IN THE COURT OF THE III ADDL., CHIEF METROPOLITAN MAGISTRATE, AT BENGALURU

Dated this 15th December 2021

Present: Sri. Prakash V. B.A.L.,LL.B.,

III Addl., Chief Metropolitan

Magistrate, Bengaluru City.

C.Misc.No:2958/2021

Petitioner : Union Bank of India,

HSR Layout Branch,

No.993, 9th Main, 7th Sector,

HSR Layout, Bengaluru.

Represented by its:

Chief Manager/Authorised Officer:

Sri.Nagendra Kumar

S/o Late Gauri Shankar Gupta,

52 yrs,

(By Sri.NB Adv.,)

V/s

Respondents : 1. Sri. V.Ravi S/o R.Venkatappa,

2. Smt.Shreedevi W/o Ravi,

Both are R/at:No.208, 2nd Cross,
1st Phase, 1st Stage, Jaibheemanagar
South BTM Layout, VP Road,
Old Madivala Village, Beguru Hobli,
Bengaluru.

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::<u>ORDER</u>::

This is a petition U/Sec.14 of the SECURITISATION AND RECONSTRUCTION OF FINANACIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT 2002, with a prayer to take physical possession of schedule property and to appoint Officers of this Hon'ble Court to take possession of Schedule property and hand over possession of the schedule property to the petitioner and direct the jurisdictional Police to assist to take physical possession of the schedule property and pass such other orders as deems fit in the circumstances of the case.

2. **The case of the petitioner is as follows**:

The petitioner averred that the respondents have borrowed a Loan of Rs.50,00,000/- on 19/09/2014 by mortgaging the schedule property and executed necessary documents and agreed to pay the principle amount, interest and other dues to the Petitioner Bank and created equitable mortgage by deposit of title deeds over the schedule property in favour of Petitioner Bank.

3. After availing the loan the respondents failed to make the payments as promised and became defaulter and the Loan Account classified as non performing asset as on 31/3/2021 and the respondents due a sum of Rs.34,45,232.38 as on 31/3/2021 to the Petitioner Bank. The petitioner has issued Demand Notice u/sec.13(2) of the Act on 9/4/2021 demanding to pay due amount within 60 days from the date of service of notice. The said notice was duly served on the respondents.

4. The petitioner also issued Possession Notice u/sec.13(4) of SARFACIE Act on 12/7/2021 and also published in two leading News Papers in The New Indian Express and Kannada Prabha on 15/7/2021. In spite of that the respondents not complied the Demand Notice and the petitioner apprehends that the respondents may resort to dispose off or transfer or alienate or otherwise deal with the property in order to repeat the legitimate right of the petitioner and respondents may abstract from

taking possession of the schedule property. Hence, this petition is filed for the relief sought in the petition.

5. Authorized Officer of the Petitioner Bank filed affidavit and furnished original documents.

6. Heard arguments.

7. The following points that arise for my consideration:

1. Whether the petitioner satisfies that the respondents borrowed a Loan of Rs.50,00,000/-by mortgaging the schedule property ?
2. Whether the petitioner satisfies that the respondents have due outstanding amount of Rs.34,45,232.38 as on the date of demand notice and the said Loan Account is classified as non performing asset?
3. Whether the petitioner satisfies that the respondents have failed to discharge due amount in spite of service of Demand notice issued u/sec.13(2) of SARFAESI Act?

4. Whether the petitioner is entitled the relief sought in the petition?
5. What Order?

8. On the basis of material available on record and under the circumstances of the case my findings on the above points is as follows:

Point No.1: In the Affirmative
Point No:2: In the Affirmative
Point No.3: In the Affirmative
Point No.4: In the Affirmative
Point No.5: As per final order for the following:

::REASONS::

9. **Point No.1**: In order to substantiate the facts narrated in the petition, the Authorized Officer of the Petitioner Bank Sri.Nagendra Kumar filed affidavit reiterating the petition averments in his affidavit and supported by the original documents. In order to substantiate for borrowing a Loan, the petitioner has produced Loan Application, Loan Sanction Letter dated 19/9/2014, Letter of Guarantee dated 19/11/2014,

Loan Agreement dated 21/11/2014, Memorandum of Deposit of Title Deeds dated 19/11/2014, Sale Deed dated 23/6/2004, Loan Account Extract, Certificate of Central Registry dated 20/11/2014. All these documents clearly establish that the respondents have borrowed a loan of Rs.50,00,000/- from the Petitioner Bank by mortgaging the schedule property in favour of Petitioner Bank.

