



Complaint Registered on :12/08/2024

Complaint Decided on :24/10/2024

EXH- .

CRIMINAL MISCELLANEOUS APPLICATION NO. 10803/2024

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, (AHMEDABAD CITY)

**Applicant : Bank Of India.
(Through its Authorized Officer Mr. Pranav Kumar.)**

VERSUS

**Opponents : 1) Mr. Jayesh Ghanshyambhai Jansari
(Borrower-Mortgagor)
987/13, Jawahar Sheri Panchbhai Ni Pole
Opp. Gheekanta Post Office
Ahmedabad-380001.
2) Ms. Avnika Ashokkumar Chauhan
3) Mrs. Ankita Jayeshbhai Jansari.**

Appearance :

**1)Learned Advocate for the Applicant : Mr. A.T. Waghmare.
2)Learned Advocate for the Opponents:**

**Sub : Application U/s. 14 of the Securitization and
Recons truction of Financial Assets and Enforcement of Security
Interest Act 2002 (SARFAESI ACT)**

ORDER

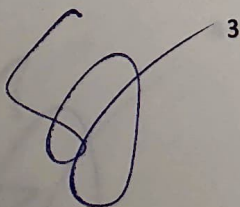
1. Present Application is submitted by the applicant U/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT) on the ground that, the applicant has granted Star Home Loan of Rs. 30,00,000/- and Opponent No.1, has executed necessary documents in favour of the applicant. The said facility are secured by the mortgage charge over the immovable property mentioned in para No.3 of the present application.
2. The applicant has submitted that opponent has failed to make the repayment of the dues therefore, account of the opponent was / has been classified as NPA on 28/01/2024.
3. The applicant issued notice U/s. 13(2) of the SARFAESI on 29/01/2024. The said notice was served to the Opponents. That by way of the said notice the opponent was called upon to pay Rs.35,63,707/46. as on 12/08/2024. However, the borrower has failed to repay the same.
4. Learned Advocate for the applicant is present. Heard the Learned Advocate for the applicant. Perused the Record.
5. In view of the Judgment of the Hon'ble Gujarat High Court as decided in SPECIAL CIVIL APPLICATION NO. 215 OF 2011 IN case of IDBI BANK LTD VS. DISTRICT MAGISTRATE AND OTHERS where in Para No. 8 (xi) it is held that :-

The Chief Metropolitan Magistrate Court has no power to adjudicate the dispute between the parties. Hence this Court cannot go into the merits of the claim.

Hon'ble SUPREME COURT OF INDIA in CIVIL APPEAL NO. 175 OF 2022, Dtd. July 27, 2022 (M/s R.D. Jain and Co. Vs Capital First Ltd. & Ors. has held that *"the powers under Section 14 of the SARFAESI Act can be exercised by the concerned Additional Chief Metropolitan Magistrates of the area having jurisdiction and also by the Additional District Magistrates, who otherwise are exercising the powers at par with the concerned District Magistrates either by delegation and/or special order".*

Hon'ble SUPREME COURT OF INDIA in 2022 (2) SCC 573 (Electrosteel Castings Limited VERSUS UV Asset Reconstruction Company Limited & Ors.) has held that *"Having considered the pleadings and averments in the suit more particularly the use of word 'fraud' even considering the case on behalf of the plaintiff, we find that the allegations of 'fraud' are made without any particulars and only with a view to get out of the bar under Section 34 of the SARFAESI Act and by such a clever drafting the plaintiff intends to bring the suit maintainable despite the bar under Section 34 of the SARFAESI Act, which is not permissible at all and which cannot be approved."*

Hon'ble Supreme Court Further held that, *"It is required to be noted that as such in the present case the assignee has already initiated the proceedings under Section 13 which can be challenged by the plaintiff – appellant herein by way of application under Section 17 of the SARFAESI Act*



3

before the DRT on whatever the legally available defences which may be available to it."

Further, As per ratio laid down in Judgment given by **Hon'ble Supreme Court in 2022 (0) AIJEL-SC 69906 (Balakrishna Rama Tarle V. Phonix Arc Pri.Ltd.)**, " power exercisable by CMM / DM u/s 14 of SARFAESI Act are ministerial step and S.14 does not involve any adjudicatory process qua points raised by borrowers against secured creditor taking possession of secured assets".

