

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, ERODE**

Present:- Thiru.C.M. Saravanan, B.A., LL.M.,  
Chief Judicial Magistrate, Erode.

Thursday, the 5<sup>th</sup> day of May 2022

**C.M.P. No.2852 of 2022**  
(CNR.No.TNED04-003602-2022)

Cholamandalam Investment and  
Finance Company Ltd  
Represented by its Authorized officer  
Mr.P. Govindan, S/o. V. Ponraj

.. Petitioner

// Vs //

1. V. Saravanan,  
S/o. Venkadachalam,  
18, AB Gandhi Nagar,  
Chennimalai Road,  
Perundurai,  
Erode – 638 052.

2. V. Anandan,  
S/o. Venkadachalam,  
18, AB Gandhi Nagar,  
Chennimalai Road,  
Perundurai,  
Erode – 638 052.

3. V. Deivathal,  
W/o. Venkadachalam,  
18, AB Gandhi Nagar,  
Chennimalai Road,  
Perundurai,  
Erode – 638 052.

4. Amman Nala Bakery,  
1 VKP Complex,  
Daily market Opp.,  
Perundurai,  
Erode – 638 052.

.. Respondents

This petition coming up for final hearing before this court on 02.05.2022 in the presence of Thiru.M. Saravanan, Advocate for the petitioner and upon hearing petitioner's side arguments, perusing affidavit, petition and other relevant documents, and having stood over for consideration till this day, this court delivered for following:

### **ORDER**

This petition has been filed by the petitioner for Assistance under Section 14(1) of the SARFAESI ACT 2002.

2. It is the case of the petitioner that the Cholamandalam Investment and Finance Company Ltd, Chennai had extended the financial assistant/ facilitated in the account of the Respondents 1 to 4 to the tune of Rs.38,25,000/- on 30.06.2017. The said respondents who are under a liability to repay the outstanding loan amount to the petitioner's Finance Company. The Respondents executed necessary loan documents and security agreements. Thereby created Security interest in respect of the immovable properties described as such in the petition. The said properties are situated in Erode District, Perunthurai Taluk, Perunthurai Village. Since, the Respondents had defaulted in repayment of the aforesaid credit facilities and the petitioner had notified the said account of NPA (Non Performing Asset) as on 24.03.2021. Subsequently, the petitioner's Finance Company initiated recovery proceedings under the provisions of SARFAESI Act by issuing notice to them on 08.06.2021. The respondents duly served with notice, but did not pay any amount. Now Rs.41,18,063.19/- are due and payable by the respondents and notice was duly served on all the respondents. Even after issuing notices, the respondents have not settled the outstanding dues in the account. The petitioner also took symbolic possession of the schedule property on 16.08.2021 and issued possession notice to the respondent and also published in two leading Newspapers on 19.08.2021. The petitioner could not take physical possession of the property as the respondents are refusing and resisting in handing over the vacant physical possession of the property.

Unless physical possession is handed over, the petitioner will be put to great loss. Hence this petition.

3. Now the question is that whether the petition filed by the petitioner under Sec. 14 of SARFAESI Act has to be allowed or not?

4. Heard the counsel for the petitioner, on perusal of the records, the following particulars are emerged from the affidavit, petition and documents filed by the petitioner

Sl.No	Date	Description of Documents	Nature
1.	29.10.2020	Authentication Letter	Certified Copy
2.	30.06.2017	Sanction Letter	Certified Copy
3.	01.02.2013	Gift deed and registered as document No.558/2013	Certified Copy
4.	30.06.2017	Loan Agreement	Certified Copy
5.	10.08.2017	Memorandum of title deeds	Certified Copy
6.	08.06.2021	Demand Notice 13(2) of SARFAESI	Certified Copy
7.	16.06.2021	Demand Notice postal track	Certified Copy
8.	16.08.2021	Possession Notice	Certified Copy
9.	21.08.2021	Possession Notice postal track	Certified Copy
10.	19.08.2021	Paper publication in Tamil and English	Certified Copy
11	01.01.2013 to 24.10.2021	Encumbrance Certificate	Certified Copy
12	07.10.2021	Statement of accounts	Certified Copy

5. The petitioner has produced copy of loan documents, title deed, notice, postal tracks, paper publications, possession notice. Paper publication and established that the schedule mentioned properties were hypothicated and mortgaged respectively. This petition also filed after the expiry of 60 days from the date of receipt of notice issued under Sec.13(2) of SARFAESI Act by the respondents. The respondents are not entitled to any further notice under the said act from this court. The petitioner Finance Company is having its office at Chennai and the petition mentioned such properties are situated in Erode District, Perundurai Taluk,

