

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR

PRESENT : Tmt.M.Breetha, M.L.,
Chief Judicial Magistrate,
Virudhunagar District at Srivilliputhur
Monday this the 10th day of June 2024
CrI.M.P.No.775/2024

State Bank of India,
Stressed Assets Recovery Branch
No.8, Dr.Ambedkar road,
Madurai 625 020.

(Represented by its authorized officer Praveen C)

... Petitioner

/ Vs /

- 1) M/S.City Hospital,
Represented by Managing Partner,
G.Ganesh Babu,
D.No.1, Railway Feeder Road,
Azeez Nagar, Aruppukottai,
Virudhunagar 626 101.
- 2) G.Ganesh Babu,
S/o.(Late) B.Guruva Reddy,
D.No.1/1, Azeez Nagar 1st street,
Aruppukottai, Virudhunagar 626 101.
- 3) G.Dinesh Babu,
S/o.(Late) B.Guruva Reddy,
D.No.1/1, Azeez Nagar 1st street,
Aruppukottai, Virudhunagar 626 101.
- 4) G.Jeevitha,
D/o.(Late) B.Guruva Reddy,
D.No.1/1, Azeez Nagar 1st street,
Aruppukottai, Virudhunagar 626 101.

... Respondents

This petition came for final hearing before this Court on 05.06.2024 in the presence of Mr.S.P.Thilagarajan, Advocate for the petitioner and upon hearing petitioner's side arguments, perusing affidavit, petition and other relevant documents,

and having stood over for consideration till this day, this Court delivered the following :-

ORDER

1) This Petition has been filed by the petitioner seeking assistance under Section 14(1) of the Securitization And Reconstruction of Financial Assets And Enforcement of Security Interest Act 2002 (hereinafter referred to as SARFAESI Act).

2) The Case of the petitioner bank is that the bank had sanctioned a Cash Credit loan of Rs.2,95,00,000/- and supplemental cash credit loan of Rs.2,65,000/- to the 1st respondent and the respondents 2 and 3 and Guruva Reddy are partners and stood as Guarantors. Guruva Reddy died and the respondents 2 to 4 are his legal heirs. Due to the default of the respondents in repaying the loan amount, it was declared as Non Performing Asset (NPA) on 29.05.2022. In order to realize the loan amount together with interest, the petitioner bank issued demand notice to the respondents under section 13(2) of the SARFAESI Act on 21.06.2023 calling upon the respondents to pay the dues to a tune of Rs.2,57,96,489/- as on 21.06.2023. The respondents though received the notice, they neither sent any reply nor paid the demand amount. Since, the respondents have not repaid the outstanding loan amount, the petitioner issued possession notice under section 13(4) of the SARFAESI Act on 16.09.2023. The possession notice was also published in English and Tamil Newspaper on 21.06.2023 and 17.09.2023. The respondents have not surrendered physical possession and hence the petitioner has approached this court under section 14 of the SARFAESI Act to assist them in taking physical possession of the scheduled properties.

3) **Point for determination:**

Whether the petitioner is entitled for assistance of this court in taking physical possession of the scheduled properties under section 14 of the SARFAESI Act as prayed for?

4) The authorised officer of the petitioner bank has been examined as PW1 and Ex.P1 to Ex.P17 documents were marked. The submissions made by the learned counsel for the petitioner was heard and carefully considered and the exhibits produced by the petitioner were carefully perused.

5) **Point and Answer:**

(i) The petitioner is M/s.State Bank of India limited which falls squarely within the definition of bank under section 2(1)(c) of the SARFAESI Act. The petitioner bank has produced Ex.P1, Authorization letter issued to C.Praveen, Chief Manager, Stressed Assets Recovery Branch, Madurai as authorized officer to represent the bank in the proceedings taken under SARFAESI Act.

(ii) The 1st respondent is the borrower. The 2nd and 3rd respondents and Guruva Reddy are its partners and Guarantors. The 1st respondent has availed the loan to an amount of Rs.2,95,00,000/- and supplemental cash credit loan of Rs.2,65,000/-. Ex.P2, Letter of arrangement; Ex.P3, Agreement of loan cum Hypothecation; Ex.P5, Letter of arrangement; Ex.P6, Letter of arrangement; Ex.P7, Supplemental agreement of loan cum hypothecation show that the respondents had availed loan as stated by the petitioner.

