

26.08.2023

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 respondent seeking for an order to for taking physical and vacant possession of the petition schedule properties by exercising the powers conferred under Section 14 of the Act; to deliver the same to the petitioner; for appointment of a Court Commissioner and direct him to take possession of the petition schedule properties by taking inventory of articles if any, in the petition schedule properties by conducting panchnama; to hand over the same to the petitioner; to give suitable directions/orders to the Police authority/Station House Officer of jurisdictional Police Station to assist the Court Commissioner in evicting the occupants of the petition schedule properties; the Court Commissioner may also be empowered to break open the locks of the schedule properties if found locked while taking over the possession if situation warrants so and to deliver the vacant and

physical possession of the petition schedule properties to the petitioner.

2. According to the petitioner, the respondent has borrowed two Housing Loans of Rs.65,00,000/- each from the petitioner. The respondent has created charge over petition schedule properties in favor of the petitioner by mortgaging them by way of equitable mortgage. But, the respondent has failed to repay the loan amount as agreed. He committed default in repayment of the loan amount. On 30.04.2023, his loan accounts were classified NPA. As on 03.07.2023, the respondent was due to pay a sum of Rs.1,34,34,414/- to the petitioner. On 03.05.2023, the petitioner issued Demand Notice under Section 13(2) of the Act calling upon the respondent to repay the amount within 60 days from the date of notice. No objections/representations were submitted by the respondent to the petitioner in response to the said notice. The respondent has also not discharged his liabilities within 60 days from the date of notice. Therefore, the petitioner taken symbolic possession of the petition schedule properties on 05.07.2023 by affixing copy of the possession notice at a conspicuous place of the petition schedule properties. The possession notices were also published in the New India Express and Kannada Prabha newspapers dated 06.07.2023. The respondent has not delivered the physical possession of the petition schedule properties. Therefore, the petitioner intends to take physical possession of the petition schedule properties. The petitioner is having a reasonable fear and apprehension of physical threat and assault at the time of taking possession of

the petition schedule properties. Hence, 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 respondent is the secured obliger and that the petition schedule properties is a secured asset for the credit facilities availed 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 respondent has 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 respondent 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 properties towards satisfaction of its due from the respondent as prayed in the petition.

Since, the 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.Swamy V., Advocate, Enrollment No.KAR/3260/2003, as Court Commissioner to take possession of the petition schedule properties.

The Court Commissioner is hereby directed to take possession of the petition schedule properties towards the satisfaction of the due of the petitioner Bank from the respondent with the assistance of jurisdictional police, to break open the lock of the petition schedule

properties 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 petition schedule properties from the respondent.

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

Commissioner fee is fixed at Rs.10,000/-, which will be forthwith deposited by the bank.

Issue Commissioner Warrant and 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 26.08.2023)

Crl.Misc.No.4846/2023

(VEDAMOORTHY B.S.)

II Addl. Chief Metropolitan Magistrate,
Bengaluru.