सत्यमेव जयते

Complaint Registered on :29/07/17

Complaint Decided on :06/07/18

Duration : Y M D

<u>CRIMINAL MISCELLANEOUS APPLICATION NO. 7452/17</u>

IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE, AHMEDABAD.

Applicant : Axis Bank Ltd.
(Through its Authorized Officer Mr. Bherusingh K Chandana)

<u>VERSUS</u>

Opponents : 1) Mr. Vinodkumar Ishvarlal Prajapati (Borrower)
23, Jaibindu Society,
Near Jaymala Bus Stand.
Isanpur,
Ahmedabad-382443.

And Also at.

M/s. Brahman Enterprise
61/2, Sindhi Commercial,
Market Chokha Bazar, Kabutar Khana,
Kalupur,
Ahmedabad-380001.

And Also at

Flat No. 202, 2nd Floor, Shyam Sai-1,
Near Jayant Park Society, Bhaduatnagar,
Ishanpur, Ahmedabad.

2) Mrs. Rekha Vinod Prakapati (Co-Borrower)
23, Jaibindu Society,
Near Jaymala Bus Stand.
Isanpur,
Ahmedabad-382443.

And Also at

Flat No. 202, 2nd Floor, Shyam Sai-1,
Near Jayant Park Society, Bhaduatnagar,
Ishanpur, Ahmedabad.

Appearance :1)Learned Advocate for the Applicant : Mr. T.C. Modi
2) Learned Advocate for the Opponents : Mr.A.N. Mundra

Sub : Application U/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT)

ORDER

1. Present Application is submitted by the applicant U/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT) on the ground that, Opponent/Mortgagor/guarantor(s)/ Co-borrower(s) have approached Axis Bank Ltd. For grant of Power Home Loan and upon their request the home loan for an amount of Rs. 26,60,312 was sanctioned by Axis Bank Ltd. Opponents have created a security interest over one property mentioned on page No. 6 of the present application under the heading SCHEDULE OF PROPERTY.

2. **The applicant**'s has submitted that opponent has failed to make the repayment of the dues therefore, account of the opponent is classified as NPA.

3. The applicant issued notice U/s. 13(2) of the SARFAESI Act dated on 30/11/16, and the said notice was duly served upon the opponent. As on 30/11/16, Total Rs.28,12,021/-, is due as outstanding.

4. Heard the Applicant, he has mainly argued on the facts mentioned in their application. Applicant has also submitted 9 points affidavit in support of his case, as per the law.

5. Learned Advocate for the Opponent did not remain present at the time of argument. Hence, the right of argument of the Opponent is closed.

6. On perusal of the record, it reveals that, the applicant has served the notice u/s. 13(2) of the SARFAESI Act, to the Opponent and has also submitted the affidavit as per the law. Thus, the applicant has fulfilled all the mandatory requirements of SARFAESI ACT.

7. 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 where in 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.

9. Sufficient time is given by the applicant to the opponent to make repayment of the outstanding dues but opponent has not paid the outstanding amount. Hence, considering the above facts of the application and in view of the above Judgments of the Hon’ble High Court, this court has no power to adjudicate the dispute between the parties. Hence, passed the following order :-

O R D E R

1) The Application of the applicant is hereby granted.

2) I authorize Mr. J.M. Parmar, Assistant Superintendent, of this court, as Court Commissioner U/s.14 (1-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. (in short SARFAESI ACT).

3) Court Commissioner is directed to take possession of property mentioned on Page No.6 of the present application under the heading

SCHEDULE OF PROPERTY. The Description of the Secured Assets is as under :-

Mortgage of Residential property situated at 202, Second Floor, Shyam Sai-1, Near Jayant Park Society, Bhaduatnagar, Isanpur, Ahmedabad Dist. Ahmedabad, admeasuring 120 Sq.Yard i.e. 100.33 Sq.Mtrs. and situated at Mouje: Village Rajpur-Hirpur, Taluka : Maninagar, District : Ahmedabad, lying on R.S. No. 189+190/1/38, T.P. Scheme No. 52, F.Plot No.11, Where in Scheme known as Jayantpark is situated and on its private (Land) Plot No. 38/1 & 38/2 and wherein its Established Scheme known as "Shyamsai" and belonging to Mr. Vinodkumar Isvarlal Prjapati. Property bounded as :-

North	: 30 Feet wide Road.
South	: Block No. 39
East	: Property belonging to Survey No. 188
West	: Other Society.

4) If the secured assets is found in closed condition, the court commissioner may take possession of this secured assets by breaking / opening the lock or may take any other steps he may think fit.

5) After taking the possession of the secured assets, Court Commissioner shall prepare the inventory of any item, Documents relating to the assets if found in secured Assets and handover the same to the applicant.

6) The Court Commissioner may take assistance of the concerned police station and may take or cause to be taken such steps and use, or cause to be used such force, as may, in his opinion be necessary.

7) Applicant shall bear the expenses incurred in taking possession of the secured assets and shall provide all necessary assistance to the court commissioner in taking possession of the secured assets.

8) Applicant is hereby directed at present to deposit lumpsum amount of Rs. 20,000/- towards the expenses and remuneration of court commissioner. On depositing the above said amount in the court, the Court Commissioner is directed to complete the said procedure within 90 days or within the time limit extended by the court and submit the compliance report of completion of proceedings.

9) The court commissioner shall carry out the said proceedings on public holidays or except court working hours.

Pronounced in the open court today i.e. on 06/07/2018

Date: 06/07/2018
Place: Ahmedabad.

[B.B. Patel]
Chief Metropolitan Magistrate,
Ahmedabad.
Code No. GJ00292