Hon'ble Bombay H.C. has held in Writ Petition No.8418/2022, Decided On: 23.03.2022i.e. in case of CA Manisha Mehta & ors.V. The Board of Directors of Represented by its MD of ICICI Bank & ors. held that

" The SARFAESI Act is intended to facilitate quick recovery of secured debts without extending any opportunity of hearing to a borrower and without judicial/quasi-judicial intervention till such time possession of the secured asset is taken by the secured creditor after serving the requisite notices and responding to the objection/representation that may be lodged/preferred by the borrower under section 13(3A). (Para-7)

Pertinently, section 14 of the SARFAESI Act was amended twice, once in 2013 and then again in 2016. If it were the intention of the legislature to extend opportunity of hearing to a borrower before the District Magistrate/Chief Metropolitan Magistrate, as the case may be, it was free to do so. Advisedly, the legislature did not do so, for, it would have militated against the scheme of the SARFAESI Act and more particularly section 13 thereof. It is implicit in the scheme of the SARFAESI Act that natural justice, only to a limited extent, is available and not beyond what is expressly provided. There seems to be little merit in the argument advanced by Mr. Nedumpara and we hold that the

language of section 14 is too clear and unambiguous, and does not admit of any requirement of complying with natural justice by putting the borrower on notice while an application thereunder is under consideration. (Para-8) "

Hon'ble Madras H.C. (AIR 2009 Mad 10) i.e. in case of Indian Overseas Bank V. Aravindh Steels Ltd., held,

"90. Following conclusions emerge from the above discussion:

1. The bank or financial institution shall, before making an application under Section 14 of the NPA Act, verify and confirm that notice under Section 13(2) of the NPA Act is given and that the secured asset falls within the jurisdiction of CMM/DM before whom application under Section 14 is made. The bank and financial institution shall also consider before approaching CMM/DM for an order under Section 14 of the NPA Act, whether Section 31 of the NPA Act excludes the application of Section 13 and 14 thereof to the case on hand.
2. CMM/DM acting under Section 14 of the NPA Act is not required to give notice either to the borrower or to the 3rd party.
3. He has to only verify from the bank or financial institution whether notice under Section 13(2) of the NPA Act is given or not and whether the secured assets fall within his jurisdiction. There is no adjudication of.
4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under Section 14 of the NPA Act by recording that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under Section 14.
5. Remedy provided under Section 17 of the NPA Act is available to the borrower as well as the third party.
6. Remedy provided under Section 17 is an efficacious alternative remedy available to the third party as well as to the borrower where all grievances can be raised.
7. In view of the fact that efficacious alternative remedy is available to the borrower as well as to the third party,



ordinarily, writ petition under Articles 226 and 227 of the Constitution of India should not be entertained.

8. In exceptional cases of gravest injustice, a writ petition could be entertained by this Court.

9. Great care and caution must be exercised while entertaining a Writ petition because in a given case it may result in frustrating the object of the NPA Act.

10. Even if a writ petition is entertained, as far as possible, the parties should be relegated to the remedy provided under Section 17 of the NPA Act before the DRT by passing an interim order which will protect the secured assets. Adjudication and final order should be left to the DRT as far as possible". (emphasis supplied)

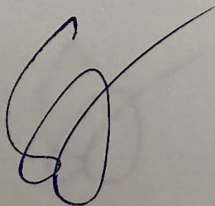
Hon'ble HIGH COURT OF JUDICATURE AT BOMBAY in WRIT PETITION NO.9749 OF 2021 (Phoenix ARC Private Limited Vs. The State of Maharashtra)

Dtd.3rd August, 2022 has held that,

18. Section 14 does not contemplate the following :-

- (i) Any notice to be given to either Borrower or a Third Party,
- (ii) Borrower or a Third Party to file any reply to the application,
- (iii) Borrower/Third Party to be heard,
- (iv) Adjudication as to the legality or validity of the mortgage.
- (v) Adjudication as to the quantum of the debt claimed by the secured creditor.
- (vi) Adjudication of any issues such as limitation, etc.

6. Upon perusal of the Judgement of the Hon'ble High Court of Gujarat, the Chief Metropolitan Magistrate has very limited scope with respect to the cases U/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT). Hence, this Court can not go into the merits of the claim.



