Received on.	17/10/23
Registered on.	17/10/23
Decided on.	25/10/23
Duration.	Y-: M-: D- 00- 00- 07
Exh.	06

IN THE COURT OF 12^{th} ADDITIONAL CHIEF JUDICIAL MAGISTRATE, AT: JAMNAGAR.

Criminal Misc. Application No.2188/2023

1. **Poonawalla Housing Finance Limited,**
   (Formally Known as Magma Housing Finance Limited),
   Through its Authorized Officer.
   Mr. Dharamesh Vekariya,

   Having its Registered Office At: Development House, 24 Park Street, Kolkata-700016.

   Branch Office Situated At: 1^{st} Floor, Auram Avenue, Mithakhali Six Road, Opp. Kotak Mahindra Bank, Ahmedabad-380006.

...............Applicant

--- V E R S U S ---

1. **Idariya Atulbhai Laljibhai,**

2. **Idariya Chandreshbhai Laljibhai,**

3. **Idariya Vijayben Laljibhai,**

   All are having same address at:

Narayannagar Main Road, Gulabnagar, Near Garbi Chowk, Jamnagar City, Jamnagar-361007.

Also At:-
Plot No. 103/A, Revenue Survey No.20/paiki, At Narayan Nagar, Rajkot Road, Jamnagar-361001.

2. **Rathod Gitaben,**
S/D/W/ of: Tapubhai, Shivam Complex, Pase Vambe Avas Same Mayur Nagar, Jamnagar-361001.

..............**Opponents**

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Subject:- Application u/S.14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for taking possession of secure assets for sale.

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Appearance:-
Ld. Advocate for the Applicant: Mr. V.P. Gori.
Ld. Advocate for the Opponents: Exparte

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:: J U D G M E N T ::

1. The applicant submitted this application for taking possession of secure assets u/s.14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act"), on the ground that opponents approached the applicant for availing Loan facility and the applicant granted the said loan to the borrowers of Rs.16,00,000/- and the said opponents have offered their property mentioned in para-05 of the application as security for the due payment for the said credit facility with interest cost and charges.

1.1 It is submitted by the applicant that, the opponents are the borrower, co-borrower and guarantor of the said loan. The applicant mainly submitted in his application that, the opponents had obtained a loan from the applicant-Finance company and opponents were agreed with the terms and conditions and the documents so executed by the borrowers and therefore the applicant-Finance company has sanctioned and agreed to provide a loan of Rs.16,00,000/- and mortgage charge was created on the property and the amount of Rs. 14,31,161=67 paise is due from the opponents. The said borrower had executed various documents for availing the said Loan, which are attested collectively vide Exh.3 with the application.

1.2 It is submitted by the applicant that, the Opponents failed and neglected to pay the installment as and when same fall due. The statement of account of the Loan availed by the borrower is attached with the application. As the borrowers failed to make repayment of the dues, the account of the opponents is classified as N.P.A. on 05.01.2023 as per Reserve Bank of India directives.

1.3 The applicant has submitted that, the applicant has issued notice under Section-13 (2) of the SARFAESI Act, for the said outstanding amount of Rs.14,31,161=67 paise for recovery of dues. The said notice was duly served to the opponents. The applicant has also published the contention of the possession notice in two daily newspapers and the copy of said demand notice, postal receipt and track consignment acknowledgement of demand notice is attached collectively with the application. It is submitted by the applicant that the borrower were called upon to pay Rs. 14,31,161=67 paise as on 10.01.2023 along with further interest and charges till the date of realization.

1.4 It is also submitted by the applicant that all the requirement of Section 13(2) are fully complied with by the applicant. In spite of the service of notice the opponents failed to pay the dues till date and the possession notice was published in two daily newspapers. Therefore, the applicant under the circumstances become entitled to enforce secured interest in the said property and entitled to take possession of the secured assets for the recovery of dues.

1.5 It is submitted by the applicant that, after publishing the public notice in two daily news papers the opponents neglected to pay the said due amount and therefore the authorized officer went to the secured assets *i.e.* the premises mentioned in para-05 of the application and took only symbolic possession of the property by affixing notice on the wall of the said premises and published the contents of the possession notice in two leading newspaper.

1.6 It is also stated by the applicant that in the application, the property situated in the jurisdiction of this Court and therefore this Court has the jurisdiction to take the possession of the said secured assets *i.e.* the property mentioned in the application and deliver the same to the applicant as per Section-14 of the SARFAESI Act. The applicant has also stated that up to the best knowledge of the applicant no order of restrainment or stay has been granted by any Court preventing the applicant from taking possession of the said property, therefore the applicant is entitled for the relied prayed by the applicant.

