

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, DINDIGUL

Present: Thiru.R. Kanagaraj, B.Com., L.L.B.,
Chief Judicial Magistrate, Dindigul.

Dated 13th day of August 2024

Cr.M.P.No.5878/2024

M/s. PNB Housing Finance Limited,
Through its Authorized Officer Mr.R. Naveen,
Having its registered Office at 9th Floor,
Antriksh Bhawan,
22 Kasturba Gandhi Marg,
New Delhi – 110 001,
Having its branch Office at No.1112,
Raja Plaza, 2nd Floor,
Avinashi Road, (Near Lakshmi Mills),
Coimbatore – 641 037.

...Petitioner

//VS//

1.V. Gomathi, (Age 45 years)
W/o. Saravanavendataraman,
No.75E, ward – 2, Chettinaickenpatti road,
Dindigul – 624 001.

Also at No.97, 1st Floor, Bava Medical Building,
Palani road, Pensioner Street, Dindigul – 624 001.

Also at T.S.No.730/4A1A, Plot No.10, T.S. Ward No.1,
Dindigul Town, Dindigul – 624 001.

2. Saravanavenkataraman (Age about 51 years)
S/o. Subramaniam,
No.75E, ward – 2, Chettinaickenpatti road,
Dindigul – 624 001.

Also at No.97, 1st Floor, Bava Medical Building,
Palani road, Pensioner Street, Dindigul – 624 001.

Also at T.S.No.730/4A1A, Plot No.10, T.S. Ward No.1,
Dindigul Town, Dindigul – 624 001.

...Respondents

ORDER

1. Heard, the Petitioner M/s. PNB Housing Finance Limited, through its Authorized Officer filed this application U/s. 14 of Securitization and Reconstruction of Financial Assests and Enforcement of Security Interest Act (SARFAESI Act) 2002 seeking assistance of this court to take possession of Secured Asset. The Petitioner filed an affidavit that the respondents availed Residential Self Construction Loan for a sum of Rs.41,47,200/- vide Loan Account No.HOU/MDU/0317/358869 from petitioner's Bank on 21.04.2017 by creating an Equitable Mortgage. The respondents executed the relevant Registered Memorandum of Deposit of Title Deed, Dated: 24.04.2017. The loan became non performing assets on 31.03.2021. Therefore, the respondents were served with Demand Notice Dated: 17.01.2023, U/s.13(2) of the Sarfaesi Act. The respondent, however, failed to repay. Hence as per account statement dated 27.03.2024 the total claim amount is Rs.52,27,963/- (Ex.P11). The schedule property does not suffer from any Encumbrance, for supporting of this Case Ex.P1 to Ex.P12 marked.

2. SCHEDULE OF PROPERTY

1. All parts and parcel of Land situated at T-S.No.730/4A1A, North-West side of Plot No.10, Town Ward NO.1, 14th Block, (ந.உள.இ.ம. 45/87 ம.வ.ம.ம.39/81) West Govindapuram, Dindigul, Dindigul revenue District, 2nd Joint Sub Registration, Dindigul Registration District is bounded on

East :	Property belongs to Bhavani
West :	Vellaivinayagar Kovil Marriage Hall
South :	2 nd Item herein
North :	Road

Measurement:

East West [Both Sides] – 9 Ft,
South North [Both Sides] – 20 Ft,
180 Sq.Ft or 16.72 Sq.Mtr.

2. All parts and parcel of Land situated at T.S.No.730/4A1A (Part), South side

of Plot No.10), Town Ward No.1, 14th Block, West Govindapuram, Dindigul, Dindigul Revenue District, 2nd Joint Sub Registration, Dindigul Registration District is bounded on.

East : North side of Plot No.10 and Plot No.9 belongs to Maimuna Begum
West : Vellaivinayagar Kovil Marriage Hall
South : Mill Building at T.S.No.730/1B
North : North East side of Plot No.10 & 1st Item herein

Measurement

1st Part

East West [Both Sides] – 31 Ft, South North [Both Sides] - 34 Ft, 1054 Sq.Ft.

2nd Part

East West [Both Sides] – 10 Ft, South North [Both Sides] – 22 Ft, 220 Sq.Ft.

Totally 1274 Sq.Ft or 118.35 Sq.Mtr,

Total extent of 1st and 2nd Item is 1454 Sq.Ft.

