

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 19th day of August 2024

CrI.M.P.No.957/2024

The Union Bank of India,

(Erstwhile Andhra Bank / Corporation Bank)

Represented by Mr. Kishor Kumar Jha,

Authorized Officer / Chief Manager,

No.51, Rosary Buildings 1st Floor,

Town Hall Road, Madurai -625 001.

... Petitioner

/ Vs /

- 1) M/s.Jaya Ram Cards,
Represented by its Proprietor Mr.M. Jaya Ram,
No.391, Ambala Puli Bazar,
Rajapalayam - 626 117.
- 2) M/s.Jaya Ram Cards,
Represented by its Proprietor Mr.M. Jaya Ram,
HIG-4, 80 feet Road, Anna nagar,
Madurai - 652 020.
- 3) M/s.Jaya Ram Cards,
Represented by its Proprietor Mr.M. Jaya Ram,
No.1/4, Sattur Road, Near Royals Travels,
Sivakasi - 626 189.
- 4) Mr.M. Jaya Ram,
Proprietor of M/s. Jaya Ram Cards,
No.9/31, 1st floor, West Vadampokki Street,
Opp. Koodalalagar Kovil,
Madurai - 625 001.
- 5) Mr.M. Jaya Ram,
Proprietor of M/s. Jaya Ram Cards,
No.391, Ambala Puli Bazar,
Rajapalayam - 626 117.

6) Mr.M. Jaya Ram,
 Proprietor of M/s. Jaya Ram Cards,
 Represented by its Proprietor, Mr.M. Jaya Ram,
 HIG - 4, 80 feet Road, Anna nagar,
 Madurai - 652 020. and also,
 No.1/4, Sattur Road, Near Royals Travels,
 Sivakasi - 626 189. ... Respondents/Borrowers

7) Mr. V. Sekar,
 S/o. Velusamy,
 No.168/1, Subramaniya Swamy Kovil Street,
 Virudhunagar, Rajapalayam - 626 117.

8) Mrs. V. Murugeswari,
 W/o. Mr. Velusamy,
 No.168/1, Subramaniya Swamy Kovil Street,
 Virudhunagar, Rajapalayam - 626 117.

9) Mrs. J. Jayanthi,
 W/o.Mr. M. Jaya Ram,
 No.9/31, 1st floor, West Vadampokki Street,
 Opp. Koodalalagar Kovil Street,
 Madurai - 625 001.

...Respondents/Guarantors

This petition came for final hearing before this Court on 13.08.2024 in the presence of Mr.S.Ganesh, 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.74,00,000/- to the 1st respondent, having its showroom in the address stated as the 2nd respondent and unit in the address stated as the 3rd respondent and the respondents 4 to 6 is the proprietor of the respondents 1 to 3 and the 7th to 9th Respondents are guarantors and the 9th Respondent is the wife of the 4th Respondent. Due to the default of the respondents in repaying the loan amount, it was declared as Non Performing Asset (NPA) on 12.11.2023. 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 16.11.2023 calling upon the respondents to pay the dues to a tune of Rs.75,86,819.71/- as on 31.10.2023. The respondents though received the notice, they neither sent any reply nor paid the demand amount. The guarantors of the principal borrower also had not raised any objection and also have not repaid the amount. Since, the respondents had not repaid the outstanding loan amount, the petitioner issued possession notice under section 13(4) of the SARFAESI Act on 30.01.2024. The possession notice was also published in English and Tamil Newspaper on 02.02.2024. 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 PW1 and Ex.P1 to Ex.P20 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.Union 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.P19, Authorization letter issued by Deputy Zonal Head. By virtue of the said deed, Mr.A.Saravanan, Chief Manager, ARB, Madurai has been appointed as authorized officer to represent the petitioner bank in the proceedings taken under SARFAESI Act.

(ii) The 1st respondent, having its showroom in the address stated as the 2nd respondent and unit in the address stated as the 3rd respondent and the respondents 4 to 6 is the proprietor of the respondents 1 to 3 are the borrowers and the 7th to 9th Respondents are guarantors. The respondents 1 to 6 have availed the Cash Credit loan facilities against the properties of the 7th and 8th Respondents. Ex.P1, Loan Application; Ex.P2, sanction letter; Ex.P3, Demand promissory Note; Ex.P6 Memorandum of Title Deeds show that the respondents had availed loan as stated by the petitioner.

(iii) The loan has been sanctioned against the properties of the 7th and 8th Respondents. Ex.P7 and Ex.P8 show that the 7th and 8th Respondents are the absolute owners of the petition scheduled properties. Ex.P6 is the Memorandum of Deposit of Title deed of the petition scheduled properties executed by the 7th and 8th Respondents. 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 Certificates of the scheduled properties has been marked as Ex.P18. The Memorandum of Deposit of title deed is reflected in the Encumbrance Certificate. It is also candid from Ex.P18, Encumbrance Certificate that the scheduled properties are located in South Venganaloor Village, Pudhupalayam Village, Rajapalayam Panchayat Union, 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.P17. Hence, the loan has been declared as Non Performing Asset on 12.11.2023 as per the guidelines of the Reserve Bank of India.

