Date:-30-11-2022

Order pronounced as under in the Open Court

The petitioner, Anand Rathi Global Finance Limited having its registered office at Express Zone, A wing, 10th floor, Western Express Highway, Goregoan(East), Mumbai-400003 and its branch office 2nd floor, Biraner Pinngele, no.1, Rhenius Street, Off Richmond Road, Bangalore represented by its Authorized Representative Mr.Kishu Ponnappa has presented this petition u/s 14 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002 to pass an Order to take possession of the immovable property all that piece and parcel of Western Half Portion of immovable property bearing site no.20, subsequent no.P-123, later no.254/13, 4th A cross, Lakshminarayanapura, Now known as No.13/1, 4th A cross, Nagappa block, Bangalore bearing old no.076-W0094-17, measuring East to West 20 feet and North to South 60 feet and bounded on the East by: Property bearing no.13 belonging to Murugesh Mudaliar, West by: Property bearing site no.19, with house, North by: 4th A cross Road, Nagappa block and South By: Property bearing site no.34 with house.

Schedule B property

All that piece and parcel of immovable property being the Northern Portion of the schedule A property bearing site no.20, subsequent no.P-123, later no.254/13, 4 A cross, Laksminarayanapura, now know as no.13/1, 4th cross, Nagappa block, Bangalore, bearing old PID no.8-11-13/1, New PID no.076-W0094-17, measuring Est to West 20 feet and North to South 45 feet, and bounded on East by: Property bearing no.13 belonging to Murugesh Mudaliar, West by: Property bearing Site no.19, with house, North by: 4th A cross Road Nagappa block and South by: Southern Portion of the schedule A property sold by the vendors to the purchaser vide registered sale deed bearing doc.no.SRI-1-03284-2012-13 dated 24-09-2012.

2. In the petition, it is stated that the respondents are the owners of the petition Schedule Property. Respondents had availed loan by mortgaging the scheduled property from the petitioners bank. For that purpose respondents had executed loan agreement, document confirming deposit of title deeds etc., by creating charge in respect of the property bearing the petition schedule property. It is alleged that in spite of several request as well as reminders, the respondents failed to repay the said loan as per terms and conditions of the loan document. As there was default, loan account is

classified as NPA and Statutory Notice under SARFAESI Act is issued. It is apprehended that the respondents may resort to obstruct the actual taking of possession of the petition schedule property. Hence, this petition.

3. In view of decision of Hon'ble High Court of Karnataka in the case of "Punjab and Sindh Bank V/s Gemini Fashion Pvt.Ltd. 2005 SCC online KAR 708", notice to respondent is dispensed with.

4. I have carefully perused the affidavit filed by the applicant and the documents placed before the court in support of the case by the petitioner company. On careful perusal of the materials, this Court is satisfied that the petitioner is a financial institution as per Section 2(m) of SARFAESI Act and as the respondents had deposited the title deeds of the petition schedule property and mortgaged the same towards the said loan, the petition schedule property is a secured asset as per section 2(zc) of the SARFAESI Act. It is alleged that the respondents have failed to repay the loan and as such the account was classified as a Non Performing Asset. Thereafter, Statutory Notice as required under section 13(2) of the Act is issued. After expiry of 60 days from the said Statutory Notice the applicant has taken symbolic possession of the petition schedule property and issued possession notice dated 27-05-2021 as per section 13(4) of the Act. Thereafter on

it is published in the the Kannada Prabha and Business Standard on 30-05-2022 which is within 7 days from the date of issuance of possession notice.

5. On careful perusal of the facts and circumstances of this case I am satisfied that the petitioner company being the secured creditor is entitled to enforce security interest against the respondent for recovery of the loan dues. Therefore, this court proceed to pass the following.

ORDER

The petition filed by the petitioner Bank u/s 14 of SARFAESI Act is hereby allowed with following terms:-

1. The applicant/petition is entitle to take possession of schedule property towards satisfaction of the creditors due.

2. The petitioner counsel files memo by suggesting Mr.Umesh.C advocate as court commissioner. Hence the said advocate has been appointed as court Commissioner & the petitioner shall deposit Commissioner fee of Rs.5,000/.

3. The advocate suggested by the petitioner is hereby appointed as a Court Commissioner and he is authorized to take possession of petition schedule property from the respondent and hand it over to the petitioner bank within 2 months from the date of his appointment.

4. If necessary, the Court Commissioner may request the jurisdictional police for assistance and they shall provide necessary assistance to Court Commissioner in taking possession of petition schedule property.

5. At the time of taking possession, the court Commissioner shall prepare the mahazar cum inventory and submit the same to this court.

6. Office to return the original documents to the petitioner, under proper acknowledgement and receipt.

(Sandesh Prabhu.B)
XXXIX ACMM, Bangalore