2. The application of the applicant has supported with all the necessary documents vide Exh.3.

3. On the perusal of all record, it appears that the applicant has served the notice under Section-13(2) of the SARFAESI Act to the opponents which is produced along with the documentary list vide Exh.3. Thus, the applicant has fulfilled all the mandatory requirements of the SARFAESI Act. Moreover, looking to the description of secured asset, it appears that property situated at Rajkot highway within the area of Jamnagar

Municipal corporation, therefore this Court having jurisdiction over the property.

4. In view of the Judgment 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, wherein Para No.8(xi) it is held that:-

8 (xi). "All such determination is to be made by the Debts Recovery Tribunal including the question whether the asset is a secured asset or not and the Chief Metropolitan Magistrate or the District Magistrate has not been empowered to adjudicate such dispute, but is directed only to assist the secured creditor in taking possession of the secured asset. If they are not empowered to adjudicate the dispute, they cannot also call for the secured creditor to produce any document to decide whether the asset is secured asset or not, which will be futile exercise in absence of power to adjudicate such issue.

Under Clauses (a) and (b) of Section 14(1), the Chief Metropolitan Magistrate or the District Magistrate and on request, are bound to take possession of the secured assets as also the documents relating thereto. If the documents are to be obtained by them, the question of asking the secured creditor to produce the document in all cases does not arise. Therefore, they do not have jurisdiction even to call for the documents.

5. Therefore, this Court does not have issued notice to the opponents. Moreover, Hon'ble Allahabad High Court has held in the judgment of "Shipra Hotels Ltd. and Anr. -Vs.- State of U.P. on 25.11.2022" that, C.M.M. or D.M. is not required to give notice to borrower before passing order u/S.-14(1) of SARFAESI Act and held that, the C.M.M. has to consider only two aspect:

(i) Whether the property situated within the local jurisdiction of C.M.M.?

(ii) Whether the provision of notice u/S 13(2) of SARFAESI Act is complied with or not?

Herein, this case both the aspects are confirmed and complied by the applicant therefore this Court does not have find any reason to issue notice to the opponents (borrower).

6. In the view of judgment of Hon'ble Supreme Court in the case of ***Authorized Officer Indian Bank -Vs.- D. Visa Lakshmi dtd. 23.09.2019*** para 48 that, the A.C.J.M. is empowered to adjudicate such dispute. Upon perusal of the documents it appears that the sufficient opportunity is given by the applicant to the opponent to repayment the outstanding amount hence considering the above facts of the application and the judgment of Hon'ble High Court of Gujarat and the judgment of Hon'ble Supreme Court, this Court is empowered to pass the order to take the possession under Section 14(1)-A of the SARFAESI Act and hence, I pass the following final order:

-:: **FINAL ORDER** ::-

1. The application of the applicant is hereby allowed.

2. I hereby authorized Mr. B.R. Rana(Assistant), in the Court of the 2nd Additional Senior Civil Judge, Jamnagar as Court Commissioner under Section 14(1)-A of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. The Court Commissioner is directed to take possession of the property mentioned in para-05 of the present application (secured assets) which is described under:

All that piece and parcel of immovable property in Jamnagar City, on Rajkot Highway within the area of Jamnagar Municipal Corporation, Originally the land of R.S. No.20 Paiki of Vibhanagar Village, admeasuring 26324.00 Sq. Mtrs. Jamnagar Municipal Corporation have sanctioned the lay-out plan and collector Jamnagar have converted into non agriculture land and as per layout plan this land divided into 1 to 200 residential plots known a "Narayan Nagar". The Scheme was launched under Section 21(1) of Urban Ceiling Act. and Construction Permission have issued by Jamnagar Municipal Corporation to construct A,B,C and D type of different residential tenament on the whole 200 plots. Out of these tenaments, Tenament

No.103/A admeasuring Plot area 81.00 Sq. Mtrs. together with construction thereon, the property is Bounded as under:

East	:	Tenament No.128 is Situated,
West	:	Road is situated,
North	:	Tenament No.104 is Situated,
South	:	Land bearing R.S. No.20/Paiki is situated.

With all the peace and parcel and rights title and interest in the property mentioned above owned by the opponents.

4. After taking possession of the secured assets the Commissioner shall prepare the inventory of every item documents relating to the assets if any and hand over the same the applicant.

5. The Court Commissioner may take the assistance of the Police Personnel as may in his opinion be necessary.

6. Applicant shall bear the expense incurred in taking possession of the secured assets.

7. The applicant is hereby directed to deposit lump sum amount of Rs.20,000/- towards the expense and remuneration of the Court Commissioner within 4 weeks. In failing to comply with the same, this order shall stand vacated.

8. On depositing the above said amount the Court Commissioner is directed to complete the procedure within 20 days.

9. The Court Commissioner shall carry out the said proceedings on public holidays or except Court working hours.

Signed and Pronounced in Open Court today on this 25th Day of October, 2023.

Date-25/10/2023	**[Mr. M.R.Patel]** Judge Code:- GJ01194 12th Addl. Chief Judicial Magistrate, Jamnagar.
Place-Jamnagar	