IN THE COURT OF CHIEF JUDICIAL MAGISTRATE AT TIRUVALLUR

Present: Thiru. **R. VELARAS** B.Sc.,B.L.,L.L.M.,
Chief Judicial Magistrate,
Tiruvallur

Dated this, Monday the 27th day of March 2023

CRL.MP.No.8355/2022

M/s. Equitas Small Finance Bank Limited.,
(Formerly known as M/s. Equitas Finance Ltd.)
Having Office at F-39, Spencer Plaza,
No.769, 4th Floor, Phase-2,
Anna Salai, Chennai-600 002
Represented by its Authorized Officer,
Mr.S. Liyakath Ali. ...Petitioner..

/Vs/

1. S. Yesu
   S/o. Santhosham
2. Meenatchi
   W/o. Yesu
   Both are
   No.250 Perumal Koil Street,
   Kuppam Kandigai Colony,
   Manavur,
   Thiruvallur 631 210. ... Respondents/Borrowers /Guarantors / Mortgagers

This petition was taken on file on 07.10.2022 and was coming for hearing before me on this day, in the presence of M/s.J. Arulmozhi, J. Vennila Advocates for the petitioner and upon hearing the petitioner's side arguments, perusing affidavit, petition and other relevant documents, and having stood over for consideration, this Court delivered the following:-

ORDER

This petition has been filed by the petitioner for taking physical and vacant possession of the secured assets under Section 14 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI Act 2002), by appointing an Advocate Commissioner and to order Officer In-Charge of **Thiruvalangadu Police Station** and Revenue Authorities to assist and permit to break open of lock if any, found on the secured asset and remove the inmates of the property after taking inventory of goods and deliver the vacant and physical possession of the petition schedule property to the Petitioner Bank.

2. Case of the petitioner in brief :

The case of the petitioner is that the respondents approached petitioner bank for availing loan against property, for which the petitioner Bank sanctioned loan of Rs.5,01,000/- on 06.07.2018. The respondents executed a loan agreement on the date of sanction itself in favour of the Petitioner Bank and offered their schedule mentioned immovable properties and mortgaged them by depositing the title documents of Settlement deed dated 24.05.2017 in respect of the petition schedule property with the Petitioner bank. The respondents were irregular in making payment and the loan account of the respondents was classified and declared as Non-Performing Assets on 10.03.2022. Even after the issuance of Notice u/s 13(2) of SARFAESI Act on 04.04.2022, though the Respondents acknowledged the receipt of Notice, did not come forward to repay the due amount.

The respondents are in due of totally Rs.5,38,600/- towards the above said loan accounts as on 01.04.2022. The secured asset is in the custody of the respondents and without taking possession of the secured assets, the petitioner could not realize the loan due amount. The petitioner apprehends that the respondent would prevent, resist the petitioner from taking physical possession of the schedule property. Hence, this petition has been filed requesting this court to take possession of the secured asset and hand over the same to the Petitioner Bank who is the Secured Creditor.

3. Point for consideration is whether the petition filed by the petitioner under Sec.14(2) of the SARFAESI Act 2002 is to be allowed or not?

4. Heard, the counsel for the petitioner.

5. The petitioner appeared before this Court and produced original documents of the copy of documents filed along with the petition. The copies of the documents were compared with Originals and marked as **Ex.P1 to Ex.P.10**. On perusal of the affidavit, petition and documents filed by the Petitioner the following particulars are decipherable :-

Sl.No.	**PARTICULARS FURNISHED**	
1	Nature of Loan Facility	Loan Against Property
2	Date of Sanction of Loan	06.07.2017
3	Amounts Borrowed	Rs.5,01,000/-
4	Name of Borrowers	1. S. Yesu 2. Meenatchi
5	Name of Guarantors	--
6	Date of Deposit of Memorandum of title deeds	Deed dated 24.05.2017 under Document No.598/2017 of SRO, Thiruvelangadu.

7	Nature of Documents deposited	Settlement Deed
8	Date of N.P.A	10.03.2022
9	Date of Notice under Sec.13(2)	04.04.2022
10	Date of Acknowledgement or return of postal cover	-
11	Whether 60 days completed from the date of notice	Yes
12	Date of Possession Notice	-
13	Amount due as on 01.04.2022	Rs.5,38,600/-
14	Name of Village and District (Secured Assets)	Manavoor Village
15	Schedule of Secured Asset	All that piece and parcel of land and building, comprised in Gramanatham Old S.No.121/3 Part, New S.No.209/4 with an extents of 1600 sq.ft situated at Manavoor Village, Tiruttani Taluk, Thiruvallur District
16	Whether Encumbrance Certificate is enclosed?	Yes
17	Name of Police Station	Thiruvalangadu Police Station
18	Whether any case is pending before the District Collector, Tiruvallur regarding the same petition mentioned property?	No

6. From perusal of the loan documents, title deed, notice, possession notice, Paper Publication, Statement of Accounts, Gazette Publication for Petitioner under SARFAESI Act it could be seen that the schedule mentioned property has been mortgaged towards the loan and it has been created as a Secured Asset and it is also evident that the Loan has not been repaid. This petition has been filed after the expiry of 60 days from the date of receipt of notice issued under Sec.13(2) of SARFAESI Act

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2002 by the respondents and so, the respondents are not entitled to any further notice as per the Act from this Court.

