KABC030382982022

Presented on : 16-05-2022
Registered on : 16-05-2022
Decided on : 11-07-2022
Duration : 0 years, 1 months, 26 days

IN THE COURT OF THE VIII ADDL. C.M.M., BENGALURU

<u>PRESENT</u>:- Sri. K.N. Shivakumar, B.Sc., (Agri) L.L.M.,
VIII ADDITIONAL C.M.M,
BENGALURU.

<u>Dated this the 11th Day of July, 2022</u>

<u>Crl.Misc.No.2911/2022</u>

Petitioner: Canara Bank
Vijayanagar Branch
No.204, CHBS Layout
Vijaynagar
Bengaluru – 560 040
Represented by its
Authorised Officer
Mr.

(By Vignesh Shetty, Advocate)

- **Vs –**

Respondents: 1. M/s. Infii Solar Solutions

India Private Limited
No.1882/1, 10th Main
31st Cross, Banashakari
II Stage, Bengaluru – 560 070

2. Sri.Deepak M.G.
No.1882, 10th Main Road
31st Cross, Banashankari
II Stage, Bengaluru – 560 070

3. Sri.Nadeem Ahmed M.J.
No.603, Life is Beautiful
Apartments, 30th Cross
Jayanagar 4th T Block
Bengaluru – 560 041

4. Smt.Sujatha Deepak
No.1882, 10th Main Road
31st Cross, Banashankari
II Stage, Bengaluru – 560 070

5. Sri.Ramesh Gundu Rao
No.D-404, Surajganga
Socrates Apartments
No.87/2, Kanakapura Main
Road, Vajaranahalli
Talaghatapura
Bengaluru – 560 062

6. Sri.Neelamangalavuddi
Vinod Ram, 'Prarthana'
No.12, 16th Cross
Shivananda Nagar
Moodalapalya
Bengaluru – 560 072

7. Smt.Pankaja K

No.12, 16th Cross
Shivananda Nagar
Moodalapalya
Bengaluru – 560 072

ORDERS ON PETITION FILED U/S 14 OF SARFAESI ACT

The Petitioner has filed this petition seeking to take physical possession of schedule property.

2. The case of the petitioner in brief is that it is a financial institution and secured creditor as defined in the SARFAESI Act. The respondents have availed loan for a sum of Rs.100/- lakhs with the petitioner bank by creating charge on the property i.e., Corporation No.12/1, New PID No.126-W0031-30, Old PID No.35-166-12/1, situated at 6th Cross, Shivananda Nagar, Marenahalli in Sy.No.44, situated at Nagarabhavi Village, Yeshwanthapura Hobli, Ward No.35, Bengaluru, measuring 1,120 sq.ft. Therefore, petition schedule property is secured asset as per SARFAESI Act. The respondents have failed to repay the dues to the petitioner bank. The loan account of the respondents have been classified as Non Performing Asset (NPA). The petitioner has issued statutory demand notice u/s 13(2) of the SARFAESI Act calling upon the respondents to pay the dues. In spite of the said notice the respondents have not repaid any amount towards realization of outstanding amount within the statutory period of 60 days from the date of the notice. The authorized officer has taken symbolic possession of the property by affixing copy of possession notice in the conspicuous place of the schedule property and possession notice was also published in "The New Indian Express" English Daily and "Kannada Prabha" Kannada Daily newspapers. The respondents have not repaid the said loan even after paper publication of the possession notice. The respondents have not delivered vacant physical possession of the property to the petitioner bank so far. Hence, the petitioner being secured creditor is entitled to take recourse under Section 13(4) of the SARFAESI Act to recover secured debt. Hence, prayed to grant the relief sought in the petition.

3. At this juncture it is profitable to mention the decision of our own Hon'ble High Court reported in **HDB Financial Services Ltd. Vs. M/s. Remo Software Pvt. Ltd, 2018 SCC Online Kar 2484 : AIR 2019 KAR 37,** wherein it is clearly held that *“No notice is necessary to the respondents u/s 14 of the SARFAESI Act 2002.”* In view of this ratio notice to respondents dispensed with.

4. Heard arguments and perused the material on record.

5. Having heard the arguments and on perusal of the records, the points that arise for my consideration are;

1. Whether petitioner is entitled for the relief claimed in the petition?
2. What order?

6. My answer to the above points are:

Point No.1: In the affirmative

Point No.2: As per final order for the following :

REASONS

7. **Point No.1:-** The petitioner through its official has filed affidavit as provided under the Proviso to Section 14. The petitioner has also filed list with documents in support of claim made in the petition. Advocate for petitioner also filed memo suggesting the name of Court Commissioner.

8. From the perusal of the affidavit and documents in the background of petition averments this court is satisfied that the petitioner is a financial institution as per Section 2(m) of SARFAESI Act. The materials on record also show that the respondents have availed credit facility of ₹100/- lakhs and mortgaged the schedule property and same is a secured asset as per Section 2(zc) of the SARFAESI Act. The materials on record show that the respondents have failed to repay the loan amount and loan accounts are classified as non performing asset.

9. Thereafter the petitioner has got issued notice as required u/s 13(2) of SARFAESI Act. It also shows that after expiry of 60 days from the demand notice the petitioner has taken symbolic possession of the schedule property and has issued possession notice on 28-09-2021 as per Section 13(4) of SARFAESI Act and same was published in the daily newspapers i.e., “The New Indian Express” English daily and “Kannada Prabha” Kannada daily on 01-10-2021.

10. On careful perusal of materials on record, this court is satisfied that the petitioner being the secured creditor is entitled to enforce its right with respect to secured asset against the respondents for recovery of the loan dues. Hence, the petitioner is entitled for the relief claimed in the petition. Accordingly, I answered the above point in the affirmative.

11. **Point No.2:** In view of my findings on point No.1, I proceed to pass the following:

ORDER

Petition filed by the petitioner u/s 14 of SARFAESI Act is hereby allowed.

The petitioner is entitled to take possession of petition schedule property towards satisfaction of loan amount due by the respondents.

Sri. Dilip Kamble, Advocate (Enrollment No.KAR/1870/2017) is hereby appointed as Court Commissioner to take possession of the petition schedule property from the respondents and hand it over to the petitioner within 3 months from the date of his appointment.

The court commissioner while executing the warrant shall prepare an inventory and report the same to the court.

The commissioner fee is fixed at ₹5,000/- and same shall be directly paid to the Court Commissioner and file a memo in that regard in the office.

If necessary court commissioner may request jurisdictional police for assistance, in which event the jurisdictional police shall provide necessary assistance to court commissioner in taking possession of petition schedule property.

Office to return original documents to the petitioner under proper endorsement and identification.

(Dictated to the stenographer direct on computer, typed by her, verified and corrected by me, signed and then pronounced by me in the open Court on this 11th day of July 2022).

(K.N.Shivakumar)
VIII A C M M,
Bengaluru.

Order pronounced in the open court vide separately

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VIII ACMM, Bangalore