(v) The 1st to 6th Respondents were the borrowers. 7th to 9th Respondents are guarantors. The petitioner bank issued notice under section 13(2) of the SARFAESI Act to the respondents demanding repayment of the loan amount. The notice under section 13(2) of the SARFAESI Act has been produced as Ex.P9. The petitioner bank is thus entitled to take physical possession of the scheduled properties. The petitioner bank has taken symbolic possession by issuing Ex.P13, possession notice, and the possession notice has been published in Tamil and English Newspapers vide Ex.P15 and Ex.P16.

(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 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.Manikandan (MS.No.3693/2022) 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, Rajapalayam South Police station and the Village Administrative officer, Arasiarpatti Village are directed to provide suitable assistance to the Commissioner in executing the warrant and;
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.30,000/- is fixed as remuneration for the said Advocate Commissioner. Out of Rs.30,000/- Rupees 15,000/- shall be paid directly to the commissioner and the remaining Rs.15,000/- 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.15,000/- from the Court by filing separate E-transfer application. For deposit of Commissioner fees call on 30.08.2024.

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

SCHEDULE OF PROPERTIES

All that piece and the parcel of the land admeasuring 4936.96 sq. ft. with Residential Building bearing Door No. 347/K2 & 347/K3, Situated at Virudhunagar Registration District, Rajapalayam Sub Registrar office, Rajapalayam Panchayat Union, South Vengalloor Village, Puthupalayam Village, patta Nos. 2698 & 2675, plot No. 47 and Plot No. 48, Survey No. 89, the sub division S.No. 89/3D, Hectares 0.94.5 Acres 1 cents 92, Survey No. 90/1 the Sub division S.No. 90/1A1 Hectares 0.77.5 Acres 1 cents 92, Survey No. 91/1B Hectares 0.05.0 is 12 cents, Survey No. 91/2B Hecters 0.03.5 is 9 cents, Totally 1.80.5 Hectares is 4 Acres and 46 cents were sub divided into various house plots naming Siranjeevi Nagar by providing roads and got approval from South Venganallur Panchayat President Proceedings No. 1/2004 dated 20.04.2004.

Item No: 1 Plot No.47

Bounded on: **North** - The Land in plot No. 51 belongs to Lakshmana Perumal Raja, **East**- The Land in plot No. 46 belongs to Ayyasamy Thevar, **South** - 20 ft. width East - West Road, **West**- The land in plot No. 48 belongs to V. Sekar and

S. Murugeswari (item No. 2 Properties), within these boundaries plot No. 47 with an extent of 2396.625 sq.ft, Measures North 41 ft., South 42 ft., East 57 ft., West 58.50 ft., totally 2396.625 sq. ft.

Item No: 2 Plot No.48

Bounded on: **North** - The Land in Plot No. 50, **South** - 20 ft. width East - West Road, **East** -The Land in Plot No. 47 (item No. 1 Properties), **West** - The Land in plot No. 49, within these boundaries Plot No. 48 with an extent of 2540.34 sq.ft., measures North 43.75 ft., South 42 ft., East 58.50 ft., West 60 ft., totally 2540.34 sq. ft.

Petitioner side Documents :

Ex.P.1	20.06.2022	Loan Application	Compared with original
Ex.P.2	21.07.2022	Credit Sanction Intimation	Compared with original
Ex.P.3	29.07.2022	Demand promissory note	Compared with original
Ex.P.4	29.07.2022	Guarantee Agreement signed by the 7 th to 9 th Respondents	Compared with original
Ex.P.5	29.07.2022	Hypothecation Agreement	Compared with original
Ex.P.6	16.08.2022	Memorandum of Deposit of Title deeds in document no.4327/2022	Compared with original
Ex.P.7	29.06.2017	Registered Sale deed Doc.No.1588/2017	Compared with original
Ex.P.8	25.05.2018	Registered Sale deed Doc.No.1733/2018	Compared with original
Ex.P.9	16.11.2023	Statutory Notice under sec.13(2) of SARFAESI Act	Truecopy
Ex.P.10	17.11.2023	Acknowledgment card and Return covers	Compared with original
Ex.P.11	21.11.2023	Statutory notice published in Dinamani Tamil	Original

		News paper	
Ex.P.12	21.11.2023	Statutory notice published in New Indian English News paper	Original
Ex.P.13	30.01.2024	Possession Notice under sec.13(4) of the SARFAESI Act	Office copy
Ex.P14	03.02.2024	Return covers of the possession notice	Compared with original
Ex.P15	02.02.2024	Possession notice published in Dinamani Tamil News paper	Original
Ex.P16	02.02.2024	Possession notice published in New Indian English News paper	Original
Ex.P17	20.04.2024	The statement of accounts	True copy
Ex.P18	20.04.2024	Online Encumbrance Certificate	Computerized copy
Ex.P19	19.06.2024	POA cum Authority letter	True copy
Ex.P20	04.03.2024	Amalgamation Order	Xerox copy

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

**Chief Judicial Magistrate Court,
Virudhunagar District at
Srivilliputhur.
Cr.M.P.No.957/2024
Order
Dated : 19.08.2024**