In the court of the Chief Judicial Magistrate, Sivagangai.
Present: Thiru.A.Pasumpon Shunmugiah B.A., B.L., L.L.M.,
Chief Judicial Magistrate, Sivagangai.
Friday, dated 15th day of November , 2024
Cr.M.P.No.4894/2024
CNR No. .TNSV02-004822-2024

THE SOUTH INDIAN BANK LIMITED
A body corporate constituted under the
companies Act 1913,
Having its Registered Office at "SIB HOUSE"
T.B Road, Thrissur -1, Kerala -680 001 ,
& Having one of its Regional Office at Madurai
1st floor, YMCA Building , 70 feet Road,
Ellis Nagar, Madurai 625 001.
Represented by its Chief Manager / Authorized officer
Mr. Nagarajan H, S/o. Mr. Hari Narayanan .K
Aged 42 Years

...Petitioner

//VS//

1. Idhayathulla.J (M/54 years)
   S/o. Jahangir
   D.No. 41, Mettuchavadi,
   Ladanenthal, Thiruppuvanam
   Sivagangai
2. Athabiya Babu, (F/47 years)
   W/o. Idhayathulla,
   D.No. 41, Mettuchavadi,
   Ladanenthal, Thiruppuvanam
   Sivagangai

......Re
spondents

Advocate for the Petitioner : **I. THEVAN**

Tr.A.Pasumpon Shunmugiah, Chief Judicial Magistrate, Sivagangai.

1. The Petitioner, THE SOUTH INDIAN BANK 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 Secured Asset.

2. SHEDULE OF PROPERTY:-

All that piece and parcel of land measuring East -West 31 feet both on Northern and Sounthern sides and North – South 51 feet both on the Eastern and Western side totaling 1581 Sq.ft comprised situated in Natham old Re. S.No. 59/1 and Natham Survey new Survey R.S.No.59/25 of Ladanenthal Village , Thiruppuvanam Taluk, Thiruppuvanam Sub Registration District, Sivagangai District with Residential building having as approximate plinth area of 552 Sq.ft Constructed therein together with all other rights and improvements therein in the name of Mr. Idhayathula J and the Property being more fully described in the registered sale deed no. 176/2001 dated 15.02.2001 on the following boundaries.
East: House belonging to Poovalingam & Vacant site belonging to Chelliah
West: House belonging to Iyyanar Servai & Others
North : Madurai – Mandampam High Way
South : Channel

3. The petitioner is a THE SOUTH INDIAN BANK LIMITED Deponent is the Authorised Officer. He filed an affidavit that the respondent availed loan of Rs.10,36,000/- from petitioner's THE SOUTH INDIAN BANK LIMITED by creating an Equitable Mortgage. The respondent executed the relevant Registered Memorandum of Deposit of Title Deed. The loan became non performing asset on 29.05.2019 Therefore, the respondents were served with demand Notice dated 22.07.2019U/s.13(2) SARFAESI Act to repay the Amount within 60 days, failing which the petitioner bank shall be entitled to take all or any of the measures mentioned U/s.13(4) of the Sarfaesi Act. The respondents, however, failed to repay. Thus, Rs.10,79,624.12/- as on 21.07.2019. The schedule property does not suffer from and Encumbrance.

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 npa 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.Vadivelkumar ,** (Roll No.Ms/236/2023 (Mobile No.9843965119) is hereby appointed as Commissioner. He is directed to assist the petitioner for taking possession of the secured as set and to file a report to this effect within one month. At the time of taking possession, if necessary, Advocate Commissioner can get Station House Officer of **Thiruppuvanam Police Station** 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.25,000/-. The remuneration has to be paid directly by the petitioner. Report by 16 .12.2024

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 15th day of November 2024.

A PASUMPON SHANMUGAIAH

Digitally signed by A PASUMPON SHANMUGAIAH
Date: 2024.11.15 13:52:15 +0530

Chief Judicial Magistrate,
Sivagangai.