



Application Registered on : 03/07/2024

Application Decided on : 19/07/2024

Exh-

CRIMINAL MISCELLANEOUS APPLICATION NO. 1171/2024

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, VALSAD

Applicant : Muthoot Homefin (India) Limited,

1st Floor, Shop No. 105, Shree Om Point, Nr. Jalaram
Bhojnalay, Opp. Bank of Baroda, Kadodara,
Surat, Gujarat - 394325.

(Through its Authorized Officer Mr. Chavada Kishorkumar)

VERSUS

Opponents :1. Devendra Pravinbhai Visroliya (Borrower)

R/at:-Flat No.3 - 407 Building Shivam Vihar Solsumba
Aadarsha Nagar Umbergaon Valsad Gujarat

Also At:-Vision Channel Office No. 121 Bhan Darshan
Complex Near Gujan Cinema Gujan Vapi-396195.

Also At : Flat No. F-3/407, 4th Floor "Shivam Vihar"
Survey No.175/4/12, Village - Solsumba, Umbergaon (east),
Gujarat.

2. Gunvantiben Pravinbhai Visroliya (Co-Borrower)

R/at:-Flat No.3 - 407 Building Shivam Vihar Solsumba
Aadarsha Nagar Umbergaon Valsad Gujarat

Also At : Flat No. F-3/407, 4th Floor "Shivam Vihar"
Survey No.175/4/12, Village - Solsumba, Umbergaon (east),
Gujarat.

Appearance:

- 1) Learned Advocate for the Applicant : Mr. J. B. Patil
- 2) Learned Advocate for the Opponents :

Sub : Application U/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT)

ORDER

1. Present Application is submitted by the applicant U/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT) on the ground that, the Opponents approached the Applicant Company for availing of Home Loan facility and accordingly the applicant Company sanctioned and disbursed the said Facility aggregating to amount of **Rs.15,82,800/-** and the Opponents has created security interest over the property mentioned in the present application.
2. The Applicant has submitted that opponents has failed to make the repayment of the dues therefore, account of the opponents was / has been classified as **NPA on 22/07/2021.**
3. The Applicant issued Demand notice U/s. 13(2) of the SARFAESI on 18/08/2023. Though the notice was unserved. That by way of the said notices the opponents was called upon to pay total **Rs.22,25,194/-** as per Application, is due as outstanding. However, the borrower has failed to repay the same.

4. Heard the Learned Advocate for the Applicant. Perused the Record.
5. In view of the Judgement of the Hon'ble Gujarat High Court as decided in **SPECIAL CIVIL APPLICATION No. 215 of 2011 IN case of IDBI BANK LTD VS. DISTRICT MAGISTRATE AND OTHERS** where in para No.8 (xi) it is held that :-
The Chief Judicial Magistrate Court has no power to adjudicate the dispute between the parties. Hence, this Court cannot go into the merits of the claim.
6. Upon perusal of the Judgement of the Hon'ble High Court of Gujarat, the Chief Judicial Magistrate has very limited scope with respect to the cases U/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT). Hence, this Court cannot go into the merits of the claim.
7. Perused the application, affidavit submitted by the Authorized Officer of the Applicant and documents filed on record of the case.
8. Taking into consideration the Application, Affidavit and Documents produced on record it is apparent that applicant has granted the aforesaid financial assistance to the 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 failed to repay loan.
9. Upon perusal of record, I am satisfied that the contents of the

affidavit are fully supported by the documents produced. That apart, sufficient time has been given by the applicant to the opponents to make repayment of the outstanding dues but opponents has not paid the outstanding amount. Hence, considering the above facts of the application and view of the above Judgements of the Hon'ble High Court. Hence, I passed the following order :

ORDER

1. The Application of the applicant is hereby allowed.
2. I authorize, **Mr. Jay Nitinkumar Vyas, Assistant, of this Court**, as Court Commissioner U/s. 14 (1-A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT).
3. Court Commissioner is directed to take possession of properties mentioned in the present application.

The description of the properties are as under:-

**Immovable Property Bearing Flat No. F-3/407, 4th Floor
"Shivam Vihar" Survey No. 175/4/12, Village - Solsumba,
Umbergaon (east), Gujarat. 396001**

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 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 concerned 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, as per the **Circular of Home Department, Bearing No. SB-II, GNH/112017/998-PART FILE Dated 03rd December 2020. As per said circular when the question of giving police protection under the SARFAESI Act, arise, at that time, the police authority shall not record any statement of any person nor should call any person to police station for recording the statement and police shall provide the police assistant to the secured creditor. On production of the copy of this order before the concerned police station. The police inspector of the concerned police station, shall provide police protection within 30 days from the receipt of the copy of this court order.** The Applicant Bank shall complete the necessary formalities for seeking police protection and also bear the expenses thereof. 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 opinion be necessary. Copy of this Order be sent to the concerned Police Station.
7. 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.

8. Applicant is hereby directed at present to deposit lump sum amount of **Rs.20,000/-** towards the expenses and remuneration of court commissioner, within One Month from the date of Order. 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.
9. The court commissioner shall carry out the said proceedings on public holidays or except court working hours.

Pronounced in the open court, today i.e. 19/07/2024.

Date: 19/07/2024
Place : Valsad.

[BHARGAV VASANTKUMAR VYAS]
Chief Judicial Magistrate, Valsad
GJ-01100.