Perundurai Village within the jurisdiction of this court. Encumbrance certificate also produced by the petitioner to show that the title of the respondents is clear and valid. Necessary affidavit of the authorised officer of the Secured Creditor/Petitioner also produced, who duly affirmed that the provisions of the SARFAESI Act and rules have been complied with. This court has satisfied about the contents of the affidavit filed for the purpose of taking the possession of secured assets. Thus, there is compelling situation arise for the petitioner to realize the loan amount by taking necessary action to take actual possession of the secured assets by sale or transfer. For the said purpose, it is just and necessary to render assistance to the secured creditor in taking possession of the secured assets and in doing so, the court can appoint a Commissioner for identification of the secured assets and taking possession thereof and if there is any resistance, ask for police assistance and take any effective steps to have possession of the secured assets taken over.

6. The Hon'ble Supreme Court also mandates the following guidelines in **the Authorised Officer, Indian Bank Vs The Visalakshi and another (Civil Appeal No. 6295 of 2015), dated 23.09.2019.**

**“This it is only a procedural step without any adjudication of any dispute whatsoever. The action is therefore, only an administrative order made for taking possession of the secured assets, if all other conditions are fulfilled. Having already noted that the powers exercised by the CMM and DM in terms of Section 14 of the 2002 Act are synonymous to each other and that they are not adjudicatory in nature”**

**“It did notice that the authority referred to in Section 14 of the 2002 Act has no power to adjudicate upon any rights of the parties but can only render assistance to the secured creditor to recover possession ”**

**“The power to be exercised under Section 14 of the 2002 Act by the concerned authority is, by its very nature, nonjudicial or State's coercive power. Furthermore, the borrower or the persons claiming through borrower or for**

**that matter likely to be affected by the proposed actoin being in possession of the subject property, have statutory remedy under section 17 of the 2002 Act and /or judicial review under Article 226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lessess: nor is it possible to suggest that they are rendered remedilies in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any advantage muchless added advantage”**

**“It also noted that the authority after receiving such request under Section 14 of the 2002 Act, was not expected to do any further scrutiny of the matter except to verify from the secured creditor whether notice under Section 13(2) of the Act has already been given or not and whether the secured asset is located within his jurisdiction. There is no adjudication of any kind at this stage. The Court also noticed in paragraph 23 of the reported judgment that after amendment of Section 14 of the 2002 Act, by inserting first proviso therein, the designated authority has to satisfy itself only with regard to the matters mentioned in clauses (i) to (ix) ”** From the above documents produced by the petitioner and in view of the principles laid down, it is clear that the provisions of SARFAESI Act has been complied with. Considering all aspects, this court is of the view that an appropriate direction to prepare inventory and to take physical possession of the secured asset shall be passed in favour of the petitioner and as such, this court is inclined to allow this application.

**SCHEDULE A**  
**SCHEDULE OF PROPERTY**

Erode Registration District, Perundurai Sub re, Erode District, Perundurai Taluk,  
Perundurai Village/Panchayat, R S No.517 total extent 3040 Sq ft

**Item No-I :**

Bounded Boundaries:-

To the South of Rasiannagounder Property;

To the West of 20 Lings width North south Road;

To the North of Duraisamy Property;

To the East of Ramayee Property;

In this ad-measuring

95' - East west on both sides

32' - North south on both sides

In this to the extent of 3040 sq.ft land.

**Item – 2:**

Bounded Boundaries:-

To the South of above mentioned item-1 property;

To the west of Duraisay property;

To the North of 10 Lings width East West Road;

To the East of Ramayee Property;

In this ad-measuring

34' - North South on both sides

6' - East West on both sides Northern side

In this to the extent of 204 sq.ft land.

In this above said two items to the total extent of 3244 sq.ft land with R.C.C building and all other appurtenances, electric fitting, water connection thereto fully, with right of access to all roads and pathway, is situated in R.S.No.517 perundurai village, Erode Taluk and district.

In the result, this application is allowed, thereby appointing Thiru.M. Jayaprakasam, (MS.No.1144/2007) (Mobile No.63803 01383) as an Advocate Commissioner

1. To inspect the petition mentioned property:
2. Take inventories:
3. Take physical possession and immediately hand over to the petitioner/secured creditor and
4. If necessary take assistance of Police and Revenue Officials in executing the warrant.

A sum of Rs.20,000/- is fixed as remuneration for the said Advocate Commissioner. The petitioner shall deposit the said remuneration into the court within a week. After executing the warrant and filing his report, the Advocate Commissioner is entitled to get the said remuneration by filing necessary application. Report by **06.06.2022**.

This order dictated directly to the typist, typed by him, corrected and pronounced by me in the open court, on this the 5<sup>th</sup> day of May 2022.

**CHIEF JUDICIAL MAGISTRATE,  
ERODE**