PATIL VEERANAGOUDA

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KABC030423462022

Presented on : 28-05-2022
Registered on : 28-05-2022
Decided on : 01-09-2023
Duration : 1 years, 3 months, 4 days

IN THE COURT OF THE CHIEF METROPOLITAN MAGISTRATE, BENGALURU

Present:

Sri.Patil Veeranagouda S.
B.Com., LL.M.
Chief Metropolitan Magistrate,
Bengaluru.

Dated this the 01st day of September, 2023

Crl. Misc. No.3214/2022

Petitioner : PNB Housing Finance Ltd., Malleshwaram Branch, Bengaluru, Represented by its Authorised Officer/Chief Manager Bharath.G.K. s/o Karibasappa.K., Aged about 28 years.

(By Sri Mukunda, Advocate)

- Versus –

Respondents: 1. Raghavendragururaj.V.L.,

2. Lakshmi Devamma,

3. Sheela.S.N.

Address of respondents - No.21, 1st Cross, Studio Main Road, Near Kanteerava Studio, Narasimhulu Layout, Bengaluru North Taluk, Bengaluru.

ORDERS ON PETITION U/S 14 OF SARFAESI ACT

The petitioner has filed this petition U/Sec.14 of SARFAESI Act seeking an order to take physical possession of schedule property.

2. The case of petitioner is that it is a company incorporated under the Companies Act, 1956, promoted by PNB and registered with National Housing Company (NHB) in terms of Section 29A of the National Housing Company Act, 1987 and having registered office at New Delhi inter alia branch office at PNB Housing Finance Ltd., 1125/12, Ground Floor, Hampi Nagar and is a notified company under the Act, by the ministry of finance on 10-11-2003

and is engaged in the business of providing credit/loan. The petitioner is a bank within the definition thereof under Sec.2 (1) (c) (i) of the Act.

3. The petitioner further contends that the respondent No.3 is the borrower/guarantor, approached the petitioner bank for housing loan of ₹31,50,000/- and accordingly it sanctioned the same vide Loan Account No.NHL/MLS/0917/427103, which loan carried interest at the rate of 9.60% per annum. As a security for the said loan, the respondents have mortgaged the schedule immovable property bearing BDA No.21, Sy.No.1, Narasimhalu Badavane, Nandini Layout, Jarakabandkaval Village, Bengaluru, standing in the name of respondent No.2 and also the respondents have executed various documents at the time of availing the loan.

4. It is further contention of petitioner that the respondents have failed to repay the loan amount as agreed upon. The petitioner has issued several reminders, besides meeting the respondents personally to recover the said amount, but the efforts are in vain. Thus the debt has been classified as Non Performing Asset on 31-05-2021. The petitioner issued demand notice under Sec.13(2) of the Act on 18-06-2021, calling upon them to pay a sum of ₹31,85,345-34 with further interest, incidental expenses etc., within 60 days from the date of notice. The demand notice was also published in "Business Standard" English and "Vishwavani" Kannada daily newspapers on 25-08-2021. But the respondents have not paid the amount towards the realization of outstanding loan amount.

5. The petitioner further contends that since the respondents have not complied with the said notice, the petitioner was forced to initiate proceedings under Sec.13(4) of the Act. The petitioner is entitled to take possession of the mortgaged property, which is a secured asset in the hands of bank, as defined under Sec.2(zd) of the Act. The statutory period of 60 days has been lapsed after the issuance of demand notice to respondents. The petitioner is entitled to take recourse to one or more measures referred to in Se.13(4) of the Act and decided to take possession of the schedule property. Accordingly it issued symbolic possession notice dated 24-11-2021 under Sec.13(4) R/W Rule 8(1) of the Security Interest and Enforcement Rules. The said notice was also affixed on the conspicuous part of the schedule property and published the same in “Financial Express” English and “Vishwavani” Kannada daily newspapers on 28-11-2021 and accordingly taken the symbolic possession of schedule property.

6. It is further contention of petitioner that the outstanding balance is ₹31,85,34-34 as on 18-06-2021. That the schedule property is secured asset occupied by respondents and their family members, which is required

to be taken over by petitioner under the provision of Act. For the purpose of securing the compliance under Section 13(4) of the Act, the court may take all appropriate steps including breaking open the lock with the aid of police protection, if necessary. Hence this petition.

7. At this juncture it is worth to mention the decision of our own Hon'ble High Court reported in **2018 SCC Online Kar 2484 : AIR 2019 KAR 37, HDB Financial Services Ltd. Vs. M/s. Remo Software Pvt. Ltd.**, wherein it is clearly held that *"No notice is necessary to the respondents U/Sec.14 of the SARFAESI Act 2002."* In view of this ratio issuance of notice to respondents is dispensed with.

8. It is to be mentioned here that, inspite of giving sufficient opportunities, the learned counsel for petitioner failed to comply/clarify the points raised by this court dated 13-03-2023 and not submitted any arguments. So with a liberty to file written arguments, the matter was posted for orders. However till today the petitioner has submitted neither oral nor written arguments.

9. On perusal of the records, the points that arise for my consideration are;

1. Whether petitioner is entitled for the relief claimed in the petition?
2. What order?

10. My answer to the above points are:

Point No.1: In the negative

Point No.2: As per final order for the following:

R E A S O N S

11. Point No.1:- It is the initial burden on petitioner to prove that it has complied with the relevant provisions of Act before filing the present petition. Further the petitioner has to furnish all the relevant documents pertaining to loan transaction.

12. I have carefully gone through the petition averments coupled with documents produced, so also the provisions of Act. On careful perusal of the material on record, the petitioner has not produced the returned envelopes containing the demand notice if not served and acknowledgments if served, the original paper publication of demand notice, so also the mortgage document pertaining to schedule property. These points were raised by this court on 13-03-2023 and adjourned the case for compliance from time to time.

13. It is to be noted here that on 13-04-2023, 26-07-2023 and 16-08-2023, the petitioner and his counsel remained absent. This court has given sufficient opportunity to comply the above points raised by this court dated 13-03-2023 and to submit arguments, but the petitioner has not bothered for the same. As noted above the petitioner has failed to furnish the above said documents. In the absence of said documents, this court is not in a position to entertain the relief sought for by the petitioner. In the result, I answer the above point in the negative.

14. Point No.2: In view of my findings to the above point, I proceed to pass the following:

ORDER

Petition filed by the petitioner under section 14 of SARFAESI Act is hereby dismissed.

Office to return original documents to the petitioner under proper endorsement and identification.

(Dictated to the stenographer directly on computer, typed by him, the print out is verified and corrected by me, signed and then pronounced by me in the open Court on this the 01st day of September, 2023)

(Patil Veeranagouda S.),
Chief Metropolitan Magistrate,
Bengaluru.

01-09-2023

Orders pronounced in the open court vide separately

ORDER

Petition filed by the petitioner under section 14 of SARFAESI Act is hereby dismissed.

Office to return original documents to the petitioner under proper endorsement and identification.

CMM, Bengaluru.