA No. 370 of 2023

Exhibit- 4

Applicant : Muthoot Homefin (India) LTD.

Mr.Amarbhai Nanabhai Patil Corporate Legal Executive
POA Holder. Age: 39.

Corporate Office: 1201 & 1202, 12th Floor, A Wing, Lotus
Corporate Park, Off Western Express Highway,Goregaon
East, Mumbai- 400063 Having Branch office at :-shop no.
105, shree Om Point Near Jalarm Bhojnalay, opp.Bank Of
Baroda Kadodara Palsana surat.

Versus

Opponents : 1.Mr. Bharat Bhanwarlal Vyas (Borrower)

Address:- E-2, 206, Vinayak Enclave, Nr. Dindoli Talab
Chhattalab, Surat.

Also At :- Kunal Fashion Pvt Ltd., C-153-154, Rktm ring
Road, Surat.

Also At :- Flat No. 405, 4th floor, Rudrakash height jolwa
Residency off jolwa Main Raod, jolwa Palsana Surat.

2.Mrs. Dipika Bharat Vyas (Co-Borrower)

Address:- E-2, 206, Vinayak Enclave, Nr. Dindoli Talab
Chhattalab Surat.

Also At:- Flat No. 405, 4th floor, Rudrakash height jolwa
Residency off jolwa Main Road, jolwa, Palsana, Surat.

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Appearances:-

Ld. Advocate Mr. V.B.Patil for the Applicant

Ld. Advocate None for the Opponents

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Subject: The Application filed under section-14 of the SARFAESI Act,

2002

J U D G M E N T

1. The present application has been filed by the applicant against the Opponents under section-14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act) Act for taking possession of secured asset as defined in section-2(zc) of the SARFAESI Act mentioned in the application and forward it to the applicant. The concise statement of the applicant's case is that the applicant is secured creditor as defined in Section-2(zd) of the SARFAESI Act and the opponents are borrower as defined under section-2(f) of the SARFAESI Act. The applicant has been notified as financial institution for the purpose of the SARFAESI Act. It is further averred in the application that the applicant has satisfied all the requirement of section-14 of the SARFAESI Act and the applicant's authorised officer has submitted his affidavit to that effect. Hence the present application.

EVIDENCE OF APPLICANT

2. The applicant has submitted his affidavit along with the application as is required by the first Proviso to Section-14(1) of the SARFAESI Act and has submitted following documents in support of his application.

DOCUMENTS

Sr. No.	Particulars
1.	Copy of Letter of Authority
2.	Copy of Loan Application Form
3.	Copy of Loan Agreement
4.	Copy of Notice to Borrower Section13(2) "SARFAESI ACT 2002"
5.	Copy of Published the Possession Notice.
6.	Copy of Property Paper.

Submissions on behalf of the applicant.

3. The Ld. Advocate on behalf of the applicant has argued as per the averment made in the application.

4. Following points are framed for determination of this case:-

ISSUES

Sr. No.	Points for Determination
1.	Whether the applicant is entitled to the relief claimed in the application?
2.	What Order ?

5. My findings for the above issues are as under :-

Sr. No.	Finding
1.	Affirmative

Sr. No.	Finding
2.	As per final order.

REASONS FOR THE DECISION

6. Before determination of this case, it would be necessary to refer some of the pronouncements governing the determination of an application filed under section-14 of the SARFAESI Act, 2002. The Hon'ble Supreme Court in "**Standard Chartered Bank v. V. Noble Kumar**" reported in (2013) 9 SCC 620 has held as under;

21. Under the scheme of Section 14, a secured creditor who desires to seek the assistance of the State's coercive power for obtaining possession of the secured asset is required to make a request in writing to the Chief Metropolitan Magistrate or District Magistrate within whose jurisdiction, the secured asset is located praying that the secured asset and other documents relating thereto may be taken possession thereof. The language of Section 14 originally enacted purportedly obliged the Magistrate receiving a request under Section 14 to take possession of the secured asset and documents, if any, related thereto in terms of the request received by him without any further scrutiny of the matter.

22. However, the Bombay High Court in Trade Well v. Indian Bank [2007 Cri LJ 2544 (Bom)] opined:

“2. ... CMM/DM acting under Section 14 of the NPA Act is not required to give notice either to the borrower or to the third party.

3. He has to only verify from the bank or financial institution whether notice under Section 13(2) of the NPA Act is given or not and whether the secured

assets fall within his jurisdiction. *There is no adjudication of any kind at this stage.*

4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under Section 14 of the NPA Act by recording that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under Section 14.”(emphasis supplied)

The said judgment was followed by the Madras High Court in Indian Overseas Bank v. Sree Aravindh Steels Ltd. [AIR 2009 Mad 10] Subsequently, Parliament inserted a proviso to Section 14(1) [“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: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.”] and also sub-section (1-A) **“14. (1-A)** *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 *t Indian Bank v. D. Visalakshi, (2019) 20 SCC 47* he 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.”] by Act 1 of 2013.

25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset.

