

TNRM020047002024



In the court of the Chief Judicial Magistrate, Ramanathapuram.

Present: Thiru.C.Mohanram,M.A., B.L.,

Chief Judicial Magistrate, Ramanathapuram.

Dated 29th day of July, 2024

CrI.M.P. No.3598/2024

CNR No. (TNRM02-004700-2024)

Shriram Transport Finance Company Limited,
No.2/1244, Ist Floor,
Saraswathi Complex, Indian Bank Upstairs,
Bharathi Nagar,
Ramanathapuram 623503.
through its Authorized Officer
and Recovery and Region Collection head
R.Seenivasan.

...Petitioner

Vs.

1. **Mr.P.Gayathri,**
W/o.Packiyaraj,
D.No.3/136, West Street,
Perungulam, Uchipuli,
Ramanathapuram 623536.
2. **Mr.M.Jeyaganesan,**
S/o.Malaraj,
D.No.1/117, Sembadaiyarkulam,
Perungulam, Uchipuli,
Ramanathapuram 623536.
3. **Mrs.N.Deepan,**
S/o.Nathan,
D.No.7/177, Devar Nagar,
Nagachi, Uchipuli,
Ramanathapuram – 623534.
4. **Mr.K.Karthigairaj,**
S/o.Kalimuthan,
D.No.7/49, Devar Nagar,
Nagachi, Uchipuli, Ramanathapuram – 623534.
5. **Mr.S.Murali,**
S/o.Selvam,
D.No.7/172A, Kenikaraivalasai,
Sembadaiyarkulam, Uchipuli,
Ramanathapuram – 623534.

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6.Mr.G.Vinoth Kumar,

S/o.Gopal,

D/o.1/130-2, Pasumponnagar,
Sembadaiyarkulam, Uchipuli,
Ramanathapuram – 623536.

7.Mr.G.Packkiyaraj,

S/o.Govindharaj,

D.No.3/136, West Street, Perungulam,
Uchipuli, Ramanathapuram 623536.

.... Borrower / Guarantor

Advocate for the Petitioner : **Mr.M.Sakthivel**

1. The Petitioner, Shriram Transport Finance Company Limited, through its Authorized Officer filed this application U/s.14 of Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), Seeking assistance of this court to take possession of the Secured Asset. i.e. the schedule property as mentioned here under.

2. DESCRIPTION OF PROPERTY:-

The Property belongs to Ist Respondent Mrs.P.Gayathri.

இராமநாதபுரம் பதிவு மாவட்டம், இராமநாதபுரம் மாவட்டம், இராமநாதபுரம் வட்டம், இராமநாதபுரம் வெளிப்பட்டிணம் சார்பதிவகம் பெருங்குளம் குளநப், பெருங்குளம் கிராமத்தில் பட்டா நிர்.1188 ல் கண்ட புஞ்சை சர்வே நிர்.59/3 பி1 (ஐம்பத்து ஒன்பதின் கீழ் மூன்று பி ஒன்று) க்கு பரப்பு ஹெக்டேர் 0.16.50 ம், சர்வே நிர்.59/9 ஏ 1 (ஐம்பத்து ஒன்பதின் கீழ் ஒன்பது ஏ ஒன்று)க்கு பரப்பு ஹெக்டேர் 0.31.50 ம் சர்வே நிர்.59/9 பி1 (ஐம்பத்து ஒன்பதின் கீழ் ஒன்பது பி ஒன்றுக்கு) பரப்பு ஹெக்டேர் 0.08.0 ம் சேர்ந்து ஆக மொத்தம் பரப்பு ஹெக்டேர் 0.56.0 க்கு ஏக்கர் 1.38 (ஒரு ஏக்கர் முப்பத்து எட்டு செண்டு) அளவுள்ளதற்கு புஞ்சை நான்குமால் விபரம்.

வடக்கு - கிழமேலோடிய தேசிய நெடுஞ்சாலை

கிழக்கு - சீனிபக்கீர் புஞ்சை நிலம்

தெற்கு - முத்துவேலு புஞ்சை நிலம்

மேற்கு - உம்முசரிபா, முகம்மது அலி, உம்முஜெமிலா பீவி,

வண்ணிமுத்து இவர்கள் புஞ்சை நிலம்.



