IN THE COURT OF THE 30TH ADDL.CHIEF METROPOLITAN MAGISTRATE, BENGALURU

Dated: This the 13th day of December, 2022.

:Present:
Sri. I.P.Naik, B.A., LL.B.,(Spl)
30th ACMM, Bengaluru.

C.Miss.No.7236/2022

Petitioner	**:**	**M/s. Tumkur Grain Mechants,** **Co-operative Bank Ltd.,** **Admin Office: B.H.Road,** **Tumkur-572 103.** **Represented by its** **Authorised Signatory** **Authorised Representative** **Mr.Rajashekar.**
		-V/s-
Respondent	**:**	**1.Smt.Laveen Janet Monteoro,** **17/18, 1st Cross,** **Eshwari Layout,** **Chikkabettahalli,** **Vidyaranyapura,** **Karnataka-560 097.** **2. Sri.Felix Serran,** **17/18, 1st Cross,** **Eshwari Layout,** **Chikkabettahalli,** **Vidyaranyapura,** **Karnataka-560 097.** **3.Anthony Kishore Kumar,** **S/o.Thomas.P** **No.12, Mariyappana Palya,** **Bangalore-560 0024.**

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-:ORDERS ON PETITION:-

The petitioner institution has filed this petition U/sec.14 of SARFAESI ACT, seeking order for take physical possession of secured asset property:

2. **Description of the property.**

All that piece and parcel of the residential building bearing House Nos.17 and 18 Old Khatha No.723/17, 18, now, it comes under BBMP limits bearing Khatha No.1212/723/17/18 ward No.03, Yelahanka out of converted land bearing old Survey No.8 new survey No.8/1, converted for non-agricultural residential purpose vide official memorandum No.B DIS. AIN.(SR)NA)219/2003-04, dated 05.04.2004 issued by special deputy commissioner Bangalore, situated at Chikkabettahalli Village, Yelahanka Hobli, Bangalore North Taluk, Measuring East To West 40 feet and North to South 56.4 + 60/2, feet totally 2320 sq ft along with 128 squares of RCC Roofed residential building and bounded on:

East by: 20 feet Road
West by: Site No.13 & 14,
North by: Private Property
South by: Site bg.No.16

Herein after this property is referred as secure asset;

3. The respondent are owners of the aforesaid secure asset. They have approached petitioner financial Bank for financial assistance. As per their request and application, the petitioner financial Bank sanctioned and distributed loan, totally of **Rs.80,00,000/-.** In this regard, the respondents executed simple mortgage infavour of the petitioner's financial Bank. The respondents were not regular in repayment and installments. They became chronic defaultor and is due to pay **Rs.70,34,920/-.** Accordingly, loan account of the respondent is classified as **NPA on 29.12.2019.** This fact reveals from the separate

memo filed by the counsel for the petitioner. On **15.06.2022** the petitioner financial Bank got issued notice as contemplated U/s.13(2) of the Sarfaesi Act. Inspite of due service of notice, the respondent not heeded to the demand made in the said notice. Further, the petitioner financial Bank got published said notice in Daily News papers. Inspite of that, respondents have not taken any steps for repayment of the said loan availed by the them. Accordingly, the petitioner financial Bank submitted this petition for aforesaid relief.

4. Heard arguments. (At the time of receiving petition, this court perused and compared the original documents with copies of the documents produced along with the petitioner, same are correct. Thereafter, original documents are returned to the learned counsel for the petitioner.)

5. The following points arise for my consideration:

1. ***Whether this petition is hit by Sec.31 of the Act?***

2. Whether the petitioner financial institution complied the ingredients of Sec. 14 of the Sarfesia Act.?

3. What Order.?

6. By considering the affidavit of Authorized Officer, documents and hearing of the parties, my answer to the above point is as under:-

Point No.1 : Negative
Point No.2 : Affirmative
Point No.3 : As per final order

......................following.

REASONS

7. The learned counsel for the petitioner financial Bank urged that, the documents relied by the petitioner clearly shows that, the petitioner has complied the conditions of Sec.13 & 14 of the Sarfesia Act. Hence, prays to allow the petitioner as sought for.

8. I have carefully perused the petition, affidavit of authorised officer and documents. The documents clearly discloses that the respondent have approached petitioner financial Bank for financial assistance and are due for **Rs.70,34,920/-.** After sanction of loan both respondent executed documents infavour financial Bank and also depositing the title documents infavour of petitioner financial Bank. The registered documents got its own genuine and relevancy as contemplated U/s.80 of the Evidence Act. The notice and postal acknowledgment clearly discloses that, the petitioner financial Bank got issued possession notice as contemplated U/s.13 (2) of the Sarfesia Act. The other records clearly discloses that, the cheques issued by the respondents are dishonoured due to funds insufficient.

9. The petitioner financial Bank classified the account of the respondent as NPA per the rules and regulations of the Reserve Bank of India. By considering all documents it clearly shows that, the petitioner Institution granted loan on application of the respondents. The documents clearly discloses that, the respondent created security interest on the secured asset. The property is clearly described in the scheduled. Further, there is specific documentary pleading about the chronic default on the part of the respondents for repayment of the loan. Accordingly, petitioner bank has classified the loan account of the respondent as NPA in terms and conditions of the circulation issued by the respondents. After 60 days the petitioner bank got issued notice as contemplated U/s.13(2) of the Sarfesia Act. There is no documents in respect of the respondents raised in objection or representation in reply of the notice issued by the petitioner institution. The petitioner financial institution has satisfied the ingredients of Sec.14 of the Sarfesia Act.

Therefore, I am of the opinion of the petitioner Bank is entitled for the relief sought for. Accordingly, **Point No.1 is answered in the Negative.**

10. ***Point No.2:***- For the foregoing reasons, I proceed to pass the following….,

ORDER

The petition filed by the petitioner Bank U/Sec 14 of SARFAESI Act, is hereby allowed and it is held that the petitioner Bank is entitled to take possession of schedule property in respect of recovery and satisfaction of loan due from the respondent/s.

Further, an advocate, is hereby appointed as Court Commissioner for taking possession of the schedule property with assistance of jurisdictional police. The court commissioner shall submits his report within reasonable time to this court. The commissioner's fee is fixed at Rs.5000/-.

Further, office is hereby directed to issue intimation to concern police station to provide necessary protection or assistance to court commissioner while executing order of this court.

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

(Dictated to the Stenographer and after corrections then pronounced by me in the Open Court on this the 1**3th day of December, 2022).**

30th ACMM, Bangalore.

(Order typed vide separate sheet)

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XXX, ACMM, Bangalore.