

Proceedings of the Chief Judicial Magistrate Court, Tenkasi District.

**Present: Thiru. C. Kathiravan, B.Sc.,B.L.,
Chief Judicial Magistrate,
Tenkasi.**

Friday the 13th day of September 2024

Criminal Miscellaneous Petition No.56/2024

Petitioner:	M/s. Aptus Finance India Private Ltd., Having Corporate Office at 8B, Doshi Towers, 205, Ponamallee High Road, Kilpauk, Chennai 600 010. Having branch office at; Rajapalayam Branch, T.P. Mills Road, Rajapalayam. Rep. by its, Authorized Officer, Muthupandi.
Respondents	1. A. Sivasubramanian, S/o. Alagaiah, 56, North Street, Kalapakulam, Sankarankovil Taluk, Tenkasi District – 627 756.
	2. S. Velmayil, W/o. Sivasubramanian, 56, North Street, Kalapakulam, Sankarankovil Taluk, Tenkasi District – 627 756.
	3. S. Senthamil Arasi, D/o. Sivasubramanian, 56, North Street, Kalapakulam, Sankarankovil Taluk, Tenkasi District -627 756.

This petition coming for final hearing before me on this court on 04.09.2024 in the presence of Mr. V. Sukumar, Advocate for petitioner and upon hearing petitioner side arguments, perusing the petition and other relevant documents, and having stood over for consideration till this day, this court delivered the following,

ORDER

The petitioner namely **M/s. Aptus Finance India Private Ltd.**, Rajapalayam Branch represented by its Authorised Officer has filed this application under section 14(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 seeking appointment of Advocate Commissioner to take possession of the Secured asset mentioned in schedule which is Land now existing and building to be put up thereon, All that piece and parcel of the land and building situated at Tenkasi Registration District, Sankarankovil Sub Registrar Office, Sankarankovil Panchayat Union, Kalappakulam Village Survey No.213/1, 79 cent southern side corner 20 cent, leave pathway portion remaining portion 4.38 cent (3.75 + 0.63) i.e. 1911.25 Sq.feet of land and building bounded by,

North by	-	16 feet wide east – west common pathway
South by	-	Property owned by Chinnakalai Thevar
East by	-	Property owned by Muthupandian and Velsamy Thevar
West by	-	Property owned by V. Kottursamy

Measurements:-

North to South Eastern side – 27 1/2 feet

North to South western side – 27 1/2 feet

East to West Southern side – 69 1/2 feet

East to West Northern side – 69 1/2 feet

Totally 1911.25 Sq.feet of land and building and all other appurtenances attached to the said property. Now as per Sub divided Survey No.213/1B.

2) The petitioner is a banking company. The deponent is the authorized officer exercising powers on behalf of **M/s. Aptus Finance India Private Ltd.**, Rajapalayam Branch, It transpires that the respondents have availed a banking loan of Rs.10,21,667/- on 30.11.2018 and created an equitable mortgage in favour of the petitioner on 31.12.2018 by depositing title deeds. They have executed a memorandum of deposit of title deeds dated 31.12.2018 confirming the mortgage. But the respondents have committed default in repayment of Principal and Interest. The petitioner has issued demand notice on 14.02.2023 under section 13(2) of SARFEASI Act and 60 days time was granted under notice. But the respondents did not send any reply despite receiving the notice. The petitioner has taken

symbolic possession of the secured asset on 08.06.2023. The possession notice was duly published in Tamil & English News Paper on 13.06.2023. The Petitioner has also declared that the property is not in possession of any lessee under any valid lease and the same is also confirmed from the encumbrance certificate taken for the period from 01.01.2017 to 29.03.2024. There is no stay or injunction in any court or Tribunals restraining the petitioner bank from taking possession of the secured assets under the provisions of the sarfaesi act.

3) As per the SARFAESI Act, the petitioner who is the secured Creditor may take possession of the secured asset under section 13 of the said act. The petitioner can file application before this court to seek assistance for taking possession of the property hypothecated. As per the section 14 of the Act, this court can take possession of such Asset and the documents relating thereto from the respondents and forward to the secured creditor.

4) The petitioner contended that the respondents are in possession of the secured Asset and declined to surrender vacant possession of the property to the petitioner and so they have filed this petition seeking assistance of the court for taking possession of the schedule property.

