IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, ERODE

Present:- Thiru.C.M. Saravanan, B.A., L.L.M.,
Chief Judicial Magistrate, Erode.
Monday, the 21st day of October 2024

C.M.P. No. 12165 of 2024
(CNR.No.TNED 04-013731-2024)

Equitas Small Finance Bank Limited,
(formerly Equitas Finance Private Limited)
having its Registered Office, 4th Floor,
Phase II, Spencer Plaza, No.769 Mount Road,
Anna Salai, Chennai 600 002 and
having Branch at Erode by its authorized officer S.Mohanraj. ...... Petitioner

// Vs //

1) Mr.P.S.Krishnamoorthy,
Proprietor – Gokul oil Mill,
D.No.198, Rasampalayam road,
Thendral Nagar,
Erode – 638 107, Tamilnadu.

2) Mr.P.S.Krishnamoorthy,
S/o.Subramanian,
D.No.63B, Ponni Nagar,
Villarampatti post,
Periasemur,
Erode – 638 107, Tamilnadu.

3) Mrs.K.Gandhimathi,
W/o.P.S.Krishnamoorthy,
D.No.63B, Ponni Nagar,
Villarampatti post,
Periasemur,
Erode – 638 107, Tamilnadu.

4) Mr.K.Gokulpradsad,
S/o.P.S.Krishnamoorthy,
D.No.63B, Ponni Nagar,
Villarampatti post,
Periasemur,
Erode – 638 107, Tamilnadu. .....Respondents

This petition coming up for final hearing before this court on 16.10.2024 in the presence of Thiru.K.Kanagaraj, 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 of the SARFAESI Act 2002.

2. It is the case of the petitioner that the **Equitas Small Finance Bank Limited (formerly Equitas Finance Private Limited), Erode Branch** had extended the financial assistant/ facilitated in the account of the Respondents to the tune of ***Rs.*****62,50,000/-**. The said respondents who are under a liability to repay the outstanding loan amount to the petitioner's Finance. 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 property is situated limit of **Erode District, Erode Taluk, Periyasemur 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) on **29.11.2023.** Subsequently, the petitioner's Bank initiated recovery proceedings under the provisions of SARFAESI Act by issuing notice u/s.13(2) to them on **20.12.2023.** The above notice was sent to the respondents through registered post on 20.12.2023. The respondents received the said notice on 22.12.2023. The respondents are issued the reply notice through his advocate to petitioner bank on 06.03.2024. The petitioner was issued the rejoinder notice to the advocate for the respondents on 14.03.2024. Even thereafter the respondents did not settle the loan account. The petitioner also took symbolic possession of the schedule property on **23.04.2024** and issued possession notice to the respondent and also published in two leading Newspapers on

25.04.2024. As on **06.08.2024**, totally **Rs.60,50,371/-** is due and payable by the respondents. 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 the petitioner filed 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 (Uploaded in online)**
1.	19.11.2019	Loan Agreement	Xerox copy
2.	15.06.2020	Loan Agreement	Xerox copy
3.	25.10.2019	Sanction letter	Xerox copy
4.	09.06.2020	Sanction letter	Xerox copy
5.	18.12.2019	Memorandum of deposit of title deeds executed by the 2nd and 3rd respondent. (Doc.No.3663/2019 SRO surampatty)	Xerox copy
6.	17.06.2020	Supplementary memorandum of deposit of tiltle deeds executed by the 2nd and 3rd respondent. (Doc.No.1286/2020 SRO Surampatty)	Xerox copy
7.	02.06.2004	Sale deed infavour of 2nd and 3rd respondent. (Doc.No.1271/2004 SRO Surampatty)	Xerox copy
8.	08.10.2007	Sale deed infavour of 3rd respondent. (Doc.No.2644/2007 SRO Surampatty)	Xerox copy
9.	20.12.2023	Office copy notice under S.13(2) of Sarfaesi Act with Postal receipts and Tracking Reports.	Xerox copy
10.	06.03.2024	Reply notice issued by the respondents through his Advocate.	Xerox copy
11.	14.03.2024	Rejoinder notice issued by the Petitioner Bank	Xerox copy

