KABC030436192022	Presented on : 03-06-2022
	Registered on : 03-06-2022
	Decided on : 19-12-2022
	Duration : 0 years, 6 months, 16 days

IN THE COURT OF THE VI ADDL CHIEF METROPOLITAN MAGISTRATE AT BENGALURU CITY

PRESENT	**:**			**RAGHAVENDRA VAIJANATH** **B.A., LL.B.(NEW)** **VI Addl. C.M.M., Bengaluru City**
DATED	**:**			**19th DAY OF DECEMBER, 2022**
CRL.MISC. No.	**:**			**3350/2022**
BETWEEN	**:**		**01.**	**THE BANGALORE CITY CO-OPERATIVE BANK LTD.,** No.03, 1st Floor, Pampamahakavi Road, Chamarajpet, Bengalore-560018. Represented by its Authorized Signatory Mr.Appajaiah C.N.
				... Petitioner/Applicant
				(Represented by Shri. K. V. Lokesh Advocate)
		//VERSUS//		
AND	**:**			**SMT. MAHALAKSHMI P.** No. E. 274, Bilekahalli Vijaya Bank Colony, Bangalore – 560076.
				...Respondent

ORDER ON APPLICATION FILED UNDER SECTION 14 OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT , 2002.

This application is filed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the SARFAESI Act' for short).

02. The application schedule property is as under;

"**SCHEDULE**

Description of the Immovable Property

All that piece and parcel of Property bearing Khaneshumari No.71 (New no. 71/A) BBMP Khatha No.3642/71/71A Situated at Belekalli Village Begur Hobli Bangalore South Taluk BBMP Ward No. 188 of Belekalli Bangalore.

Measuring:

East to West: 15.5 + 12 ¾ /2 feet, North to South : 105 feet

Bounded:

East By : Property belongs to M Abbaiappa

West By: Property belongs to M Nagaraj

North By : Road

South By: Vijaya Bank Co-op Society Property."

03. **Facts in brief :** The applicant is a Co-operative bank. The respondent being a borrower had availed in all a loan of (Rs.39,00,000/- + Rs.35,00,000/- + Rs.15,00,000/-) Rs.89,00,000/- from the applicant/Co-operative bank by mortgaging his secured application schedule property. As the borrower had defaulted in repayment of the loan amount, the applicant proceeded under Section 13(2) of the SARFAESI Act by issuing notice dated 04.10.2021 and 03.01.2022 and also by publishing demand and possession notice in news papers on 29.10.2021 and 08.01.2022 respectively towards recovery of the outstanding loan amount. Since the borrower did not comply with the notice, the applicant filed the instant application against the respondent for taking over possession of the secured asset, viz., application schedule property in question and also for a direction to the police to access the said possession.

04. After presentation of the application, the application was registered but no notice was issued to the respondent as there is no provision in the SARFAESI Act or the rules framed there under for issuance of notice to the borrower/s before an order to take possession is issued. This view of this Court receives support from the law declared by the Hon’ble High Court of Karnataka in the case of Mrs. Sunanda Kumari and Another Vs. Standard Chartered Bank reported in ILR 2007 KAR 16.

05. I have heard the arguments and perused the documents on record.

06. In view of the above, the following points arise for my consideration:

(i) Whether the applicant has issued demand notice as provided in Section 13(2) of the SARFAESI Act and the respondent had failed to discharge his liability in full within the prescribed period?

(ii) Whether the application is hit by any of the clauses of Section 31 of the SARFAESI Act?

(iii) Whether any interim order is passed by the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, preventing the enforcement of security interest?

(iv) What order?

07. My answer on the above points is as under;

(i)	POINT NO.1	:	IN THE AFFIRMATIVE
(ii)	POINT NO.2	:	IN THE NEGATIVE
(iii)	POINT NO.3	:	IN THE NEGATIVE
(iv)	POINT NO.4	:	AS PER FINAL ORDER
			FOR THE FOLLOWING;

R E A S O N S

08. **POINTS NO.1 TO 3**: For the purpose of convenience, I take up points No.1 to 3 together for consideration.

09. Law is clear Section 14 of the SARFAESI Act provides for granting assistance to the secured creditor to take possession of the secured asset. It states that where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of the SARFAESI Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him forward such assets and documents to the secured creditor provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor, declaring that the provision of the Act and the Rules made there under had been complied with. Provided further that on receipt of the affidavit from the authorized officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets. The role of the Court is only ministerial in nature and does not require adjudication of any lis. The Court only acts on the request of the secured creditor in taking possession or control of such secured asset or document and making over the same to the secured creditor. In effect, the Court only provides assistance and necessary protection to the secured creditor in taking possession of the assets and documents referred to in sub-section (4) of Section 13 of the SARFAESI Act.

10. It is evident from the records that the borrower took a loan from the applicant/secured creditor by offering the application schedule property/secured asset as security but made default in repayment of loan/installment and the applicant issued to the respondent a notice under sub-section (2) of Section 13 of the SARFAESI Act. The applicant has annexed a copy of the notice issued under Section 13(2) of the SARFAESI Act along with proof of dispatch of the said notice and affidavit of service to that effect to the main application. The application secured asset which is intended to be taken over is within the jurisdiction of this Court. The respondent’s account is classified as non-performing asset by the secured creditor. The application is not covered by any of the clauses of Section 31 of the SARFAESI Act. The applicant has stated that no interim order has been passed by the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. Since the applicant has complied with the mandatory requirement of Section 13(2) of the SARFAESI Act and Rule 8 of the Security Interest (Enforcement) Rules, 2002, the applicant as secured creditor is entitled to take possession of the application schedule property. Therefore, I answer point no. 1 in the Affirmative and point no.2 and 3 in the Negative.

11. **POINT NO.4:** In view of foregoing reasons, I pass the following;

O R D E R

The application filed by the applicant under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is allowed.

Consequently, applicant is permitted to take possession of the secured asset i.e., application schedule property with reasonable force which includes the breaking open of locks, wherever necessary.

The concerned Police Station is directed to provide necessary help/assistance in taking possession.

(Typed directly on computer by me, after corrections pronounced by me in Open Court on this the 19th day of December, 2022).

(RAGHAVENDRA VAIJANATH)
VI ADDL. C.M.M. BENGALURU CITY