5) Section 14 of the Act does not contemplate any notice to the respondents before passing any order under this section. On perusal of the affidavit and documents filed by the petitioner it is seen that the petitioner has complied all the pre-conditions to invoke the section 14 of the SARFAESI Act and also proved that there is compelling situation arose for the petitioner to realise the loan amount by taking necessary action for taking actual possession of the secured asset for sale or for transfer. For the said purpose it is just and necessary to render assistance to the secured creditor in taking possession of the secured asset, it is necessary to appoint an Advocate Commissioner for identification of the secured Asset and taking possession and if there is any resistance, seek for police assistance and take any effective step to have possession of the secured Asset.

6) The Honourable Supreme Court in its Judgment reported in 2020 – 3 – L.W. - 498 : The Authorised Officer, Indian Bank Vs.D.Visalakshi and another (Civil Appeal No.6295 of 2015) dated:23.09.2019 observed and endorsed as follows:

“22. Thus it is only a procedural step without any adjudication of any dispute whatsoever. The action is therefore only an administrative order made for taking possession

of the secured assets if all other conditions are fulfilled. Having already noted that the powers exercised by the CMM and DM in terms of Section 14 of the 2002 Act are synonymous to each other and that they are not adjudicatory in nature...”

“25. ... It did notice that the authority referred to in section 14 of the 2002 Act has no power to adjudicate upon any rights of the parties but can only render assistance to the secured creditor to recover possessions ... ”

7) Considering the above and the documents including the Sanction Letter, MOD, EC and demand notice issued by the petitioner, this court is satisfied that the respondents have defaulted in repayment of loan amount and the loan amount is not barred by limitation and the schedule property offered as security of the loan is located within the jurisdiction of this court. Thus, this court finds it fit to issue proper direction to take physical possession of the secured asset described in the schedule after taking proper inventory and also to handover the possession of the property to the petitioner bank, and as such this petition is liable to be allowed.

In the result, this petition is allowed thereby appointing **Mr. S. Velpandian, MS.No.1915/2005, Mob: 9894262064** as Advocate Commissioner.

1. to inspect the petition mentioned property
2. take inventories
3. take Physical Possession of the said property and hand over to the petitioner.

A sum of Rs.25,000/- is fixed as remuneration for the said Advocate Commissioner. The petitioner shall give the said remuneration to the commissioner on or before 24.09.2024.
Call on 25.09.2024.

Chief Judicial Magistrate,
Tenkasi.

Petitioner side witness:

PW1 - Mr. S. Ramachandran

Petitioner side Documents:

Ex.P1	Copy of Certification and License of the Petitioner dt.20.12.1958. (Compared with original).
Ex.P2	Copy of Authorisation letter issued by the petitioner bank to its employee namely

	Mr. Ramachandran. (Compared with original).
Ex.P3	Copy of Loan Sanction Letter dt. 30.11.2018. (Compared with original).
Ex.P4	Copy of Loan Sanction Letter dt.16.10.2019. (Compared with original).
Ex.P5	Copy of Memorandum of Deposit of the Title Deed in doc.No.3291 of 2018 REgistered on the file of the Sub Registrar, Sankarankovil dt.31.12.2018 (Compared with original).
Ex.P6	Copy of Demand Notice and along with acknowledgment cards dt.14.02.2023. (Compared with original copy).
Ex.P7	Copy of Possession Notice Postal receipt and Postal tracking extract dt.08.06.2023. . (Compared with original copy).
Ex.P8	Copy of Photograph showing the affixture of Possession Notice dt.08.06.2023 (Compared with original copy).
Ex.P9	Copy of Newspaper Dinamani (Tamil Edition) Extract showing Publication of Possession Notice dt. 13.06.2023. (Compared with original).
Ex.P10	Copy of Newspaper New Indian Express (English Edition) Extract showing Publication of Possession Notice dt.13.06.2023. (Compared with original).
Ex.P11	Copy of Statement of Account of the respondent dt.29.03.2024. (Compared with online copy).
Ex.P12	Copy of Sale deed doc.No.2602 of 2011 file of the Sub Registrar, Sankarankovil dt.14.07.2011. (Compared with original copy)
Ex.P13	Copy of Sale deed Doc. No.3811 of 2013 file of the Sub Registrar, Sankarankovil dt.01.10.2013. (Compared with original copy)
Ex.P14	Copy of Encumbrance Certificate (Compared with Online copy)

Chief Judicial Magistrate,
Tenkasi.

