IN THE COURT OF THE XXXVII ADDL CHIEF METROPOLITAN MAGISTRATE COURT, NEW ANNEX: BANGALORE.

Present:- Sri. B.Mohan Babu,B.A., LL.B.,
XXXVII Addl. C.M.M., Bangalore.

Dated this the 18th day of May, 2022

Crl.MISC.NO.1215/2022

PETITIONER:- **Axis Bank Limited,**
Regd.office at "Trishul" 3rd floor,
Opp Samartheswar temple, Near
Law garden, Ellisbridge, Ahmedabad
- 380006. Having its branch office at
Plot No.41, Seshadri Road, Anand Rao
Circle,Bangalore- 560 009.

Rep.by its Senior Manager &
Authorized Officer Mr.Charan K.K.

Vs.

RESPONDENTS:- **Mr. Thimme Gowda Muthe Gowda**
and 9 others

****

ORDER ON APPLICATION FILED UNDER SEC.14 OF SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT.

The petitioner has filed the instant petition U/s.14 of Securitization and reconstruction of financial assets and enforcement of security interest Act, 2002 seeking for handover the possession in respect of the schedule property from the hands of the respondents or his tenants or his henchmen or anybody and seeking assistance of jurisdiction police to provide necessary police aid in taking possession of the schedule properties and for providing to draw inventory and Panchanama to the authorized officer as to taking possession of the schedule property by allowing their petition.

2. Heard the arguments. Perused the documents available on record.

3. On going through the contentions of the petition averments, the following point arises for my determination is:

1) Whether the petitioner has made out sufficient grounds to consider the instant petition?

2) What Order?

4. My finding to the above points are as follows:

POINT No.1 – In the Affirmative

POINT No.2 - As per final order, for the following :

<u>REASONS</u>

5. <u>POINT No.1</u>:- In the petition, it has been submitted that the respondents have borrowed loan from the petitioner by mortgaging the properties and also executing necessary loan documents. The respondents have mortgaged schedule property by way of deposit of title deeds. Thereafter the respondents are default in payment of balance amount. Therefore, it has been classified Loan Accounts as "Non Performing Asset" on **07-05-2021.** The total due payable by the respondents were **Rs.6,99,52,254/-** as on **06-09-2021.** Despite that, the respondents have not paid the amount. Therefore, calling upon them to pay the money by issuing demand notice date

10-02-2021. Since the respondents failed to repay the loan amount, the petitioner is entitled to take physical possession of the Schedule Property as provided under Sec.13(4) of the Secularization Interest Act, 2002, but faced stiff resistance from the Respondent. As such taken symbolic possession of property on **25-11-2021** by giving possession notice to respondents and informed about taking physical possession of property if failed to repay the outstanding liability. Even after publication in two leading newspapers viz., The New Indian Express & Kannada Prabha on **30-11-2021,** they have not forthcome to pay the dues. Therefore, the petitioner has filed this petition seeking for direction to handover the physical possession of the schedule property by virtue of the order of the Court with the aid of police by appointing the necessary authorized person. Hence, he prays to allow the above application.

6. From the point of the contentions and allegations made in the petition which reproduced above, this court has satisfied with the grounds urged in the petition. So on looking to these documents, it is crystal clear that the applicant is a secured creditor and the schedule property is secured asset. The said property is situated within the jurisdiction of this court. Despite, the petitioner issued notice including the paper publication so far as respondent neither cleared the loan amount nor handover the physical possession of the schedule property.

7. The Hon'ble High Court of Karnataka held in **Crl. Petition. No.4881/2016 dated 17-11-2006.** Scope of Sec.14 of Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act. In the said Judgment it was held that " Chief Metropolitan Magistrate cannot decide the rights of the parties and he can only provide assistance and protection to the secured creditor in taking possession of the secured asset. It is further held that only remedy available to the defaulter/borrower is to approach Debt Recovery Tribunal and he cannot contest the petition filed before the Chief Metropolitan Magistrate U/s.14 of Securitization and reconstruction of financial assets and enforcement of security interest Act. So also in the **petition No.35956/2015 (GMCPL**) the Hon'ble High Court of Karnataka in its order dated 30-09-2015 held that Chief Metropolitan Magistrate cannot decide the rights of the parties as per Sec.14 of Securitization and reconstruction of financial assets and enforcement of security interest Act. In view of the above decision, the respondent has no right to contest the petition and to raise any objection.

8. In the present petition despite, the petitioner bank issued notice and made paper publication till the date, the respondents have not cleared the arrears of the loan amount nor handed over the physical possession of the schedule property, but unnecessarily stalled the proceedings. The preliminary proceedings against the recovery of loan is over and the same of remained unchallenged. Hence,the respondents shall handover the physical possession of the **SCHEDULE "A", SCHEDULE "B'' AND SCHEDULE 'C".**

9.The petitioner bank has complied the the Sec 13(2) and 13(4) and also filed the affidavit along with petition. The petitioner/applicant being the secured creditor is entitled to take possession of secured asset as shown in the schedule to the petition from the respondent/borrower. As could be seen from the documents placed before the court, the petition schedule properties are situated within local jurisdiction of this court. Therefore, this court can entertain the present petition without any hesitation. Hence, Point No.1 is answered in the affirmative.

10. **POINT No.2**:- In view of the reasons stated above discussed, this court proceed to pass the following:

ORDER

The petition filed by the petitioner U/s.14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act is hereby allowed.

The petitioner is entitled to take physical possession of the secured assets which are SCHEDULE PROPERTY.

It is also ordered that the Jurisdictional police shall assist the court commissioner and the petitioner to take physical possession of the secured assets i,e petition schedule property as above by drawing mahazar and also by taking photographs or by making videography at the cost of petitioner.

Sri UMESH .C. Advocate, Enrolment No.KAR/2250/2009, Mobile No. 8971969209 is appointed as Court Commissioner to

take physical possession of the secured assets and to deliver the same to the petitioner.

The commissioner's fee is tentatively fixed at Rs.5,000/- (Five thousand only) and the petitioner is directed to pay the same to the Court Commissioner.

On depositing or payment of commissioner's fees, the office is directed to issue commission warrant in the name of court commissioner, who is hereby directed to submit the compliance report in the court office without undue delay.

Return the original documents to the petitioner on proper identification.

(Dictated to the Stenographer directly on computer, printout taken by her is corrected, and then pronounced by me in the open court on this the 18-05-2022).

(B. MOHAN BABU)
XXXVII ADDL.C.M.M., BENGALURU.

18-05-2022

Order pronounced in the Open Court
(vide separately)

ORDER

The petition filed by the petitioner U/s.14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act is hereby allowed.

The petitioner is entitled to take physical possession of the secured assets which are SCHEDULE PROPERTY.

It is also ordered that the Jurisdictional police shall assist the court commissioner and the petitioner to take physical possession of the secured assets i,e petition schedule property as above by drawing mahazar and also by taking photographs or by making videography at the cost of petitioner.

Sri UMESH .C. Advocate, Enrolment No.KAR/2250/2009, Mobile No. 8971969209 is appointed as Court Commissioner to take physical possession of the secured assets and to deliver the same to the petitioner.

The commissioner's fee is tentatively fixed at Rs.5,000/- (Five thousand only) and the petitioner is directed to pay the same to the Court Commissioner.

On depositing or payment of commissioner's fees, the office is directed to issue commission warrant in the name of

court commissioner, who is hereby directed to submit the compliance report in the court office without undue delay.

Return the original documents to the petitioner on proper identification.

(B. MOHAN BABU)
XXXVII ADDL.C.M.M., BENGALURU.