3. As per the under section 14 (3) of SARFAESI Act, the CMM or DM Magistrates perform only the ministerial functions. For reference the same is extracted below:

“No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority”

4. In this Juncture the following rulings taken into consideration and followed.

(i) *Techno Builders and Ors //VS// Canara Bank and ors (MANU/TN/9525/2019) Hon’ble High Court of Madras.*

(ii) *Standard Chartered Bank – Vs – Noble Kumar and others in 2013 CTC 6 683: 2013 (5) LW 97.*

Therefore, services of any notice to the borrower is not contemplated in Section 14 of the Act. On hearing of petitioner side and careful perusal of the petition, affidavit and documents this court is of a view to appoint an Advocate Commissioner for taking possession of the petition mentioned property, without sending any notices to the respondents.

5. In fine. The petition is allowed and Advocate Mr.R. Parthasarathy,

Enrolment No. MS 1605/2007 is hereby appointed as Advocate Commissioner. For taking possession by break open the buildings of the secured asset as mentioned in the schedule of property and to hand over the same to the secured creditor / petitioner with the Assistant of the concerned VAO and Inspector of Police, Town West Police Station, Dindigul District, if necessary. The Commissioner's remuneration is fixed at Rs.20,000/- The remuneration has to be paid by the petitioner directly to the Advocate Commissioner. Report by 13.09.2024.

Dictated by me, directly to the Steno-typist and typed by her in computer and after rectification taken printout and pronounced by me in Open Court on this 13th day of August 2024.

Chief Judicial Magistrate,
Dindigul.

1) Petitioner side witness:
PW1 Mr.R. Naveen.

2) No.of Exhibits marked on the side of the Petitioner:-

Sl. No.	Date	Description of Document	Remarks
1	03.02.2021	Authorization Letter	Photo Copy
2	21.04.2017	Loan Agreement	Photo Copy
3	24.04.2017	Memorandum of Deposit of Title deeds Doc.No.1466/2017	Photo Copy
4	25.01.2017	Settlement Deed bearing Doc.No.200/2017	Photo Copy
5	17.01.2023	The Office copy of the Notice U/s.13(2) of the SARFAESI Act	Photo Copy
6	20.01.2023	Proof of Service	Photo Copy
7	17.02.2023	Paper Publication in “ Business Standards’ and ‘Dinakaran”	Photo Copy
8	28.07.2023	Possession Notice Under Rule 8(1) – Sec 13(4) of the SARFAESI Act	Photo Copy
9	01.08.2023	Proof of Service	Photo Copy
10	30.08.2023	Possession Notice Paper Publication in “	Photo Copy

		Business Standards and Dinakaran”	
11	27.03.2024	Statement of Accounts	Photo Copy
12	26.03.2024	Encumbrance Certificate	Online Copy

Chief Judicial Magistrate,
Dindigul.

Cr.M.P.No.5878/2024

Date: 13.08.2024

Order pronounced in open Court.

In the result, Advocate Mr.R. Parthasarathy, Enrolment No. MS 1605/2007 is hereby appointed as Advocate Commissioner. For taking possession by break open the buildings of the secured asset as mentioned in the schedule of property and to hand over the same to the secured creditor / petitioner with the Assistant of the concerned VAO and Inspector of Police, Town West Police Station, Dindigul District, if necessary. The Commissioner's remuneration is fixed at Rs.20,000/- The remuneration has to be paid by the petitioner directly to the Advocate Commissioner. Report by 13.09.2024.

Chief Judicial Magistrate,
Dindigul.

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Present: Thiru.R. Kanagaraj, B.Com., L.L.B.,
Chief Judicial Magistrate, Dindigul.

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Dindigul Town, Dindigul – 624 001.

...Respondents

Warrant of Commissioner

Whereas it is deemed requisite for the purpose of this CrI.M.P.No.5878/2024 that a Commission should be issued. Hence Mr.R. Parthasarathy, Enrolment No. MS 1605/2007 is hereby appointed as Advocate Commissioner, for taking possession by break open the buildings of the secured asset as mentioned in the schedule of property and to hand over the same to the secured creditor / petitioner with the Assistant of the concerned VAO and Inspector of Police, Town West Police Station, Dindigul District, if necessary. The Commissioner's remuneration is fixed at Rs.20,000/- The remuneration has to be paid by the petitioner directly to the Advocate Commissioner.

Propose to compel the attendance before you of any witnesses for the production of any documents, whom of which you may desire to examine or inspect will be issued by any Court having jurisdiction or your application.

A sum of Rs.20,000/- fixed for Advocate / Commissioner's fee, has been paid directly by the petitioner/Secured creditor. The Commissioner is hereby directed to receive the commission fee and file his report on or before 13.09.2024.

Given under my hand and the seal of this Court on the 13th day of August 2024.

Chief Judicial Magistrate,
Dindigul.

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Chief Judicial Magistrate,
Dindigul.

To

1. Mr.R. Parthasarathy, Advocate/Commissioner,
Enrolment No. MS 1605/2007, Dindigul.
2. The File.