7. The petitioner Bank is having its office at Chennai and the petition mentioned property is situated in Manavur Village within the jurisdiction of this court. Encumbrance certificate has also been produced by the petitioner to show that the title of the respondents are clear and valid and no rights of any third parties are involved. Necessary affidavit affirming that the provisions of the SARFAESI Act 2002 and Rules have been complied with has also been filed by the Authorized Officer.

8. The records produced before this Court confirms the contents of the affidavit and they clearly show that the debt has not been repaid. As the debt has become a NPA, the petitioner bank is entitled to take possession of the secured asset and the interest of justice would be best served by assisting the secured creditor in taking possession of the secured assets. An advocate commissioner shall be appointed by this court for identifying the secured asset and taking physical possession of the same. If there is any resistance, it shall be open for the advocate commissioner to seek police aid and also take all effective steps to take possession of the secured assets.

9. This view of the court is also fortified by the Hon'ble Supreme Court in its judgment reported in **the Authorised Officer, Indian Bank Vs The Visalakshi and another (Civil Appeal No. 6295 of 2015), dated 23.09.2019, wherein it has held as follows**:-

"…..Thus, it is only a procedural step without any adjudication of any dispute whatsoever. The action is therefore, only an administrative order made for taking possession of the secured assets, if all other conditions are fulfilled. Having already noted that the powers exercised by the CMM and DM in terms of Section 14 of the 2002 Act are synonymous to each other and that they are not adjudicatory in nature….."

"…. It did notice that the authority referred to in Section 14 of the 2002 Act has no power to adjudicate upon any rights of the parties but can only render assistance to the secured creditor to recover possession……."

"….. The power to be exercised under Section 14 of the 2002 Act by the concerned authority is, by its very nature, nonjudicial or State's coercive power. Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy under Section 17 of the 2002 Act and/or judicial review under Article 226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lessee; nor is it possible to suggest that they are rendered remedy-less in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any advantage much less added advantage…."

"….. It also noted that the authority after receiving such request under Section 14 of the 2002 Act, was not expected to do any further scrutiny of the matter except to verify from the secured creditor whether notice under Section 13(2) of the Act has already been given or not and whether the secured asset is located within his jurisdiction. There is no adjudication of any kind at this stage. The Court also noticed in paragraph 23 of the reported judgment that after amendment of Section 14 of the 2002 Act, by inserting first proviso therein, the designated authority has to satisfy itself only with regard to the matters mentioned in clauses (i) to (ix)...."

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10. Hence, applying the principles laid down in the aforesaid judgment to the case on hand, and on perusal of the documents produced by the petitioner, it is clear that the requirements under the various provisions of the SARFAESI Act have been complied with and the petitioner is to be assisted in taking physical possession of the secured asset. In the light of the aforesaid discussions, this court is of the view that an appropriate direction to prepare inventory and to take physical possession of the secured asset is liable to be passed in favour of the petitioner and as such, this court is inclined to allow this application.

In the result, this application is allowed, Advocate Mr.R.S. Inbarasan (E.N.Ms.No.2207/2017, Mobile No.:7010481894) is appointed as Advocate Commissioner

1. To inspect the petition schedule mentioned property;
2. Take inventories;
3. Take physical possession of the petition schedule mentioned property and immediately hand over the same to the petitioner/secured creditor and
4. If necessary, take assistance from **Thiruvalangadu Police Station** and Revenue Officials in executing the warrant.

A sum of **Rs.20,000/-** is fixed as remuneration for the said Advocate Commissioner. **"*The petitioner is directed to pay remuneration directly to the Advocate Commissioner. The Advocate Commissioner is entitled to get remuneration directly from the petitioner after possession is taken or this matter is settled between the parties or the petition is withdrawn by the petitioner. The***

petitioner shall not refuse to pay the remuneration to the Advocate Commissioner at any cost like settled out of court or withdrawn". The Advocate Commissioner is directed to file report with original warrant and with a memo regarding receipt of remuneration, after taken possession. Further the Advocate Commissioner shall file his report with original warrant if the matter is settled between the parties or withdrawn by the petitioner.

11. In case of urgency for any further orders either the petitioner or the Advocate Commissioner can approach this court by way of memo.

12. This petition ordered accordingly.

This order dictated directly to the Steno-Typist, typed by her on the Computer, corrected, and pronounced by me in the Open Court, on this Monday, the 27th day of March 2023.

Petitioner side witness :

PW1 - Mr.S.Liyakath Ali, Authorized Officer

Exhibits on the side of Petitioner :

(Copies compared with originals)

1. Ex.P.1 - 16.02.2021 Power of attorney
2. Ex.P.2 - Loan Application of respondents
3. Ex.P.3 - Loan agreements
4. Ex.P.4 - 06.07.2017 Sanctioned Term Loan
5. Ex.P.5 - 24.05.2017 Memorandum of Deposit of Title deeds registered as Doc.No.598/2017, of SRO Thiruvalangadu
6. Ex.P.6 - 04.04.2022 Demand Notice U/Sec.13(2) of SARFAESI Act.
7. Ex.P.7 - Postal Track Consignment
8. Ex.P.8 - Statement of accounts
9. Ex.P.9 - Encumbrance Certificate
10. Ex.P.10- 13.10.2005 Settlement deed

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