(iii) The loan has been sanctioned against the properties of the 2nd respondent and Guruva Reddy. Ex.P12, Sale deed and Ex.P13, Settlement deed dated 23.02.2015 and Ex.P14, Settlement deed dated 03.08.2015 show that the 2nd respondent and Guruva Reddy are the absolute owners of the petition scheduled properties. Ex.P4 is the memorandum of deposit of title deeds of the petition scheduled properties executed by the 2nd respondent and Guruva Reddy. Guruva Reddy died and the respondents 2 to 4 are his legal heirs. The respondents have thus created security interest over the scheduled properties and the petitioner has valid and subsisting security interest over the scheduled properties.

The Encumbrance Certificate of the scheduled properties has been marked as Ex.P12. The Memorandum of Deposit of title deed is reflected in the Encumbrance Certificate. It is also candid from Ex.P12, Encumbrance Certificate that the scheduled properties are located in Chinnapuliyampatti Village, Aruppukottai Taluk, Virudhunagar District and thereby within the jurisdiction of this Court. The respondents have thus created security interest over the scheduled properties and the petitioner bank has valid and subsisting security interest over the scheduled properties.

(iv) The respondents have defaulted in repayment of the loan amount obtained from the petitioner bank which is evident from Account Statements produced as Ex.P11. Hence, the loan has been declared as Non Performing Asset on 29.05.2022 as per the guidelines of the Reserve Bank of India.

(v) The 1st respondent is the borrower and the respondents 2 and 3 and Guruva Reddy are partners and stood as Guarantors. Guruva Reddy died and the respondents 2 to 4 are his legal heirs. The petitioner bank issued notice under section 13(2) of the SARFAESI Act to the respondents 1 to 4 demanding repayment of the loan amount. The notice under section 13(2) of the SARFAESI Act has been produced as Ex.P8. The petitioner bank is thus entitled to take physical possession of the scheduled properties. The petitioner bank has taken symbolic possession by issuing Ex.P9, possession notice, and the possession notice has been published in Tamil and English Newspapers vide Ex.P10.

(vi) Though, the respondents have been served with the notice, they have not surrendered physical possession of the scheduled properties. The authorized signatory of the petitioner bank has affirmed on oath that the respondents are purposely delaying surrender of possession of the scheduled properties and that there is no stay granted against taking possession of the scheduled properties. From the affirmation of the authorized signatory of the petitioner on oath and on perusal of the documents

exhibited on the side of the petitioner, this court is satisfied that the petitioner bank has properly complied with the conditions precedent for invoking the provision under section 14 of the SARFAESI Act. Through the affidavit filed by the authorized signatory and through the exhibits marked on their side, the petitioner has satisfactorily established the default on the part of the respondents 1 to 4 in repayment of the loan amount; the loan amount is not barred by limitation; the scheduled properties were offered as security for the loan amount secured and; the scheduled properties are located within the jurisdiction of this court.

(vii) Thus, considering the above observations, this court finds it fit to issue proper direction to take physical possession of the secured assets described in the schedule of properties after taking proper inventory and also to handover the possession of the properties to the petitioner bank and as such this petition is liable to be allowed.

In the result, this petition is allowed thereby appointing Mr.M.Kaliappan (MS.2779/2015) as Advocate Commissioner

1. to inspect the petition mentioned properties;
2. to take inventories;
3. to take physical possession and immediately hand it over to the petitioner/secured creditor;
4. the Inspector of Police Aruppukottai Town Police station and the Village Administrative officer, Aruppukottai Town are directed to provide suitable assistance to the Commissioner in executing the warrant in respect of the properties in their respective jurisdiction;
5. the Advocate Commissioner may break open any locks put to the doors of the scheduled properties if the same is necessary for handing over physical possession.

A sum of Rs.40,000/- is fixed as remuneration for the said Advocate Commissioner. Out of Rs.40,000/- Rupees 20,000/- shall be paid directly to the

commissioner and the remaining Rs.20,000/- shall be **deposited into this Court within 10 days.** After executing the warrant and filing his report, the Advocate Commissioner is entitled to get the remaining remuneration of Rs.20,000/- from the Court by filing separate E-transfer application. For deposit of Commissioner fees call on 19.06.2024.

