

03.11.2022

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 for an order to direct the full time Officer/Sheristedhar of this Court to take possession of the residential property bearing Site No.9, Khatha No.23, 7th Main Road, Katharaguppa, Banashankari 3rd Stage, Uttarahalli Hobli, Bengaluru South Taluk measuring East to West 30 feet and North to South 30 feet, totally measuring 900 sq.ft and bounded on East by Sri Charavarthi's property, West by Road, North by Site No.8, Sri Bettaswamy's property and South by Site No.10 (herein afterwards referred to as petition schedule property) from the respondents or their henchmen or anybody claiming through them and forward the same to the petitioner by exercising the powers conferred under Section 14(1) of the Act with further direction to prepare inventory and panchnama and handover the possession thereof to the petitioner, to direct the petitioner to

take possession of the petition schedule property from the respondents or their henchmen or anybody claiming through them and forward the same to the petitioner exercising the powers conferred under Section 14 of the Act, to direct the jurisdictional police to assist or give protection for peaceful enforcement of taking possession of the petition schedule property from the respondents their agreement/lease holders or any third person representing or in possession of the petition schedule property and to break open of the locks if the petition schedule property found to be locked at the time of possession activity.

2. According to the petitioner, at the request of the respondents, on 20.08.2019, loan of Rs.70,36,988/- was sanctioned to them. The respondents have executed the documents in favour of the petitioner. Additional loan of Rs.12,00,000/- was disbursed on 24.10.2020 to the respondents. On 11.11.2020, the respondents have executed the Deposit of Title Deeds in favour of the petitioner and mortgaged the petition schedule property as security to the said loans. The mortgage is registered in CERSAI. The respondents have not repaid the loan as agreed by them. On 05.05.2022, their loan account became NPA. As on 16.06.2022, the respondents were due to pay a sum of Rs.92,74,613/- to the petitioner. The petitioner is the secured creditor and the petition schedule property is secured asset as defined under the Act. On 23.06.2022, the petitioner issued Demand Notice under Section

13(2) of the Act including in Vartha Bharathi and the New Sunday Express Newspapers dated 23.06.2022. Since, the respondents have not discharged their liabilities, on 09.09.2022, the petitioner issued Possession Notice including in Vartha Bharathi and the New Sunday Express newspapers dated 11.09.2022. The Notice was also pasted in the petition schedule property. Therefore, the petitioner filed this petition.

3. The petition is supporting with the affidavit of the Authorized Officer of the petitioner Bank. 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 Bank.

5. On careful perusal of the available materials, this Court is satisfied that the petitioner is a secured creditor, the respondents are the secured obligors and that the petition schedule property is a secured asset for the debt 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 Bank has issued 60 days Demand Notice as per Section 13(2) of the Act and that the respondents have not paid the said due loan amount to the petitioner bank in spite of due service of the said demand notice. Therefore, the petitioner Bank being the secured

creditor is entitled to enforce security interest against the respondents for recovery of the loan dues. Under these circumstances, the petitioner bank 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 Bank is entitled to take possession of the petition schedule property towards satisfaction of its dues 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 an Advocate Sri.Shashidhara.R, Roll No.KAR/2314/2005 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 Bank 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 bank 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 bank while taking possession of the petitioner schedule property from the respondents.

The petitioner bank 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 bank.

Office is directed to return the original documents to the authorized person of

petitioner bank 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 03.11.2022)

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