3. The petitioner is Shriram Transport Finance Company Limited, Deponent is the Authorised Officer. He filed an affidavit stating that the respondents have availed loan of Rs.1,00,00,000/- from petitioner's financial service private limited by creating an Equitable Mortgage. The respondents have also executed Registered Memorandum of Deposit of Title Deeds. The loan became non performing asset on 10.05.2019. Therefore, the respondents were served with demand Notice dated 25.01.2023 U/s.13(2) SARFAESI Act to repay the Amount within 60 days. As per loan agreement, if the respondents failed to make payment, the petitioner finance company shall be entitled to take all or any of the measures mentioned U/s.13(4) of the Sarfaesi Act. The petitioner finance company issued a possession notice dated 21.04.2023 which was duly served upon the respondents. The said notice was also published in daily Newspaper as per the SARFAESI Act. The respondents never taken any steps to repay the loan amounts and thus the respondents become a defaulter and now the respondents having the present outstanding towards the loans in connection with secured property. The schedule property does not suffer from any Encumbrance. Upon perusal of documents marked as Ex.P1 to P12, the Petitioner's finance company has followed all the procedures contemplated under the Sarfaesi Act . So, the Petitioner's finance company is entitled to get all the reliefs as prayed for.

4. **In Techno Builders and Ors //VS// Canara Bank and Ors (MANU/TN/9525/2019)** Hon'ble High Court of Madras held thus: *“In the considered opinion of this Court, Section 14 of the SARFAESI Act did not contemplate any notice of hearing/objection from the Borrowers and as such there may not be any necessity of affording opportunity of personal hearing to the Borrowers/Petitioners and that apart though it is the claim of the petitioner that the appeal is pending against recovery proceedings, there is no interim order in operation and in the absence of the same, it is always open to the 2nd respondent to proceed further in accordance with law while dealing with the application filed under Section 14 of the SARFAESI Act by the 1st respondent” (Para No.6). This is reaffirmed by our Hon'ble Madurai Bench of Madras High Court in Division Bench decision dated 22.12.2021 in M/s.Shanmuganathan Cold Storage Pvt Ltd., -vs- 1. Authorized Officer, Karnataka Bank Ld and anr.*



5. The CMM or DM Magistrates perform only the ministerial functions under section 14 of SARFAESI Act . Further Sec.14(3) of SARFAESI ACT Says as 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"

Section 14 is procedural in nature and merely empowers the CMM or DM to assist the secured creditor in taking possession of the secured assets and it does not cloth them with the power to adjudicate in respect of any dispute pertaining to secured assets. Further Hon'ble Apex Court has observed that there is no adjudication of any kind at this stage and CMM/DM acting U/s.14 of the SARFAESI act is not required to give notice either to the borrower or to the third party, through citing various judgments in it's decision in **Standard Chartered Bank -vs- Noble Kumar and others in 2013 CTC 6 683: 2013 (5) LW 97** Therefore, service of any notice to the borrower is not contemplated in Section 14 of the Act. In this context, this court is of a view that Advocate Commissioner can be appointed for taking possession without sending any notices to the respondents.

6. In fine, the petition is allowed and **Advocate S.Mukilarasan** (Roll No. MS.1227/2017) (Mobile No.9626960077) is hereby appointed as Commissioner. He is directed to assist the petitioner for taking possession of the secured assest and to file a report to this effect within a month. At the time of taking possession, if necessary, Advocate Commissioner can seek the assistance of Station House Officer of Uchipuli Police Station where the schedule mentioned property is situate for Police assistance/protection for taking possession and Break open (if warranted), without approaching this court separately for such purpose. The Commissioner's remuneration is fixed at **Rs.10,000/-** The remuneration has to the deposited in the court within a week. Report by **20.09.2024**.

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Dictated 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 29th day of July 2024.

(Sd/-C.Mohanram)
Chief Judicial Magistrate,
Ramanathapuram.

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Chief Judicial Magistrate Court,

Ramanathapuram.

Crl.M.P.No.3598/2024

Fair Order

Dated:29.07.2024