		with Postal receipts and Served Acknowledgement card.	
12.	23.04.2024	Under S.13(4) of Sarfaesi Act Possession Notice with Postal receipts and Served Tracking Reports.	Xerox copy
13.	25.04.2024	Possession Notice Published in Tamil (Dinamani) and English (The New Indian Express) Daily News paper.	Xerox copy
14.	03.08.2024	Encumbrance Certificate	
15.	06.08.2024	Statement of Accounts (Loan a/c no.183TL21201720001)	
16.	06.08.2024	Statement of Accounts (Loan a/c no.183BB03193300001) (Page no.1 to 24)	
17.	06.08.2024	Statement of Accounts (Loan a/c no.183BB03193300001) (Page no.25 to 49)	
18.	06.08.2024	Statement of Accounts (Loan a/c no.200001165690) (23-12-2019 to 25-07-2020)	
19.	06.08.2024	Statement of Accounts (Loan a/c no.200001165690) (25-07-2020 to 07-02-2021)	
20.	06.08.2024	Statement of Accounts (Loan a/c no.200001165690) (07-02-2021 to 23-12-2021)	
21.	06.08.2024	Statement of Accounts (Loan a/c no.200001165690) (23-12-2021 to 31-07-2024)	
22.	06.02.2024	Power of Attorney	
23.	30.06.2016	RBI Certificate	

5. The petitioner has produced copy of loan documents, title deed, notice, postal acknowledgments, paper publications, possession notice. Paper publication 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 respondent. The respondent is not entitled to any further notice under the said act from this court. The petitioner **Finance Company is having its branch office at Erode** and the petition mentioned such property is situated limit of **Erode District, Erode Taluk, Periyasemur Village.** Encumbrance certificate also produced by the petitioner to

show that the title of the respondents is clear and valid. Necessary affidavit of the authorized 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 there of 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 fulfiled. 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 action 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/lesses: nor is it possible to suggest that they are rendered remediless 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 much less 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 the 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 favor of the petitioner and as such, this court is inclined to allow this application.

SCHEDULE OF PROPERTY
(Full description of the mortgaged property with boundaries)
Residential cum commercial Property owned by
Mr.P.S.Krishnamoorthy & Mrs.K.Gandhimathi

Property – I:

Residential cum commercial Property owned by Mr.P.S.Krishnamoorthy & Mrs.K.Gandhimathi

All that pieces and parcels of land and building Comprised in SF No.326/1, 2 &

327/1, 2, 3 measuring with an extent of 962 Sq.Ft (Southern portion) with all present and future structure thereon

Four Corners of the Said Property:-

North : Item-II.

South : Property belong to Mr. Krishnamoorthi.

East : Property belong to Mr. Krishnamoorthi.

West : 50 feet width North South Bye-Pass Road.

With following Measurement's

East to West on the Northern Side : 45 feet

East to West on the Southern Side : 45 feet

North to South on the Eastern Side : 22 feet

North to South on the Western Side : 20 feet

Admeasuring 962 Sq.Ft and within the Sub registration District of Surampatti and in the Registration District of Erode, Periyasemur Village, Erode Taluk, Erode District and with all its amenities.

Property – II:

Residential Property owned by Mrs.K.Gandhimathi

All that pieces and parcels of land and building Comprised in SF No.326/1, 2 & 327/1, 2, 3 measuring with an extent of 962 Sq.Ft (Northern portion) with all present and future structure thereon

Four Corners of the Said Property:-

North : Property belong to Mr. Eswaramoorthi and others.

South : Item-I.

East : Property belong to Mr. Eswaramoorthi and others.

West : 50 feet width North South Bye-Pass Road.

With following Measurement's

East to West on the Northern Side : 45 feet

East to West on the Southern Side : 45 feet

North to South on the Eastern Side : 22 feet

North to South on the Western Side : 20 ¾ feet

Admeasuring 962 Sq.Ft and within the Sub registration District of Surampatti and in the Registration District of Erode, Periyasemur Village, Erode Taluk, Erode District and with all its amenities.

Both Item-I - 962 Sq.Ft & Item-II - 962 Sq.Ft = 1924 Sq.ft of house site with buildings thereon and right to use the common road etc., now S.No.327/1, 2.

The above property is previously Situated within the limits of Ward No.13, Thendral Nagar, Periyasemur Municipality. Now within the limits of Ward – 18, Erode Corporation, Thendral Nagar.

In the result, this application is allowed, thereby appointing P.Sumathi, M.S.No.2274/2021 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/- in fixed as remuneration for the said Advocate Commissioner. The petitioner shall deposit the said remuneration into the court within 15 days. After executing the warrant and filing his report, the Advocate Commissioner is entitled to get the said remuneration by filing necessary application. Report by **26.11.2024.**

This order dictated directly to the typist, typed by him, corrected and pronounced by me in the open court, on this the **21st day of October 2024.**

Sd/-XXXXXXXXXX
CHIEF JUDICIAL MAGISTRATE,
ERODE.