

20.07.2023

This case is called and orders pronounced in the Open Court as under

ORDERS

This petition is filed under Section 14 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 by the petitioner against the respondents seeking for an order to take possession of the property bearing No.10-A, Assessment No.32/2, BBMP Khatha No.689, 32/2, 32/2, 10/A, New PID No.195-W0168-16, Chunchaghatta Village, Uttarahalli Hobli, Bengaluru South Taluk, measuring East to West 15 feet and North to South 40 feet, totally measuring 600 Square Feet and abounded on East by Property of C.Dorai, West by Property No.9, North by Property of Sadanandappa and South by Road (herein afterwards referred to as the petition schedule property) by exercising the powers conferred under Section 14 of the Act; handover the same to the petitioner; to direct the full time officers of this Court to take possession of the petition schedule property; to carryout inventory and panchanama of the articles found therein; handover the same to the petitioner to keep in safe custody of the petitioner; to issue suitable

directions or orders to the jurisdictional Police to assist to evict the occupants of the petition schedule property; if so required to break open the lock of the petition schedule property and to deliver the physical possession of the petition schedule property to the petitioner.

2. According to the petitioner, the respondents have approached the petitioner for OD loan. The petitioner sanctioned Rs.9,00,000/- to the respondents on 31.12.2010 and Rs.4,00,000/- on 28.04.2016. The respondents have executed all necessary documents in favour of the petitioner. To secure the said loan, the respondents have created mortgage of the petition schedule property by way of equitable mortgage. The respondents have utilized the loan and they have failed to repay the same as agreed by them. On 25.02.2018, their loan account became NPA. As on 01.12.2021, the outstanding loan amount from the respondents was Rs.11,83,948/-. On 13.12.2022, the petitioner issued Demand Notice under Section 13(2) of the Act to the respondents calling upon them to repay the outstanding loan amount within 60 days from the date of receipt of the notice. In spite of the said Notice, the respondents have not repaid the outstanding loan amount. On 10.02.2023, the petitioner took symbolic possession of the petition schedule property under Section 13(4) of the Act by giving notices to the respondents. It was also published in Kannada Prabha and the New Indian Express News Paper dated 14.02.2023. Therefore, the petitioner filed this petition.

3. The petition is supporting with the affidavit of the Authorized Officer of the petitioner Bank. The learned Counsel for the petitioner filed Original documents relied by the petitioner.

4. I have carefully read the petition averments, its annexed affidavit and the documents placed before this Court in support of the case of the petitioner Bank.

5. On careful perusal of the available materials, this Court is satisfied that the petitioner is a secured creditor, the respondents are the secured obligor and that the petition schedule property is a secured asset for the credit facilities availed within the meaning of the provisions of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. I am also satisfied that the petitioner Bank has issued 60 days Demand Notice as per Section 13(2) of the Act and that the respondents have not paid the said due loan amount to the petitioner bank in spite of due service of the said Demand Notice. Therefore, the petitioner Bank being the secured creditor is entitled to enforce security interest against the respondents for recovery of the loan dues. Under these circumstances, the petitioner bank is entitled for the relief under Section 14 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. Accordingly, a Court Commissioner is to be appointed to execute the order of the Court. Hence, I proceed to pass the following:-

ORDERS

The petition filed by the petitioner under Section 14 of Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 is hereby allowed as prayed.

The petitioner Bank is entitled to take possession of the petition schedule property towards satisfaction of its due from the respondents as prayed in the petition.

Since, the appointment of Sheristedar or any officers of this Court as Court Commissioner is leading to hampering of public duty of this Court, it is just and necessary to appoint an Advocate Sri.Bimrao M., Advocate, Enrollment No.KAR/3011/2007, as Court Commissioner to take possession of the petition schedule property.

The Court Commissioner is hereby directed to take possession of the petition schedule property towards the satisfaction of the due of the petitioner Bank from the respondents with the assistance of jurisdictional police, to break open the lock of the petition schedule property if situation warrants, by conducting inventory and Panchanama and to report the same as

early as possible as per the memo of instruction.

Further, petitioner bank is directed to forthwith furnish memo of instructions to the Court Commissioner.

It is hereby further ordered that direct the jurisdictional Station House Officer to give necessary assistance to the petitioner bank while taking possession of the petition schedule property from the respondent.

The petitioner bank shall bear the legal expenses if any incurred in this regard.

Commissioner fee is fixed at Rs.5,000/-, which will be forthwith deposited by the bank.

Office is directed to issue Commissioner Warrant and return the original documents to the authorized person of petitioner bank or to its counsel on due verification.

(Typed by the Stenographer in the Court computer on my direct dictation, printout taken, corrected, signed and then pronounced by me in the open court on 20.07.2023)

(VEDAMOORTHY B.S.)

II Addl. Chief Metropolitan Magistrate,
Bengaluru.