

27.02.2023

This case is called and orders pronounced in the Open Court as
under

ORDERS

This petition is filed under Section 14 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 by the petitioner against the respondents seeking for an order for appointment of a Court Commissioner and direct him to take possession of the property bearing site New Municipal No.43, PID No.55-56-43, (Old Site No.05, Khata No.540/42/3, Old Municipal No.352/2/753/1) situated at 1st Cross Road, Kadirenahalli Village, Uttarahalli Hobli, Bangalore South Taluk, Bangalore, presently comes in the limits of Bruhat Bangalore Mahanagara Palike, measuring East to West $(38+37.5)/2$, North to South $(31+36)/2$ feet, totally measuring 1275 sq.ft and bounded on East by Munivenkatappa's property, West by 20 feet Road, North by Raj Kaluve and South by Shamanna's property (herein afterwards referred to as the petition schedule property) by taking inventory of the articles if any in the schedule property by conducting panchanama and thereafter handover the same to the petitioner, to give suitable

direction or orders to the police authority/Station House Officer to assist the petitioner/Court Commissioner in evicting the occupants of the petition schedule property and the Court Commissioner/authorized Officer may also be empowered to break open the locks of the schedule property if found locked while taking over the possession if situation warrants so and to deliver the vacant and physical possession of the schedule property to the petitioner or its agent.

2. According to the petitioner, the respondents have borrowed Housing loan of Rs.37,30,000/- from the petitioner and secured the said loan by equitable mortgage of the petition schedule property. The respondents have failed to repay the loan amount to the petitioner and they became defaulters. As on 13.01.2023, the respondents were due to pay a sum of Rs.34,47,611/-. On 31.05.2019, their loan account classified as NPA. On 29.06.2019, the petitioner issued Demand Notice under Section 13(2) of the Act calling upon the respondents to pay the said outstanding dues. But, the respondents have failed to discharge their liability within the statutory period of 60 days from the date of Notice. The petitioner took symbolic possession of the petition schedule property on 18.11.2019 by affixing the copy of the Possession Notice on conspicuous place of the petition schedule property. It was published in The New India Express and Kannada Prabha Newspapers dated 20.11.2019. The petitioner is having a reasonable fear and apprehension of

physical threat and assault on them in the event of their proceedings to secure the asset independently. Hence, this petition is filed.

3. The petition is supporting with the affidavit of the Authorized Officer of the petitioner. The learned Counsel for the petitioner filed Original documents relied by the petitioner.

4. I have carefully read the petition averments, its annexed affidavit and the documents placed before this Court in support of the case of the petitioner .

5. On careful perusal of the available materials, this Court is satisfied that the petitioner is a secured creditor, the respondents are the secured obliger and that the petition schedule property is a secured asset for the debt borrowed within the meaning of the provisions of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. I am also satisfied that the petitioner has issued 60 days Demand Notice as per Section 13(2) of the Act and that the respondents have not paid the said due loan amount to the petitioner in spite of due service of the said demand notice. Therefore, the petitioner being the secured creditor is entitled to enforce security interest against the respondents for recovery of the loan dues. Under these circumstances, the petitioner is entitled for the relief under Section 14 of the Securitization & Reconstruction of Financial

Assets & Enforcement of Security Interest Act, 2002. Accordingly, a Court Commissioner is to be appointed to execute the order of the Court. Hence, I proceed to pass the following:-

ORDERS

The petition filed by the petitioner under Section 14 of Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 is hereby allowed as prayed.

The petitioner is entitled to take possession of the petition schedule property towards satisfaction of its due from the respondents as prayed in the petition.

Since appointment of Sheristedar or any officers of this Court as Court Commissioner is leading to hampering of public duty of this Court, it is just and necessary to appoint an Advocate Sri.Basararaju H.R., Enrollment No.KAR/3873/2021 as Court Commissioner to take possession of the petition schedule property.

The Court Commissioner is hereby directed to take possession of the petition schedule property towards the satisfaction of the due of

the petitioner from the respondents with the assistance of jurisdictional police, to break open the lock of the petition schedule property if situation warrants, by conducting inventory and Panchanama and to report the same as early as possible as per the memo of instruction.

Further, petitioner is directed to forthwith furnish memo of instructions to the Court Commissioner.

It is hereby further ordered that direct the jurisdictional Station House Officer to give necessary assistance to the petitioner while taking possession of the petition schedule property from the respondents.

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

Commissioner fee is fixed at Rs.5,000/-, which will be forthwith deposited by the petitioner.

Office is directed to issue Commissioner Warrant and return the original documents

to the authorized person of petitioner or to
its counsel on due verification.

(Typed by the Stenographer in the Court computer on my direct
dictation, printout taken, corrected, signed and then
pronounced by me in the open court on 27.02.2023)

(VEDAMOORTHY B.S.)
II Addl. Chief Metropolitan Magistrate,
Bengaluru.