**Chief Judicial Magistrate,
Virudhunagar District at
Srivilliputhur.**

SCHEDULE OF PROPERTIES

Properties - No.1 In the name of late Shri B.Guruva Reddy

(Sale deed No.1504/1991 dated 11.09.1991)

In Virudhunagar Registration Dt, Aruppukottai Sub Registration Dt, Chinnapuliyampatti Village, Now Aruppukottai Town, Azees Nagar, 1st street, S.No.87/3 in the South West side to the extent of 9.67/436 cents house properties with ground floor measuring 1308.25 sq.ft, 1st floor measuring 1223.875 sq.ft and high ceiling measuring 472 sq.ft built with bricks and Cement with RCC roof with doors and windows bearing Door No.1A with old Assessment No.126/4676 and New Assesment No.126/007/00661 and EB service connection No.07-203-016-1072 to the extent of East West 50 feet, North South 80 feet, Total of 4000 sq.ft bounded

On the North : 20 feet East West street

On the East : land belonged to Sikkandat Bhatcha and North South railway feeder road

On the South : Kalankarai Odai and Nadars Common land

On the West : Vacant site belonged to B.Guruva Reddy

Properties - No.2 In the name of Late Shri.B.Guruva Reddy

(Gift settlement Deed No.2923/2015 dated 03.08.2015)

In Virudhunagar Registration Dt, Aruppukottai Sub Registration Dt, Aruppukottai Taluk, Aruppukottai Town, Azees Nagar, 1st street, Revenue S.No.87/3, total extant of acres 4 cents 10 southern side 75, out of cent 75 South West cent 18.152/436 Western side 9.76/436, 4000 sq.ft (371.75 sq.meter) vacant land in ward-A, Block 29, T.S.No.38 (old T.S.No.14/3B) with in Aruppukottai Municipal limitation bounded

North : Public park and 20 feet east west common street
 South : Common place of Nadars
 East : House of Guruva Reddy
 West : Common place of Nadras
 Measuring East West 50 ft, South North 80 ft totally 4000 sq.ft

Properties - No.3 In the name of Shri.G.Ganesh Babu
 (Gift settlement deed No.930/2015 dated 23.02.2015)

In Virudhunagar Registration Dt, Aruppukottai Sub Registration Dt, Aruppukottai Taluk, Aruppukottai Town, Azees Nagar, 1st street, S.No.87/3 an extent of 4.10 acres in which easter side Southern portion 71 cents of land. In above land south eastern side 15-1/2 cents, In which northern side 9.28 cents measuring 4050 sq.ft (376.39 sq.meter) site of hospital building with ground floor measuring 3517.37 sq.ft. 1st floor measuring 3358 sq.ft, 2nd floor measuring 3358 sq.ft and portico measuring 253.12 sq.ft and head room measuring 164 sq.ft built with bricks wall and cement with RCC roof frame doors and windows bearing Door No.1B and its E.B connection No.07-203-016-2255

Bounded:

On the North : 20 feet width East West Azees Nagar 1st street
 On the East : 40 feet width Railway feeder road
 On the South : Megaboob, Ahamadsha land
 On the West : Guruva Reddi House.

Property - No.4

Medical equipments.

Petitioner side Documents :

Ex.P.1	---	Authorisation letter	True Copy
Ex.P.2	18.03.2017	Letter of agreement	Compared with original
Ex.P.3	18.03.2017	Agreement of loan cum hypothecation and guarantee	Compared with original
Ex.P.4	14.07.2017	Memorandum of deposit of title deed (Doc.No.2905/2017)	Compared with original
Ex.P.5	05.04.2018	Letter of arrangement	Compared with original
Ex.P.6	27.09.2019	Letter of arrangement	Compared with original

Ex.P.7	27.09.2019	Supplemental agreement of loan hypothecation and guarantee agreement	cum	Compared with original
Ex.P.8	21.06.2023	Demand notice along with AD cards		Compared with office copy
Ex.P.9	16.09.2023	Possession notice along with AD cards		Compared with office copy
Ex.P.10	17.09.2023	Possession notice Paper publication in Tamil and English		Original
Ex.P.11	---	Account statements		System generated copy
Ex.P.12	---	Encumbrance Certificate		Online copy
Ex.P.13	11.09.1991	Sale deed (Doc.No.1504/1991)		Compared with original
Ex.P.14	23.02.2015	Settlement deed (Doc.No.930/2015)		Compared with original
Ex.P.15	03.08.2015	Settlement deed (Doc.No.3923/2015)		Compared with original
Ex.P.16	24.09.2020	Legal heir certificate		On line copy
Ex.P.17	30.06.2020	Death Certificate		On line copy

**Chief Judicial Magistrate,
Virudhunagar District at
Srivilliputhur.**

**Chief Judicial Magistrate Court,
Virudhunagar District at
Srivilliputhur.**

**Cr.M.P.No.775/2024
Order Dated: 10.06.2024**