**Date: 20.04.2023**

**Order pronounced as under in the Open Court**

The petitioner, Mahila Co-operative Bank Ltd., Represented by its Authorized Officer Smt. Yamuna .P, No.13 & 14, South End Road, Sheshadripuram, Bengaluru -560 020 has presented this petition u/s 14 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002 to pass an Order to take possession of all that piece and parcel of immovable property being land with residential building bearing Corporation No.15, PID No.8-36-15 situated at 6th 'A' Main Road, Maruthi Layout, Bengaluru City, BBMP Ward No.8, Bengaluru measuring east to west 40'f and north to south (13-6'+15-0')/2 ft having a total extent of 575 Sq. Ft. and bounded on East by : Site No.4, West by : Property No.2, North by : Conservancy and South by : Road.

2. In the petition, it is stated that the respondent is the owner of the petition Schedule Property. Respondent had availed loan by mortgaging the scheduled property from the petitioners bank. For that purpose respondent had executed loan agreement, document confirming deposit of title deeds etc., by creating charge in respect of the property bearing the petition schedule property. It is alleged that in spite of several request as well as reminders, the respondent failed to repay the said loan as per terms and conditions of the loan document. As there was default, loan account is classified as NPA and Statutory Notice under SARFAESI Act is issued. It is

apprehended that the respondent may resort to obstruct the actual taking of possession of the petition schedule property. Hence, this petition.

3. In view of decision of Hon'ble High Court of Karnataka in the case of "Punjab and Sindh Bank V/s Gemini Fashion Pvt.Ltd. 2005 SCC online KAR 708", notice to respondents are dispensed with.

4. I have carefully perused the affidavit filed by the applicant and the documents placed before the court in support of the case by the petitioner company. On careful perusal of the materials, this Court is satisfied that the petitioner is a financial institution as per Section 2(m) of SARFAESI Act and as the respondent had deposited the title deeds of the petition schedule property and mortgaged the same towards the said loan, the petition schedule property is a secured asset as per section 2(zc) of the SARFAESI Act. It is alleged that the respondent has failed to repay the loan and as such the account was classified as a Non Performing Asset. Thereafter, Statutory Notice as required under section 13(2) of the Act is issued. After expiry of 60 days from the said Statutory Notice the applicant has taken symbolic possession of the petition schedule property and issued possession notice dated 19.01.2023 as per section 13(4) of the Act. Thereafter it is published in the Samyukta Karnataka and The Indian

Express on 22.01.2023 which is within 7 days from the date of issuance of possession notice.

5. On careful perusal of the facts and circumstances of this case I am satisfied that the petitioner company being the secured creditor is entitled to enforce security interest against the respondent for recovery of the loan dues. Therefore, this court proceed to pass the following.

**ORDER**

The petition filed by the petitioner Bank u/s 14 of SARFAESI Act is hereby allowed with following terms:-

1. The applicant/petition is entitle to take possession of schedule property towards satisfaction of the creditors due.

2. The petitioner counsel files memo by suggesting Sri. Ramesh .M advocate as court commissioner. Hence the said advocate has been appointed as court Commissioner & the petitioner shall deposit Commissioner fee of Rs.5,000/.

3. The advocate suggested by the petitioner is hereby appointed as a Court Commissioner and he is authorized to take possession of petition schedule property from the respondent and hand it over to the petitioner bank within 2 months from the date of his appointment.

4. If necessary, the Court Commissioner may request the jurisdictional police for assistance and they shall

provide necessary assistance to Court Commissioner in taking possession of petition schedule property.

5. At the time of taking possession, the court Commissioner shall prepare the mahazar cum inventory and submit the same to this court.

6. Office to return the original documents to the petitioner, under proper acknowledgement and receipt.

(Sandesh Prabhu.B)
XXXIX ACMM, Bangalore