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
Wednesday this the 6th day of November 2024

Crl.M.P.No.1485/2024

M/s.City Union Bank Ltd.,Banking Co.,
Credit Recovery and Management Department,
"Naryana" Administrative Office,
No.24-B, Gandhi Nagar,
Kumbakonam.
Through its AuthorizedOfficer,
Ramasubramanian, S/o.R.Dwarakanathan

... Petitioner

/ Vs /

1) M/s.Senthilandavar Traders,
through its Proprietors,
Sree Lakshmi Kriba,
Door No.42, SBK High School Road,
Aruppukottai,
Virudhunagar District.

2) Sreelakshmi Kibra,
W/o.B.Kumaran,
Door No.31, K.S.Shanmugavel Nadar Street,
Aruppukottai,
Virudhunagar District.

3) B. Kumaran,
S/o.A.Baratharajan,
Door No.31, K.S.Shanmugavel Nadar Street,
Aruppukottai,
Virudhunagar District.

4) A. Baratharajan,
S/o.Amirthalinga Nadar,
Door No.31, K.S.Shanmugavel Nadar Street,
Aruppukottai,
Virudhunagar District.

... Respondents

This petition came for final hearing before this Court on 09.10.2024 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 CUBOSL Term EMI-BR loan of Rs.35,00,000/-; Emergency Credit Line SCH loan of Rs.24,00,000/-; ECLGS 1.0 Extension loan of Rs12,80,000/- and; Secured OD without DP loan of Rs.1,00,00,000/- totally Rs.1,71,80,000/- to the Respondents. 2nd respondent is the Proprietor of the 1st respondent company. The 3rd and 4th respondents are the guarantors. Due to the default of the respondents in repaying the loan amount, it was declared as Non Performing Asset (NPA) on 04.01.2024. 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 10.01.2024 calling upon the respondents to pay the dues to a tune of Rs.1,56,61,312/- as on 04.01.2024. 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 18.04.2024. The possession notice was also published in English and Tamil Newspaper on 23.04.2024. 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 as PW1 and Ex.P1 to Ex.P21 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.City Union Bank limited which falls squarely within the definition of bank under section 2(1)(c) of the SARFAESI Act. The petitioner bank have produced Ex.P1, Power of attorney issued by Board of Directors appointing Mr.D.Ramasubramanian as authorized officer to represent the bank in the proceedings taken under SARFAESI Act.

(ii) 2^{nd} respondent is the Proprietor of the 1^{st} respondent company. The 3^{rd} and 4^{th} respondents are the guarantors. The respondents have availed the loan against the properties of the 3^{rd} respondent. Ex.P2, P3, P4, P5, Applications cum undertaking for loan and sanction letter with annexures and demand promissory note executed by respondents infavour of the bank ; Ex.P7, Letter of continuity executed by respondents 1 to 3 in favour of the bank; Ex.P8, Registered Memorandum of Deposit of Title Deed executed by 3^{rd} respondent and; Ex.P9, Registered Memorandumof Extension of equitable mortgage executed by 3^{rd} respondent shows that the respondents had availed loan as stated by the petitioner.

(iii) The loan has been sanctioned against the properties of the 3rd respondent. Ex.P6 shows that the 3rd respondent is the absolute owner of the petition scheduled properties. Ex.P8 is the Memorandum of deposit of title deed of the petition scheduled properties executed by the 3rd respondent. 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.P21. The Memorandum of Deposit of title deed is reflected in the Encumbrance Certificate. It is also candid from Ex.P21, Encumbrance Certificate that the scheduled properties is located in Sekaram, Aruppukottai Town, 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.P16 to P20. Hence, the loan has been declared as Non Performing Asset on 04.01.2024 as per the guidelines of the Reserve Bank of India.

(v) 2nd respondent is the Proprietor of the 1st respondent company. The 3rd and 4th respondents are the 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.P10. The petitioner bank is thus entitled to take physical possession of the scheduled properties. The petitioner bank has taken symbolic possession by issuing Ex.P11, possession notice, and the possession notice has been published in Tamil and English Newspapers vide Ex.P13 and P14.

(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 was offered as security for the loan amount secured and; the scheduled properties is 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 **Mrs.M.Priya (MS No.672/2014)** 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 18.11.2024

Sd/Tmt.M.Breetha/

Chief Judicial Magistrate,
Virudhunagar District at
Srivilliputhur.