7. The Hon'ble High Court of Gujarat has in "**IDBI Bank Ltd- through Authorized Signatory Vs. District Magistrate**" reported at **2011 SCC OnLine Guj 1280** held as under;

5. So far as the first principal contention of the petitioner is concerned, the same merits consideration because the Chief Metropolitan Magistrate and the District Magistrate, under Section 14 of the Securitisation Act are not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor under Section 13(4), which can be assailed under Section 17 of the Securitisation Act by the

aggrieved person. Under sub-section (3) of Section 14, the act of the Chief Metropolitan Magistrate or District Magistrate done in pursuance of the said section cannot be called in question in any court or before any authority. From the aforesaid provisions of law, it is evident that Chief Metropolitan Magistrate or District Magistrate is bound to assist the secured creditor in taking possession of the secured assets.

6. The Authority who is called upon to act under Section 14 of the Securitisation Act can only assist, nay, is bound to assist the secured creditor in taking possession of the secured asset. As the Chief Metropolitan Magistrate and District Magistrate under Section 14 is not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor under Section 13(4), which may be assailed under Section 17 of the Act by the aggrieved person, under sub-section (3) of Section 14 of the Securitisation Act, the act of the Chief Metropolitan Magistrate or District Magistrate done in pursuance of said Section cannot be called in question in any court or before any authority. It is evident from the provisions of law that the District Magistrate while bound to assist the secured creditor in taking possession of the secured assets and to take the possession of the documents relating thereto and forward such assets and documents to the secured creditor, he is not empowered to decide the question of genuinity or propriety of such documents, including the document signed or agreed between the borrower and the secured creditor.

8. The Hon'ble Supreme Court has in **Indian Bank v. D. Visalakshi** reported in **(2019) 20 SCC 47** held as under;

52. Applying the principle underlying this decision, it must follow that substitution of functionaries (CMM as CJM) qua the administrative and executive or so to say non-judicial functions discharged by them in light of the provisions of the Code of Criminal Procedure, would not be inconsistent with Section 14 of the 2002 Act; nay, it would be a permissible approach in the matter of interpretation thereof and would further the legislative intent having regard to the subject and object of the enactment. That would be a meaningful, purposive and contextual construction of Section 14 of the 2002 Act, to include CJM as being competent to assist the secured creditor to take possession of the secured asset.

54. To sum up, we hold that CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act.

9. Considering the material produced by the applicant and perusing the affidavit submitted by the authorised officer of the applicant, it transpires to this court that the applicant has satisfied the requirement of section-14 of the SARFAESI Act so as to entitle it to have assistance of this Court. The secured asset has been situated within the jurisdiction of this court. As per the pronouncement of Hon'ble Supreme Court in Indian Bank Case (supra), the Chief Judicial Magistrate is also empowered to entertain the application filed under section-14 of the SARFAESI Act. So, in view of the aforesaid reasons and discussion, my finding on issue no-1 is in affirmative. So far as to issue no-2 is concerned, I hereby pass following final order in the interest of justice;

FINAL ORDER

- 1) The Application of the applicant is hereby allowed.
- 2) I authorize, Kum. N.H. Dhaduk (Assi.) of this Court, to act as Court Commissioner under section-14 (1-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- 3) Court Commissioner is directed to take possession of asset and forward such asset to the secured creditor. The description of such asset is as under:-

DESCRIPTION OF MORTGAGED PROPERTY/SECURED ASSET:

All that piece and parcel of property Flat No. 405, on 4th floor of the bulding namely Rudrakash height in the society "Jolwa Residency" organized on the land bearing bearing Revenue Survey No.182 paikee Plot No.364+365+366+367+368, Block No.223 in the village: Jolva, Taluka: Palsana, Dist. Surat.

- 4) If the secured assets is found in closed condition, the Court Commissioner may take possession of this secured assets by breaking / opening the lock or may take any other steps he/she may think fit.
- 5) After taking the possession of the secured assets, Court Commissioner shall prepare the inventory of any item, Documents relating to the assets if found in secured Assets and handover the same to the applicant.
- 6) The Police Inspector of the concerned police station under whose Jurisdiction, the aforesaid Secured Assets is situated, shall provide necessary police Assistance / protection to the Court

Commissioner on the date appointed by the Court Commissioner for taking possession of the secured assets.

7) The Applicant Bank shall complete the necessary formalities for seeking police protection and also bear the expenses thereof.

8) The Court Commissioner may take or cause to be taken such steps and use, or cause to be used such force, as may, in his/her opinion be necessary.

9) Copy of this Order be sent to the concerned Police Station.

10) Applicant shall bear the expenses incurred in taking possession of the secured assets and shall provide all necessary assistance to the court commissioner in taking possession of the secured assets.

11) Applicant is hereby directed at present to deposit lump-sum amount of Rs. 15,000/- (Fifteen thousand only) towards the expenses and remuneration of court commissioner, within One Month from the date of Order.

12) On depositing the above said amount in the court, the Court Commissioner is directed to complete the said procedure within 90 days or within the time limit extended by the court and submit the compliance report of completion of proceedings.

13) The court commissioner shall carry out the said proceedings on public holidays or except court working hours.

Signed and Pronounced in Open Court on 3rd March, 2023.

Date : 03-03-2023
Place : Kathor.

(T.H.Dave)
Addl.Chief Judicial Magistrate, Kathor,
Dist. Surat.
Code : GJ 00732