IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE & CJM., GADAG.

Present: Sri. Prakash Channappa Kurabett
B.SC., L.L.B. (Spl.,)
Prl. Senior Civil Judge & CJM., Gadag.

Crl. Misc. 25/2022

This the 5th day of November 2022

PETITIONER:

Bank of India,
Sayyed Building, P.B. Road,
Opp. Bhisma Lake ward No.26
Gadag Represented by
Chief Manager / Authorized
Officer Mr. Vishwantha R.

(By Sri. GAT Adv.,)

V/s

RESPONDENTS:

1. M/s Shripradha Enterprises
Rept by its Partners, Shri. Prasanna Vasant Anvekar & Shri. Vasant Vasudev Anvekar R/o at CTS No.6658/46-B "Vasudev Krupa", Opp. J.T. College, Gadag - Betageri.

2. Shri. Prasanna Vasant Anvekar,
CTS No.6658/46-B, "Vasudev Krupa"
Opp. J.T. college, Gadag – Betageri.

3. Shri. Vasant Vasant Anvekar,
CTS No.6658/46-B, "Vasudev Krupa"
Opp. J.T. college, Gadag – Betageri.

4. Smt. Anandibai Vasant Anvekar,
CTS No.6658/46-B, "Vasudev Krupa"
Opp. J.T. college, Gadag – Betageri.

5. Shri. Shivanand Ishwarappa Annigeri
C/o Shri. Gururaghavendra Ginning &
Pressing Mill compound Asundi Cross,
Opp. Police Station, at & post: Binkadakatti
Tq: Dist: Gadag.

6. Shri. Krishna Ishwarappa Annigeri
C/o Shri. Gururaghavendra Ginning &
Pressing Mill compound Asundi Cross,
Opp. Police Station, at & post: Binkadakatti
Tq: Dist: Gadag.

7. Shri. Kashayya Siddaramayya Hosmath,
Mallikarjun Road, Betageri.

(Exparte)

O R D E R

The petitioner has filed present petition U/s.14 of SARFAESI Act with a prayer to permit the petitioner to get possession of secured petition property from the respondents and also permit to break open if said property is locked.

2. The facts of the petition is as under:

The petitioner / bank having its branch office at Gadag. The respondent No.1 approached to the petitioner / bank for credit facilities of Rs.25,00,000/-, The petitioner sanctioned loan of Rs.25,00,000/- for the purpose of Traders / Small Business on 15.03.2013, to the respondents at the rate of 14.25% p.a. interest by executing loan agreement and agreed to repay the same. The respondents borrowed said loan by mortgaged property by way of memorandum of deposit of title deed created security interest in favour of the petitioner bank and all piece and parcel of the immovable property measuring to the extent of 333 sq. yrd bearing its CTS No.6658/46-B situated at “Vasudeva Krupa” Near J.T. College, Gadag - Betageri and owned by Smt. Anandibai vasant Anvekar.

3. Further it is the case of the petitioner that, the respondents by creating security interest on the asset which mentioned schedule property by deposit of title deeds with the petitioner. But, the respondents have failed to repay the loan amount. The loan account of obligors has classified as NPA on 30.11.2018. Thereafter, the petitioner has issued demand notice on 13.12.2018 as required U/sec.13(2) calling upon them for payment of outstanding amount as on 21.11.2018 of Rs.26,68,846/-, and also issued demand possession notice on 16.02.2019. The said notices were served upon

the respondents and also they were published in Deccan Herald and Vijaya Vani newspapers on 20.02.2019. In spite of notice issued to the respondents they have not come forward to repay the said loan amount nor replied to the said notice. Thereafter the petitioner has taken symbolic possession on 16.02.2019. In spite of notice the respondents not come forward repay the said loan amount. Hence, petitioner/bank has filed this petition.

4. After institution of petition, petition notices were served to the respondents, in spite of service of notices they were not appeared before the court and placed exparte.

5. On the basis of pleadings of the petitioner, the points are arises for my consideration as under:

POINTS

1. Whether the petitioner / bank has made out sufficient grounds to entitled for claim as sought in the petition?
2. What order ?

6. Heard arguments and perused the records.

7. Now the findings of this court on the above as follows;

Point No.1 : In the affirmative

Point No.2 : As per final order,
for the following

REASONS

8. Point No.1:- The petitioner / Bandhan Bank Limited, has filed present petition U/s.14 of SARFAESI Act prayed to permit the petitioner to get possession of secured petition property and also permit the bank to break open if said property is locked. Wherein, it is necessary quoting Sec.14 of SARFAESI and the same is read as under;

> **Sec.14:-** Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset:-
>
> 1. Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, 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-

(a).....

and looking to the above, the question is arises as whether the present petition is maintainable or not before this Court? Answered by this court is present petition is maintainable, in view of Law laid down by our Hon'ble Supreme Court of India reported in **2019 0 Supreme(SC) 1067** in case of **The Authorised Officer, Indian Bank V/s- D. Visalakshi and Another.** It has been held at para No.34 as follows:

> *34. Notably, the powers and functions of the CMM and the CJM are equivalent and similar, in relation to matters specified in the Cr.P.C.. These expressions (CMM and CJM) are interchangeable and synonymous to each other. Moreover, Section 14 of the 2002 Act does not explicitly exclude the CJM from dealing with the request of the secured creditor made thereunder. 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 remediless 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 muchless added advantage. Taking totality of all these aspects, there is nothing wrong in giving expansive meaning to the expression "CMM", as inclusive of CJM concerning nonmetropolitan area, who is otherwise competent to discharge administrative as well as judicial functions as delineated in the Cr.P.C. on the same terms as CMM. That interpretation would make the provision more meaningful. Such interpretation does not militate against the legislative intent nor it would be a case of allowing an unworthy person or authority to undertake inquiry which is limited to matters specified in Section 14 of the 2002 Act.*

In view of the above, this Court is got jurisdiction to entertained the present petition.

9. Whereas, the petitioner / company has sought for the assistance from this Court for taking possession of secured property U/s.14 of SARFAESI Act. As such, the Authorized Officer of the petitioner, by name Shreekant S/o Muralidharasa Pawar has filed affidavit and has produced certain documents which are as under;

1. Application for financial assistance to Traders / Small Business dated 15.03.2013.
2. Sanction Letter format for credit Limits dated 15.03.2013
3. Hypothecatin cum Loan agreement dted 15.03.2013
4. Deed of Guarantee daed 15.03.2013.
5. Memorandum evidencing creation of equitable mortgage by deposit of title deed dated 28.01.2015
6. Encumbrance certificate dated 28.01.2015
7. Demand notice u/s. 13(2) dated 13.12.2018
8. Copies of postal receipts dated 14.12.2018, 17.12.2018, 18.12.2018
9. Possession notice dated 15.02.2019
10. Copies of postal receipts dated 21.03.2019
11. Copy of possession notice U/s. 13(4) of SARFAESI Act dated 16.02.2019.

10. In the instant case, the respondent has filed application for the purpose of loan, wherein it shows that, the respondent had approached to the petitioner / bank for loan for the purpose of Traders / Small Business and the petitioner / bank has sanctioned loan of Rs.25,00,000/- as per document No.2 on 15.03.2013 and executed loan agreement on 15.03.2013 as per document No.3. Further the respondents have executed Memorandum of deposit of Title deeds with respect of petition property and said

copy of mortgage deed dated 28.01.2015 produced at document No.5. Further as per document No.7 for loan recall notice dated 13.12.2018, wherein it shows that, the respondents have failed to repay the dues to the bank. Before filing present petition, the petitioner has issued demand possession notice as required Sec.13(2) of SARFAESI Act. In spite of such notice dated 13.12.2018 the respondents have not paid the dues.

11. Further in the instant case, the petitioner / bank being the security creditor is entitled to enforce security interest against the respondents for recovery of so dues and there is no need to issue the notice of main petition to the respondents i.e., security debtors. Hence, issuance of notice to the respondents is dispense with. The respondents will not handover the possession of the secured property to the petitioner / bank. If really they are not defaulter, they could have appeared before this court and contest the matter by filing their objections, but in this regard they failed to appeared and they were placed exparte. Hence, for recovery of dues from the respondents, it is necessary to take physical possession

of the secured property by exercising powers conferred U/s. 14 of SARFAESI Act and handed over the same to the petitioner and it is necessary to carry out inventory and panchanama of the articles found therein and further to handover possession thereof to the petitioner to keep in safe custody of the secured assets. Further it is also necessary to direct the jurisdiction station officer of the police to assist the petitioner for break open the lock, if so required. Further the allegation made by the petitioner is unchallenged. Thus, on looking to facts narrated in the petition coupled with the documents produced by the petitioner / bank, the petitioner is entitled to the relief as sought for. **Hence, this court answered point No.1 in the affirmative.**

12. Point No.2:- In view of the above findings on above said point, this Court proceed to pass the following;

O R D E R

The petition filed by the petitioner / bank U/s.14 of SARFAESI Act is hereby allowed with the following terms.

1. The petitioner / bank is entitled to take possession of the secured property towards satisfaction of the creditors dues.

2. Police inspector of jurisdiction of police station is hereby directed to give necessary assistance to the petitioner/ bank while taking possession of the schedule property.

3. Further petitioner / bank is also entitled to break open if the secured asset if so locked and handover the same to the petitioner / bank.

(Dictated to the Stenographer directly on computer, typed by her and corrected by me and then pronounced in the open court on this the 5th day of November 2022)

(PRAKASH C. KURABETT)
Prl. Senior Civil Judge & CJM.,
Gadag.

PRAKASH CHANNAPPA KURABETT

Digitally signed by PRAKASH CHANNAPPA KURABETT
Date: 2022.11.07 15:19:56 +0530