SCHEDULE OF PROPERTIES

Site with superstructure situated at Virudhunagar Registration District, Aruppukottai Sub-Registration District, Aruppukottai Town, Sekaram, Sri Amirthalingeswara Kovil North Car Street, Natham S.No.160/303, Old Door No.53-1-135 present Tax assessment No : 17167 in Aruppukottai Municipality, Ward No : 20, Madurai Road, New Door No.20-11-135 to the extent of 2117 square feet, site with house, the East part of house site bounded on:

North by : Properties of Rajamanikka Nadar and Duraipandia Nadar
East by : Sivankovil Street
South by : Properties of Kanagaraj
West by : Properties of A.Paramasivam

within this site feet West side South North feet 29, East side South North feet - 29, North side East West feet 72 inch 8, South side East west feet 73 inch 4 of whole house site. Total square feet is 2117

2. Site with superstructure situated at Virudhunagar Registration District, Aruppukottai Sub-Registration District, Aruppukottai Town, Sekaram, Sri Amirthalingeswara Kovil North Car Street, Ground rent Natham S.No : 160/303, Old Door No.53-1-135 present tax assessment No :17167 in Aruppukottai Municipality, Ward No.20, Madurai Road, New Door No.20-11-135 to the extent of 1058.50 square feet, site with house, bounded on:

North by : Properties of Rajamanikka Nadar and Duraipandia Nadar
East by : Properties of Thirumeninathan and A. Gurusamy

South by	:	Properties of Kanagaraj
West by	:	Karuppasamy Kovil South North Street

within this site feet South North West side feet 29, South North East side feet -29, East West North side feet 36.4, East West South side feet 36.8, measured totally 1058.5 square feet.

Petitioner side Documents :

Ex.P.1	01.02.2006	Power of attorney executed by the Board of Directors of the petitioner bank in favour of the authorised officer, D.Ramasubramanian, S/o.Dwarakanathan	Compared with original
Ex.P.2	31.07.2018	Applications cum undertaking for loan and sanction letter with annexures and demand promissory note executed by respondents 2 and 3 infavour of the bank	Compared with original
Ex.P.3	13.02.2020	Applications cum undertaking for loan and sanction letter with annexures and demand promissory note executed by respondents 1 to 3 infavour of the bank	Compared with original
Ex.P.4	03.07.2020	Applications cum undertaking for loan and sanction letter with annexures and demand promissory note executed by respondents 1 to 3 infavour of the bank	Compared with original
Ex.P.5	29.03.2022	Applications cum undertaking for loan and sanction letter with annexures and demand promissory note executed by respondents 1 to 3 infavour of the bank	Compared with original
Ex.P.6	01.06.2018	Registered Settlement deed executed by 4th respondent in favour of the 3rd respondent in Doc.No.2454/2018 of SRO, Aruppukkotai	Compared with original
Ex.P.7	29.06.2019	Letter of continuity executed by respondents 1 to 3 in favour of the bank	Compared with original
Ex.P.8	11.06.2021	Registered Memorandum of Deposit of Title Deed executed by 3rd respondent infavour of the petitioner bank in Doc.No.3216/2021 of SRO,	Compared with original

		Aruppukkotai	
Ex.P.9	29.03.2022	Registered Memorandum of Extension of equitable mortgage executed by 3rd respondent infavour of the petitioner bank in Doc.No.2157/2022 of SRO, Aruppukkotai	Compared with original
Ex.P.10	10.01.2024	Sec.13(2) Notice issued by petitioner bank to the respondents by hand	True copy
Ex.P11	18.04.2024	Sec.13(4) Notice issued by petitioner bank to the respondents by hand	Compared with original
Ex.P12	--	Returned covers	Original
Ex.P13	23.04.2024	Paper advertisement in Dinamani	Original
Ex.P14	23.04.2024	Paper advertisement in New Indian Express	Original
Ex.P15	--	Photos	Photocopy
Ex.P16	16.05.2024	Statement of account of loan account bearing no.501812080088067	True copy
Ex.P17	16.05.2024	Statement of account of loan account bearing no.501312030014663	True copy
Ex.P18	16.05.2024	Statement of account of loan account bearing no.501812080066054	True copy
Ex.P19	16.05.2024	Statement of account of loan account bearing no.512120020001311	True copy
Ex.P20	16.05.2024	Statement of account of loan account bearing no.5018120800631083	True copy
Ex.P21	--	Encumbrance Certificate of the secured assets	Online copy

Sd/Tmt.M.Breetha/
Chief Judicial Magistrate,
Virudhunagar District at
Srivilliputhur.

Chief Judicial Magistrate Court,
Virudhunagar District at
Srivilliputhur.
Cr.M.P.No.1485/2024
Order Dated: 06.11.2024