

IN THE COURT OF XLI (41ST) ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE, BENGALURU

DATED THIS THE 31ST DAY OF AUGUST 2021

PRESENT

SRI S.S.BHARATH M.A. LL.M.,
XLI (41ST) ADDITIONAL CHIEF METROPOLITAN MAGISTRATE,
BENGALURU

CRIMINAL MISCELLANEOUS PETITION NUMBER
2791/2021

BETWEEN

1. Union Bank of India
(Erstwhile Andhra Bank)
Kormangala Branch,

Represented by its Chief Manager/
Authorized Officer,
Sri.Lakshmeesha K Bhargav,
Major,
HSR Layout Branch,
Bangalore-560102.

....Petitioner

(Represented by Sri.Nagendrababu V.N. - Advocate)

AND

1. Jeyanthi
W/o Venugopal.V
Major,

- 2.** Venugopal.V
S/o Late B.Vellai,
Major,

Both are residing at
No.206, Hosa Road,
1st Main, 5th Cross,
C.K.Nagar (Chenna Kesava Nagar)
Bangalore.

....Respondents

THIS PETITION IS FILED UNDER SECTION 14 OF SECURITISATION AND RECONSTRUCTION OF THE FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT OF 2002, SEEKING TO TAKE PHYSICAL POSSESSION OVER THE PETITION SCHEDULE PROPERTY AND TO HANOVER THE SAME TO THE PETITIONER-BANK AND TO APPOINT COURT COMMISSIONER FOR THE SAME PURPOSE AND TO DIRECT THE CONCERNED JURISDICTIONAL POLICE TO ASSIST THE PETITIONER-BANK WHEN THEY MOVE FORWARD TO TAKE PHYSICAL POSSESSION OVER THE SCHEDULE PROPERTY.

THE CASE, AFTER HEARING, COMING ON FOR ORDERS, THIS DAY, COURT DELIVERED THE FOLLOWING ORDERS.

ORDERS**Case of the petitioner is as follows:-**

The Petitioner-Bank was earlier known as Andhra Bank. Subsequently it came to be merged with Union Bank of India. It is a body corporate as per Banking Companies(Acquisition and Transfer of Undertaking) Act, 1970. The respondents mortgaged the schedule property and availed housing loan to the tune of Rs.4,50,000/- agreeing to repay the same in 174 monthly installments together with the interest calculated at 8.25% P.a. The said mortgage has been done by way of deposit of title deeds. They are due to repay sum of Rs.4,20,621/-, as on 01/04/2021 and shall repay further interest as well. Despite agreement, the respondents failed to repay the loan money. In spite of compliance of Sections 13(2) and 13(4) of SARFAESI Act, loan amount has not been repaid.

After filing of this petition, this court, after hearing the learned counsel appearing for the petitioner has

posted the matter for orders. The documents in originals which are stated in the petition have been furnished by the petitioner to the court.

In support of the petition, the petitioner bank has furnished to the court the documents as to request of the respondents to advance loan, Loan application form, Loan sanction letter, Memorandum of Deposit of title deed, Gift Deed, EC, Demand notice, Postal Receipts and Acknowledgment, Possession Notice and Paper publications of Possessions notice vide annexures No.1 to 09.

The documents produced by the petitioner would leave no doubt in the mind of this court regarding the strength of those documents so produced. Because they are originals. There is no scope for disbelieving those documents. Further, those documents would make out a case alleged against the respondents herein.

Therefore considering the above documents and the foregoing aspects collectively the points which fall for consideration at this juncture, are as under;

1. Whether the petitioner-bank has made out a good case against the respondent to invoke section 14 of SARFAESI Act ?
2. Whether the petitioner-bank is entitled for the reliefs sought for ?
3. What order ?

Above points are answered in the affirmative and also partly in the affirmative respectively for the reasons hereinafter stated.

REASONS

As expressed herein above the petitioner-bank is successful in furnishing to this court the originals of the documents mentioned herein above vide annexures Nos.1 to 09. As aforementioned there is no reason to disbelieve them as they are originals of the documents stated in the petition as aforesaid. The

documents aforesaid through their contents make it clear to the effect that the case cannot be doubted at all . Further considering the nature of the documents so produced by the petitioner herein, this court finds no reason to disbelieve them as mentioned herein above and also to deny the relief sought in the petition only to the extent which is stated hereinafter.

Taking into consideration the foregoing reasons collectively and particularly the paper notifications having already been taken out by the petitioner-bank in Kannada Prabha daily news paper and in the New Indian Express which are dated 08/07/2021, this court has no impediment to say that the petitioner-bank is certainly entitled for some of the reliefs sought in the petition. Therefore for the foregoing reasons, this court is of the considered opinion to say that this is a fit case to proceed further in accordance with section 14 of the said act. Hence point No.1 is hereby

answered in the Affirmative and point No.2 is answered partly in the Affirmative.

O R D E R S

Petition is allowed. The jurisdictional police is directed to assist the petitioner-Bank to take the possession over the schedule property from the respondents or from anybody claiming through them with respect to the schedule property and the jurisdictional police is further directed to extend the protection in favor of the petitioner-bank and to its authorized officers for the purpose of taking the physical possession, over the schedule property from the respondents or from anybody claiming through them including tenants, lease holders, henchmen etc.

Further the authorized officer is hereby directed to draw inventory and panchanama of the property and materials which would be available in the schedule property at the time of securing physical possession of

the schedule property and shall proceed further only in accordance with law and shall submit the inventory and panchanama copies to respondents as well and once the “out standing” due stated in the petition is recovered, then the rest of the belongings which are likely to be taken to the possession shall be returned in time without giving scope for delay.

This court declines to take possession over the schedule property to the hands of the court.

However the petitioner-bank is directed to act in accordance with law only and shall comply with the above orders with proper application of law.

Sri.Chandra Shetty Advocate (KAR 643/2008), is hereby appointed as a Court Commissioner for the purpose of the present orders and he shall execute the above orders and shall ensure the compliance of orders passed herein above. However he is hereby

directed to draw inventory of the materials which would be present in the above premises and shall prepare it transparently, shall furnish the copy of the inventory likely to be drawn to the counsel for the petitioner, and to all the parties specifically to respondents without fail and shall act in accordance with law. The court commissioner fee is fixed at Rs.05,000/-.

Office shall return the original documents submitted by the petitioner to the advocate appearing for petitioner after obtaining the affidavit which shall state that the originals of the documents submitted by the petitioner have been taken back by them in view of the disposal of the petition.

Considering the notices of Hon'ble High Court of Karnataka dated 15/04/2021 and 16/04/2021 respectively and subsequent SOP's, the orders passed herein above will take effect only after

normalcy is resumed as there is a panic span the globe regarding the outbreak of Covid-19 infection.

S.S. Bharath
XLI ACMM, B'lore.

SCHEDULE PROPERTY

(Property belongs to P.Jeyanthi the respondent No.1)

All that part and parcel of the residential building in
Site No.206, CMC Khata No.495, Singasandra Village,
Begur Hobli, Bengalore South Taluk, measuring East to
West 40 feet and North to South 30 feet extent 1200
Sq.Ft and bounded on;

East by :Site No.246

West by : Road,

North by : Private Property

South by: Site No.207

S.S. Bharath
XLI ACMM, B'lore.