

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.
Monday , dated 17th day of March 2025
Cr.M.P.No.408/2025
CNR No. .TNSV020006292025

Indian Overseas Bank
College Road Branch
Karaikudi
Rep by its Authorized Officer
Mr. R. Kalyanasundram
(Roll No. 43329)
Working at Regional Office
No.661/1 South 4th Street
Subramaniyapuram
Karaikudi 630 002.

... Petitioner

//VS//

Mr. Muthupalani (50 years) (Borrower / Mortgager)
S/o. Muthupalani Asari
Door No.128
Parivallai Street, Keerungakottai Village
Thiruppathur Taluk
Sivagangai District

... Respondent

Advocate for the Petitioner : **Mr. L.Raghunathan.**

1. The Petitioner Indian Overseas Bank 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. SCHEDULE OF PROPERTY:-

Details of the immovable security mortgaged to Bank for Possession

Tr.A.Pasumpon Shunmugiah,

Chief Judicial Magistrate, Sivagangai.

(Only House Site Patta No. 427)

Residential building situated in Sivagangai District Thirupathur Taluk, Kirungakottai Village Old S.F.No. 395/4, Total extent 3443.20 Sq.ft (House Site)

Boundaries:

North : Maharaja Chettiar House

South : Selvam House

East : Road

West : Ayyavu House

3. The petitioner is a Indian Overseas Bank Deponent is the Authorised Officer. He filed an affidavit that the respondent availed loan of Rs.8,00,000/- from petitioner's by creating an Indian Overseas Bank The respondent executed the relevant Registered Memorandum of Deposit of Title Deed. The loan became non performing asset on 31.03.2020 Therefore, the respondents were served with demand Notice dated 29.06.2020. U/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.26,70,063.32/- on 06.07.2024/-. 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 Ltd 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 **Loga arasi M/s.No. 2021V/2016 Ph.No. 9942435346** 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 **Singampunari P.S** 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 13.05.2025

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 17th day of March 2025.

Chief Judicial Magistrate,
Sivagangai.