10. As per the Loan Agreement, Loan Sanctioning Letter the Petitioner Bank sanctioned Loan of Rs.50,00,000/- to the respondents and received the same by executing necessary documents and mortgaged the schedule property by executing Memorandum of deposits of title deeds dated 19/11/2014. In order to considerations the respondents executed the said documents by creating equitable mortgage by deposits of Title Deeds in respect of loan over the petition scheduled property in favour of Petitioner Bank for the security of the Loan Rs.50,00,000/-. The respondents have not disputed these documents. Under these circumstances, it is clearly establish that the respondents borrowed a Loan from the Petitioner of Rs.50,00,000/- by mortgaging the petition schedule property. There are no material grounds to disbelieve the affidavit of petitioner and documentary

evidence. Hence, I answer Point No.1 in the affirmative.

11. **Point No.2**: The petitioner further contended that the respondents have due outstanding amount of Rs.34,45,232.38 and it is become non performing asset. As per the Loan Agreement and Loan Sanction Letter the respondents have to pay 120 monthly installments. The petitioner produced Loan Account Extract clearly shows that the respondents have not paid regularly and due to the Petitioner Bank. The petitioner has issued Demand Notice on 9/9/2021 calling upon the respondents to pay due amount of Rs.34,45,232.38 with future interest. The respondents have received the said notice on the same day .

12. As per the Loan Agreement, Loan Sanctioning Letter the respondents have pay loan amount with interest in 120 monthly installments. As per the Loan Extract they have not paid regularly. When they have not paid the Loan installments regularly it is deemed to be considered that they have defaulter in payment of loan amount. As per the Loan Account Extract it clearly shows that the respondents have defaulters in payment of Loan amount and due to the Petitioner Bank. When the Loan amount was not cleared within the stipulated time and

became defaulter the Loan Account will become non performing asset. Loan Account Statement clearly establish that the respondents have due to the Petitioner Finance. Hence, I answer Point No.2 in the Affirmative.

13**.** **Point No.3**: If the respondents failed to comply the Loan Agreement, the petitioner can recover due amount in accordance with law and the petitioner also having a right to take physical possession of the mortgage property to recover outstanding due amount. Before proceeding on the immovable properties, the petitioner has to issue demand notice under section 13(2) of SARFACIE Act with a prayer to pay the due amount within 60 days from the date of service of notice and if they failed to comply the Demand Notice, then the petitioner can proceed against immovable property.

14. The Demand Notice dated 9/4/2021 was personally received by the respondents on the same day. In spite of that respondents not complied the Demand notice and not replied to the Demand Notice. Thereafter, the petitioner has issued Possession Notice u/sec.13(4) of SARFACIE ACT and also published in two leading News Papers one in Kannada Prabha and one in English The New Indian Express on

15/7/2021. Inspite of that, the respondents not complied the Demand Notice. Hence, I answer Point No.3 in the affirmative.

15. **Point No.4**: The petitioner has complied the statutory requirements. The Security Interest i.e. equitable mortgaged property was registered before the Central Registry of Securitization asset reconstruction and Security Interest of India on 29/11/2014. The petitioner has satisfied to obtain the relief claimed in the petition. The respondents have not replied the Demand Notice. Hence, it can be considered that they have agreed the claim of Petitioner Bank. There are no material grounds to reject the claim of petition. Hence, I answer Point No.4 in the Affirmative.

16. **Point No.5**: For the reasons stated above and under the facts and circumstances of the case, I proceed to pass the following final:

::ORDER::

The Petition filed by the Petitioner u/sec.14 of the SARFAESI Act is hereby allowed.

It is further ordered that the petitioner is permitted to take vacant physical possession of immovable schedule property in accordance with law.

It is further ordered that the concerned Jurisdictional Police is hereby directed to assist the petitioner to take physical possession of petition schedule property.

It is further ordered that the Sheristedar of this Court is authorized and appointed as Court Commissioner u/sec.14(1) (A) of SARFAESI Act to take possession of schedule property and to hand over the same in favour of Petitioner to execute the order in accordance with law.

Commissioner Fee of Rs.2,000/- is fixed and petitioner shall bare the same.

Office is to return the original documents with due acknowledgements.

(Dictated to the Stenographer directly on computer, typed by her, revised and corrected by me and then pronounced in the open Court on this 15/12/2021).

(Prakash V.),
III ACMM.,
Bengaluru City.

::Schecule Property::

All that piece and parcel of the Property bearing House No.208 (Old Khaneshumari No.98/3) 2^{nd} Cross, VP Road, Old Madivala Village, Beguru Hobli, Bengaluru and bounded on:

East by: Nagappa's House,
West by: Senappa's Property,
North by: Harohalli Ramaiah's House,
South by: Road.

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(Prakash V.),
III ACMM.,
Bengaluru City.