KAHV020008372024

IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, AT: HAVERI

Present:

SRI MAHAMMAD ANWAR HUSSAIN MOGALANI

B.Sc. LL.B (Spl).,

Prl. Senior Civil Judge & CJM,
Haveri

CRI.MISC. No.163/2024

DATED 24th DAY OF JUNE, 2025

PETITIONER: Karnataka Vikas Grameen Bank, Head office at Belgaum road, Dharwad-08, Regional office at Haveri, OPP APMC Hangal road, Renuka Arcade 1st floor, Haveri.

Represented by its authorized Officer Sri Manohar S Davalagi, Age: 59 years.

(By Sri M. S. B., Advocate)

AND

RESPONDENTS:

Sri Shivakumar Kuruvateeppa Stavarad(Deceased)

Legal heirs are:

1. Smt. Shruthi Shivakumar Stavarad
At post Lingapur
Taluk: Hirekerur Dist: Haveri.

2. Smt. Mahadevakka Shivakumar Stavarad
At post Lingapur
Taluk: Hirekerur Dist: Haveri.

3. Sri Hanumantappa Hanumantappa Talawar
At post Lingapur
Taluk: Hirekerur Dist: Haveri.

(Nil)

ORDER

The petitioner-bank has filed this petition through its authorized officer against the respondents under Sec.14 of the Securitization of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI Act -2002).

2. It is stated in the petition that, the petitioner bank constituted under banking companies act and doing business of banking. The petitioner is represented by the authorized officer who is conversant with the fact of the case. The respondents have approached the petitioner-bank for sanction of Loan of Rs.5,00,000/- on 12.01.2018. The petitioner-bank by considering the documents has sanctioned the loan. The borrowers have executed loan

agreement in favour of petitioner-bank with agreed terms and conditions mentioned in the loan agreement. The borrower has deposited the title deeds relating to the property VPC no.60 E-swattu no.151700401000320016 at Lingapur village Hirekerur taluk, District Haveri and which is bounded East by Maruthi Devastan, West by property of borrower, North by property of Nangappa Jambu, South by road. Non-performing asset as per Sec.2(O) of SARFAESI Act, in accordance with guidelines issued by the Reserve Bank of India. The demand notice was issued on 25.01.2024 for recovery of loan of Rs.5,05,556/-. The notice was served through RPAD and subsequently the paper publication was taken by the petitioner in daily newspapers. The respondents have not approached the petitioner for repayment. Consequently, the intimation for taking possession was issued on 17.04.2024 and same was published in daily newspapers on 19.04.2024. The total sum of Rs.5,05,556/- was due from the respondents and the respondents are also liable to pay all the costs incurred by petitioner-bank. The petitioner-bank is under apprehension that, while taking possession, the respondents and their agents may prevent the authorized officer from entering into the schedule property. Therefore, the petitioner-bank has filed the petition with the prayer to direct the advocate commissioner to take the possession of the immovable property in accordance with law.

3. As per the order of the Hon'ble High court of Karnataka in the case of Miss. Sunanda Kumari and another Vs Standard Chartered Bank reported in ILR 2007 Kar 16 there is no need to issue notice to the respondents.

4. The authorized officer of the concerned bank has filed affidavit.

5. Heard the learned counsel for the petitioner.

6. The following points arise for my consideration, which are as follows:-

> 1. Whether the petitioner bank made out sufficient grounds to appoint an Advocate of Bar or any subordinate officer of the court as a court commissioner as provided under Sec.14(4) of SARFAESI Act, authorizing him to take possession of schedule properties mentioned in petition and hereby authorizing him to handover such properties or any inventories or documents find in schedule properties to the petitioner finance?
>
> 2) What order ?

7. My findings to the above said points are as under:-

Point No.1 – In the Affirmative.

Point No.2 – As per final order

for the following:

REASONS

8. **POINT No.1**:- The authorized officer of the secured Creditor who is addressed as petitioner above has filed the affidavit by representing the bank. The respondents have taken housing Loan of Rs.5,00,000/- on 12.01.2018 by executing mortgage. The borrower has also deposited the title deeds such as Mortgage deed in respect of property VPC no.60 E-swattu no.151700401000320016 at Lingapur village Hirekerur taluk, District Haveri and which is bounded East by Maruthi Devastan, West by property of borrower, North by property of Nangappa Jambu, South by road. The petitioner bank has produced the Loan application, Loan Agreement, Mortgage deed, Demand Notice, Possession Notice. Further the affidavit goes to show that, the borrower has become defaulter and account has become non-performing assets as per Sec.2(O) of SARFAESI Act. The bank has issued notice by RPAD and also got published in the news paper as per the guidelines.

9. The petitioner-bank has claimed Rs.5,05,556/- as due amount from the respondents. The petitioner bank has produced the copy of the loan application, home loan agreement and copy of the Mortgage deed in respect of house property.

10. The petitioner has relied on **judgment of the Hon'ble Supreme court in Civil Appeal No.6295/2015** and submitted that, this court can grant the relief and appoint advocate commissioner to take possession of schedule property.

11. Herein I rely on the judgment reported in 2014 BC 355 (Kerala) in the case of Federal Bank Vs. Punnus wherein it is held that, the advocate court commissioner can be appointed to take over possession of the schedule property.

12. Therefore, by considering all the material placed by the petitioner it is just and necessary to appoint advocate court commissioner to take the physical possession of the secured asset which is mentioned in petition schedule. Hence, I answer point No.1 in the **Affirmative.**

13. **POINT NO.2**:- In view of above made discussion on point No.1, I proceed to pass following:

ORDER

The petition filed by finance under Sec.14 of SARFAESI Act– 2002 is hereby allowed.

Advocate of Bar, by name Smt Vidyashree D Havanur, Roll No. KAR-3708/2021 Advocate is hereby appointed as Court Commissioner, authorizing her to take physical possession of secured asset as mentioned in the petition property VPC no.60 E-swattu no.151700401000320016 at Lingapur village Hirekerur taluk, District Haveri and which is bounded East by Maruthi Devastan, West by property of borrower, North by property of Nangappa Jambu, South by road and which is belonging to respondents.

The Court Commissioner has to make inventory of any articles in schedule properties found while taking possession of the same by conducting detailed panchanama in the presence of any two independent witnesses.

The court Commissioner's fees tentatively fixed as Rs.6,000/-. The petitioner bank either has to pay Commissioner Fees through cheque/DD or directly pay it to the Court Commissioner.

Issue Commission warrant accordingly if necessary process is paid.

It is made very much clear that court commissioner for this purpose shall have all powers and duties of commissioner appointed under Code of Civil Procedure to execute the same with the help of concerned police if necessary.

(Dictated to the Stenographer, transcribed by her on computer, corrected, signed and then pronounced by me in the open Court dated this the 24th day of June 2025)

(MAHAMMAD ANWAR HUSSAIN MOGALANI)
PRL., SENIOR CIVIL JUDGE & CJM,
HAVERI