IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, KOLLAM

PRESENT: Sri. S. Ramesh Kumar,
Chief Judicial Magistrate.

Dated:- Friday, the 23rd day of September, 2022 / 1st day of Aswina, 1944 S.E

M.C.No.534/22

Petitioner	:-	State Bank of India, Sakthikulangara Branch, Kollam, represented by the Authorised Officer, Chief Manager, SARB, LMS Compound, Opp. Museum West Gate, Vikas Bhavan P.O., Thiruvananthapuram – 695 033.
		(By Adv. Nazia Sharaf)
Respondents / Counter petitioners	:- 1	Sri. Biju Antony, Purathezhathu, Padinjattathil, Sakthikulangara P.O., Kollam – 691 581.
	:- 2.	Smt. Carolin Biju, -do-

This petition came up for hearing on 23/9/2022 and the court on the same day passed the following:-

ORDER

This is a petition filed by the petitioner u/s.14(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act) for taking possession of the secured asset which is the scheduled immovable property.

2. The petitioner is the State Bank of India, which is the secured creditor and the respondents are the borrowers. The respondents availed term loan (Housing Loan) of Rs.18,43,853/- and Rs.15,70,000/- on 24/2/2011 and 9/9/2015, respectively, with the petitioner bank by creating security interest in favour of the petitioner bank. Repayment was defaulted and the account was classified as Non Performing Asset on 29/2/2020. The petitioner issued notice u/s.13(2) of the SARFAESI Act to the respondents on 10/9/2021 calling upon them to repay Rs.15,09,682/- and Rs.14,65,874/-, respectively, within 60 days from the date of

notice. But even after issuing the statutory notice u/s.13(2) of the said Act, they did not repay the loan amount within the statutory period. So the petitioner has sought for taking possession of the secured asset for realisation of the amount due to the petitioner's Bank.

3. Heard. The Chief Manager is the Authorised Officer under the SARFAESI Act. Authorised Officer of the petitioner Bank filed affidavit in compliance of section 14 of the SARFAESI Act. The affidavit and documents produced would show that the respondents have created security interest in respect of the secured asset in favour of the petitioner at the time of availing loan from the petitioner's Bank and failed to repay the amount even after receipt of statutory notice u/s.13(2) of the Act. Hence I find that the petitioner is entitled to get possession of the secured asset which is the scheduled property, through the proceedings of the Court. Hence a direction can be given to hand over the petition scheduled property, as prayed for.

In the result, the petition is allowed as follows:--

(1) Respondents are directed to hand over the possession of the secured asset described in the petition schedule to the petitioner.

(2) Advocate Abhishek.B.P. is appointed as the Advocate Commissioner to take possession of the scheduled property after giving due notice and hand over the same to the petitioner on proper acknowledgment. The petitioner shall pay a batta of Rs.10,000/- to the Commissioner and file memo.

(3) The petitioner shall provide a copy of the petition including the schedule of secured asset to the Advocate Commissioner for executing the order.

(4) The Station House Officer of the Police Station in which the petition schedule property situate shall give necessary assistance to the Commissioner, if so required.

(5) The Advocate Commissioner is permitted to break open the

premises/building if the circumstances so warrant.

(6) The Advocate Commissioner is directed to prepare an inventory in triplicate, if required, to be attested by two respectable witnesses, as regards the execution of this order and in taking possession of the scheduled property and copies thereof shall be given to the petitioner as well as the respondents on proper acknowledgment. One copy shall be filed along with the commissioner's report before the Court.

(7) The Advocate Commissioner shall file report before this Court after taking and handing over possession to the petitioner Bank.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open court on this the 23rd day of September, 2022.

CHIEF JUDICIAL MAGISTRATE.

<u>WARRANT AUTHORISING COMMISSIONER TO TAKE POSSESSION OF PROPERTY</u>

(See section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002)

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To

Advocate Abhishek.B.P.

Whereas the petitioner has applied to this Court seeking assistance for taking possession of secured asset.

This is to authorise you Adv. Abhishek.B.P. to take possession of the property scheduled in the petition after giving due notice at the time of taking possession and hand over possession to the petitioner Bank. In the event of taking possession, you have to prepare an inventory in triplicate, if required, attested by two respectable witnesses as regards the execution of the order and in taking possession of the scheduled property and copies thereof shall be given to the petitioner as well as the respondents on proper acknowledgment. One copy shall be filed along with the commissioner's report before the Court.

You are also authorised to seek police assistance in the event of any obstruction or resistance in taking possession of the property. You are permitted to break open the premises/building if the circumstances so warrant. The Advocate Commissioner shall collect a copy of the petition along with the schedule of secured asset from the petitioner.

The batta of the commissioner is fixed as Rs.10,000/-.

Dated, this the 23rd day of September, 2022.

CHIEF JUDICIAL MAGISTRATE.