7. Perused the application, affidavit submitted by the authroised officer of the Applicant and documents filed on record of the case.
8. Taking into consideration the Application, Affidavit and documents produced on record It is apparent that applicant has granted the aforesaid financial assistance to the Respondents. In pursuance of such financial assistance Respondents have executed various documents in favour of Applicant to create security interest over the aforesaid secured asset. However, in due course failed to repay loan.
9. Upon perusal of record, I am satisfied that the contents of the affidavit are fully supported by the documents produced. That apart, sufficient time has been given by the applicant to the opponent to make repayment of the outstanding dues but opponent has not paid the outstanding amount. Hence, considering the above facts of the application and in view of the above Judgments of the Hon'ble High Court,. Hence, passed the following order

O R D E R

- 1) The Application of the applicant is hereby allowed.
- 2) I authorize Mr. D.K. Kumpawat, Asst. Superintendent, of this Court, as Court Commissioner U/s.14 (1-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. (in short SARFAESI ACT).
- 3) Court Commissioner is directed to take possession of properties mentioned In Para No.3, of the present application, under the



heading DESCRIPTION OF MORTGAGED PROPERTY/SECURED ASSET. The description of the properties are as under:-

All that part and parcel of the property Flat No. A-406 Fourth Floor, Vasupujya Tower Nr. St. Kabir School, Naranpura, Ahmedabad admeasuring about 91 Sq.Mtrs. i.e. 110 Sq.Yards and proportionate undivided share in the land (Super Built up area) beating Final Plot No. 272 (Paiki), Town Planning Scheme No. 29 (Land of Old Survey No. 166/2 paiki) situate lying and being at Mouje Memnagar, Taluka: Ghatlodia, in the Registration District and Sub District Ahmedabad-3 (Memnagar). which is bounded as under:-

East: T.P. Road.

West: Road. Flat No. A/405

North: Lift and Passage

South: Adjoining Flat.

4. If the secured assets is found in closed condition, the Court Commissioner may take possession of this secured assets by breaking / opening the lock or may take any other steps he may think fit.

5) After taking the possession of the secured assets, Court Commissioner shall prepare the inventory of any item, Documents



relating to the assets if found in secured Assets and handover the same to the applicant.

- 6) The concerned Police Inspector of the concerned police station under whose Jurisdiction, the aforesaid Secured Assets is situated, shall provide necessary police Assistance / protection to the Court Commissioner on the date appointed by the Court Commissioner for taking possession of the secured assets, as per the **Circular of Home Department, Bearing No SB-II, GNH/112017/998-PART FILE Dated 03rd December 2020. As per said circular when the question of giving police protection under the SARFAESI Act, arise, at that time, the police authority shall not record any statement of any person nor should call any person to police station for recording the statement and police shall provide the police assistant to the secured creditor. on production of the copy of this order before the concerned police station. The police inspector of the concerned Police Station, shall provide police protection within 30 days from the receipt of the copy of this Court order.** The Applicant Bank shall complete the necessary formalities for seeking police protection and also bear the expenses thereof. The Court Commissioner may take or cause to be taken such steps and use, or cause to be used such force, as may, in her

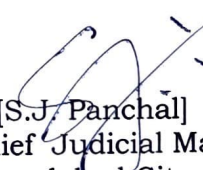


opinion be necessary. Copy of this Order be sent to the concerned Police Station.

- 7) Applicant shall bear the expenses incurred in taking possession of the secured assets and shall provide all necessary assistance to the court commissioner in taking possession of the secured assets.
- 8) Applicant is hereby directed at present to deposit lumpsum amount of Rs. 20,000/- towards the expenses and remuneration of court commissioner, within One Month from the date of Order. On depositing the above said amount in the court, the Court Commissioner is directed to complete the said procedure within 90 days or within the time limit extended by the court and submit the compliance report of completion of proceedings.
- 9) The court commissioner shall carry out the said proceedings on public holidays or except court working hours.

Pronounced in the open court today i.e. on 24/10/2024.

Date: 24/10 /2024
Place: Ahmedabad.


[S.J. Panchal]
Addl. Chief Judicial Magistrate
Ahmedabad City.
Code No.GJ00864