IN THE COURT OF ADDL. CHIEF METROPOLITAN MAGISTRATE, 3RD COURT, ESPLANADE, MUMBAI
(Presiding Officer – Shri G. P. Bawaskar)

Case No.359/SA/2020
(CNR NO.MHMM11-003950-2020)
Dated - 05/05/2022

Kotak Mahindra Bank Limited,

(KMBL) A Banking Company within the meaning of the Banking Regulation Act, 1949 having its registered office address at 27 BKC, C-27, G Block, Bandra-Kurla Complex, Bandra (East), Mumbai – 400 051 and having one of its Branch Office situated at Kotak Mahindra Bank Ltd., 4th Floor, Admas Plaza, 166/16, CST Road, Kolivery Village, Kunchi Kurve Nagar, Kalina, Santacruz (East), Mumbai – 400 098. Through its Authorized Officer Mr. Ranjit Mhase.

…. Applicant

Versus

1. Rasiklal Sankalchand Jewellers Pvt. Ltd. (Borrower),

2. Vatsal Jayesh Shah (Co-Borrower),

3. Jayesh Rasiklal Shah (Co-Borrower),

4. Neeta N. Shah (Co-Borrower),

5. Paru J. Shah (Co-Borrower),

6. Nilesh Rasiklal Shah (Co-Borrower),

7. Zenil Jayesh Shah (Co-Borrower),

All having address at Ground Floor, Skyline Status, M. G. Road, Opp. Pooja Hotel, Ghatkopar East, Mumbai – 400 077.

And also at :-

Neelkanth Valley, 130/B2, Kalindi Building, Rajawadi, Ghatkopar East, Mumbai.

…. Respondents

And also at :

Flat No.402, I Wing, Fourth Floor, Kukreja Palace, Vallabh Baug Lane, Garodia Nagar, Ghatkopar East, Mumbai – 400 077. …. Respondents

---

Appearance :-
For Applicant :- Advocate M & S Legal Ventures.

ORDER BELOW EXH.1

1] This is an application Under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short **"SARFAESI Act**") for taking possession of the secured asset known as :-

"Flat No.402 in I Wing on the Fourth Floor in the building known as "Kukreja Palace" situated at Vallabh Baug Lane, Garodia Nagar, Ghatkopar (East), Mumbai – 400 077".

2] Brief contents of application are as under :-

Applicant has granted **Loan against Property Facility of Rs.8,75,00,000/- (Rupees Eight Crores Seventy Five Lacs Only) and Rs.50,00,000/- (Rupees Fifty Lacs Only)** vide **Sanction Letter dated 31/10/2018** to the respondents.

As against the aforesaid financial assistance, Borrowers and guarantors have created security interest over above referred secured asset in favour of the applicant. The secured asset is situated within territorial jurisdiction of this court. Till the date of filing of this application, applicant is holding a valid and subsisting security interest over secured asset. In pursuance to grant of financial assistance and creating of security interest over secured asset, various documents are executed by respondents in favour of the applicant. In due course, borrower has committed default in repayment of the financial assistance. Thus, the account of the borrower has been classified as **"Non Performing Asset" on 30/12/2019**. In sequel, **Demand Notice dated 15/01/2020** U/Sec.13(2) of the SARFAESI Act was issued to their last known addresses and they were called upon to repay outstanding amount within 60 days from the date of service of notice. The said demand notice was served upon the respondents by RPAD as per online track reports as well as by paper publication. Despite, the service of said notice, respondents had not complied with the requisitions for payment of outstanding loan amount within stipulated period of 60 days. Hence, applicant is constrained to file this application, which is well in limitation.

3] In catena of judgments Hon'ble Supreme Court and Hon'ble Bombay High Court have settled the position of law that no notice is required to be issued to borrowers and guarantors when application Under Section 14 of SARFAESI Act is filed. Thus, no notices are issued by court to respondents.

4] It is requirement of Section 14 of SARFAESI Act that Authorized Officer of applicant financial institute has to file affidavit containing therein facts mentioned in Section 14(1)(b)(i) to 14(1)(b)(ix). Accordingly, Authorized Officer had filed **Affidavits at Exh.3 & 6**. In addition to affidavit, copies of certain documents are placed on record. Authorized Officer has also tendered original documents before Court, for verification with copies on record. Such documents are loan sanction orders, loan agreements, memorandum of deposit of title deeds, title deeds of mortgaged property, notice given under section

13(2) of SARFAESI Act to respondent, postal receipts, online track report, paper publication, etc.

5] Perused the application, affidavit submitted by the authorized officer of the applicant and documents filed on record of the case. Heard Ld. Advocate for applicant. It comes to my knowledge that applicant has granted the aforesaid financial assistance to respondents. In pursuance of such financial assistance, respondents have executed various documents in favour of applicant to create security interest over the aforesaid secured asset. However, in due course respondents failed to repay the loan amount. Thus, applicant is constrained to declare borrower's account as “Non Performing Asset” and constrained to issue **Demand Notice dated 15/01/2020** U/Sec.13(2) of SARFAESI Act, demanding total outstanding amount of **Rs.9,05,86,153.16 (Rupees Nine Crores Five Lacs Eighty Six Thousand One Hundred Fifty Three and Paise Sixteen Only)**, but in vain. Respondents had not complied the notice within stipulated period of 60 days. Thus, present application came to be filed. Whereas secured asset is located in territorial jurisdiction of this Court and claim of applicant is well in limitation. More so, as per the pleading, documents filed on record and affidavit of authorized officer of applicant, it transpired that secured asset is in possession of borrowers. No tenancy right has been created and no valid lease is created prior to mortgage. There is no stay to present proceeding by any competent Court. So, I do not found any barrier to pass order in favour of the applicant under Section 14 of SARFAESI Act to take over possession of aforesaid secured asset. Thus, I proceed to pass following order;

ORDER

(I) Application is allowed.

(II) Assistant Registrar of Kurla Center of Courts, Mumbai is hereby appointed as Court commissioner to take possession of the secured asset known as **"Flat No.402 in I Wing on the Fourth Floor in the building known as "Kukreja Palace" situated at Vallabh Baug Lane, Garodia Nagar, Ghatkopar (East), Mumbai – 400 077"** and handover it to the aforesaid Authorized Officer namely Mr. Ranjit Mhase of applicant under panchanama.

(III) The Court Commissioner to take such steps and use such force including breaking open the lock or any hurdle thereof by taking assistance of police if required at the expenses of the applicant and if any articles/documents found in the secured asset, then deliver its possession to the Authorized Officer of the applicant after preparing panchanama and taking inventory.

(IV) Issue writ of commission accordingly on payment of **Rs.10,000/- (Rupees Ten Thousand Only)** by the applicant. The amount deposited shall be credited to Government.

DISTRICT COURTS MAHARASHTRA

Digitally signed by GOPAL PANDHARI BAWASKAR
Date: 2022.05.25 12:53:50 +0530

(G. P. Bawaskar)
Addl. Chief Metropolitan Magistrate,
3rd Court, Esplanade, Mumbai.

05/05/2022
pk/-