KABC030582572022

IN THE COURT OF THE IX ADDL.CHIEF METROPOLITAN MAGISTRATE, AT BENGALURU.

Dated this the 17th day of September 2022

Present : Sri.R.Mahesha,
B.A.L., LL.B.,
IX Addl.C.M.M., Bengaluru.

Crl.Misc.No.4552/2022

Petitioner/ Applicant. :**The National Co-Operative Bank Limited, No.73/1,**
Gandhi Bazar Main Road,
Bengaluru. Represented by its authorized officer Sri.Ramesh M V.

V/S

Respondents: 1. Chandra P S/o.Puttaswamaiah
2. Lakshmidevi R w/o.Chandra.P
3. Bharath Kumar S/o.Chandra P.
All R/No.2, 14th Cross Road,
Kengeri Satellite Town,
Bengaluru.

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ORDER

The petitioner has filed this petition u/Sec.14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 to take possession of the schedule property from the respondents and to pass necessary orders in the interest of justice.

2. It is the case of the petitioner that the respondents have borrowed loan of **Rs.3,00,00,000/-** dated **13/11/2015** from it by executing loan agreement and other documents. Further, the respondents have mortgaged the schedule property by way of deposit of title deeds in its favour. But thereafter, the respondents have not come forward to repay the loan amount in spite of repeated requests. Hence, the loan account of the

respondents have been classified as non-performing asset.

3. Further it is the case of the petitioner that on **24-03-2022** it has issued demand notice to the respondent u/Sec.13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, demanding them to repay the loan amount within 60 days from the date of receipt of notice. But the respondent has failed to repay the loan amount. Hence, it has taken symbolic possession of the schedule property and have issued possession notice on **07-06-2022**. Even it has published the said notice in daily newspapers on **11-06-2022.** The respondents are due by sum of **Rs. 2,76,27,217/-** as on **28.02.2022.** Therefore, it is necessary to take the possession of the mortgaged

properties from the respondents. Hence, this petition.

4. The petitioner in support of its application has filed affidavit along with original documents pertaining to the loan transaction. The said document reveals that the respondents have borrowed loan amount from the petitioner by undertaking to repay the same in installments. But thereafter they did not keep up their promise and committed default as such, the petitioner taken steps for recovery of the amount by invoking the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. The said documents further indicate that before approaching this Court, the petitioner has exhausted the remedies available under the law.

5. In this case, this Court has not issued separate notice to the respondents. At this juncture, it is

relevant to refer a decision of **Hon'ble High Court of Karnataka** reported in **ILR 2006 KAR page 4663** in the case of **Vijaya Bank, SD Road branch v/s M/s. Shameem Transport,** wherein, it has been held that **no such notice is required to be given to the borrower or any person by Chief Metropolitan Magistrate before passing orders for possession.** Similarly, in a decision reported in **2006 (4) KCCR 2216** in the case of **Mrs. Sunandakumari & another v/s Standard Chartered Bank** held that **if the borrower is informed in advance, that if the liabilities are not discharged within the stipulated period, the secured creditor will be resorting to any of the remedies available under sub section 4 of sec.13 of the Act & may file an application u/s.14 & the Magistrate may pass an order u/s.14, the above**

safeguards the principles of natural justice & the Magistrate is not required to issue any notice to the borrower before passing an order u/s.14 of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002. In view of the above decisions, separate notice to the respondents on the present petition is not necessary.

6. I have perused the relevant provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 and the above decisions. In view of the above decisions and having regards to the facts and circumstances of this case, I am of the view that there are no legal impediments to grant the relief in favour of the petitioner. Hence, I proceed to pass the following:

ORDER

The petition filed u/Sec.14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 is hereby allowed.

Accordingly, as per the memo filed by the counsel for the petitioner Sri.Bhimrao M Advocate Roll No.KAR.No.3011/2007 is hereby appointed as a Court Commissioner to take possession of petition schedule property from the respondents in accordance with law. The petitioner and jurisdictional police are directed to assist the Court Commissioner in taking possession of the petition schedule premises from the respondents. If the premises is found locked during the visit, the same may be opened by breaking the lock.

The Court Commissioner shall issue notice to the petitioner regarding his visit to the petition schedule premises and prepare a mahazar in the spot in connection with taking possession of petition schedule property and thereafter hand over the possession of the same to the petitioner in accordance with law and shall submit a report to this court as early as possible.

Return the original documents to the counsel for petitioner after proper verification.

Put up this file after receipt of report from the Court Commissioner.

Court Commissioner fee is fixed at Rs.5,000/-.

(Dictated to the Stenographer directly over computer, transcribed by her, corrected by me and then pronounced by me in the open court on this the 17th day of September 2022).

(R.Mahesha)
IX ACMM, Bengaluru.

Order pronounced in the Open Court (Vide separate order)

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