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

Dated: This the 1st day of June, 2022.

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

C.Miss.No.2119/2022

Petitioner	**:**	**Canara Bank,** **Vijayanagara Branch,** **No.53, Magadi Chord Road,** **Vijayanagar,** **Bengaluru-560 040.** **Rep by its Authorised officer,** **Sri.Suresh.Kumar.M**
		-V/s-
Respondent	**:**	**1-M/s. Sri. Devi Caterers** **No.3/117, 9th 'A' Cross,** **3rd Phase, Ganapathy nagar,** **Peenya, Bengaluru—560 058.** **2. Smt. A.W.Shajira,** **D/o.Mr. Aslam Pasha,** **No.130, 2nd Cross, Minhaz Nagar,** **Kadrenahalli,** **J.P Nagara,** **Bangalore-560 078.**

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-:ORDERS ON PETITION:-

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

2. The brief facts of the case:-

The description of the secured asset:

Schedule Property

All that piece and parcel of the property being the southern Portion of the Residential Property which is under construction bearing Site No.57, Khatha No.11, situated at Kadirenahalli Village, Uttarahalli Hobli, Bengaluru SouthTaluk, measuring East to West 69* Feet and North to South 15 Feet, totally measuring 1,035 Square Feet, along with construction standing thereon, now bearing New Corportion No.15, Old No.11/57, PID.No.55-170-15, situated at Kalinga Rao Road, Bendre Nagar, Kadirenahalli, Bengaluru and bounded:-

On the East by:	**Sri. Ramachandra Layout**
On the West by:	**30 Feet Road,**
On the North by:	**Remaining portion of the same property and 1.5 feet Common Passage**
On the South by;	**Site No.64**

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. 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.98,14,962.64/-.** Accordingly, loan account of the respondent is classified as **NPA on 30.05.2021.** This fact reveals from the separate memo filed by the counsel for the petitioner. On **24.12.2021** 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. In this case respondent voluntarily appeared before this court through his counsel. Inspite of granting sufficient time, respondent not chosen to filed objection and also not submitted arguments. Hence, case is posted for orders.

5. Heard arguments. (At the time of arguments, 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.)

6. 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.?

7. 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

8. 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.

9. 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.98,14,962.64/-**. 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.

10. 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.**

11. ***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, Sri.Dilip Kamble, 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 **1st day of June, 2022).**

30th ACMM, Bangalore.

I P NAIK

Digitally signed by I P NAIK
Date: 2022.06.06 10:39:44 +0530

(Order typed vide separate sheet)

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