सत्यमेव जयते

Complaint Registered on :06/07/18

Complaint Decided on :26/08/19

Duration : Y M D

CRIMINAL MISCELLANEOUS APPLICATION NO. 3937/18

IN THE COURT OF CHIEF METROPOLITAN MAGISTRAT E, AHMEDABAD.

Applicant : Syndicate Bank
(Through its Authorized Officer Shri R.C. Jena.)

VERSUS

Opponents : 1) Shri Ajay Kumar Sharma
B-501, Karnawati Apartment.
Opp. Om Shanti Nagatr, Narol,
Ahmedabad.

2) Shri Kishor M. Sharma
FF-123, Aakar Complex,
Near Narol Cross Road,
Ghodasar, Ahmedabad- 382405.

Appearance :1)Learned Advocate for the Applicant : Mr. T.C. Modi
2) Learned Advocate for the Opponent : ---------

Sub : Application U/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT)

ORDER

1. Present Application is submitted by the applicant U/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT) on the ground that, Opposite Party Borrower M/s. Bhawani Polymers [Proprietor Shri Amit Kumar Sharma] borrower approached the applicant's Branch at Maninagar Branch Ahmedabad for Credit facility of Rs. 30,00,000/-. 1) Shri Ajaykumar Sharma 2) Shri Kishor M. Sharma Stood as guarantors for the credit facility granted to the said borrowers and the opposite parties have offered their properties

mentioned in para No. 2 of the present application under the heading DESCRIPTION OF THE MORTGAGED SECURED ASSET as security for due repayment of the said credit facility with interest, costs, charges etc.

2. **The applicant's has submitted** that opponent has failed to make the repayment of the dues therefore, account of the opponent is classified as NPA on 23/10/2017.

3. The applicant issued notice U/s. 13(2) of the SARFAESI Act dated on 26/10/17. The said notice was duly served upon the Opponent. As on 26/10/2017, Total Rs.22,96,533/29, is due as outstanding.

4. Heard the Applicant, he has mainly argued on the facts mentioned in their application. Applicant has also submitted affidavit in support of his case, as per the law. Opponent did not remain present before the Court. hence the right of argument of the Opponent is closed.

5. On perusal of the record, it reveals that, the applicant has served the notice u/s. 13(2) of the SARFAESI Act, to the Opponent and has also submitted the affidavit as per the law. Thus, the applicant has fulfilled all the mandatory requirements of SARFAESI ACT.

6. In view of the Judgment of the Hon'ble Gujarat High Court as decided in SPECIAL CIVIL APPLICATION NO. 215 OF 2011 IN case of IDBI BANK LTD VS. DISTRICT MAGISTRATE AND OTHERS where in Para No. 8 (xi) it is held that :-

8 (xi). **"**All such determination is to be made by the Debts Recovery

Tribunal including the question whether the asset is a secured asset or not and the Chief Metropolitan Magistrate or the District Magistrate has not been empowered to adjudicate such dispute, but is directed only to assist the secured creditor in taking possession of the secured asset. If they are not empowered to adjudicate the dispute, they cannot also call for the secured creditor to produce any document to decide whether the asset is secured asset or not, which will be futile exercise in absence of power to adjudicate such issue.

Under Clauses (a) and (b) of Section 14(1), the Chief Metropolitan Magistrate or the District Magistrate and on request, are bound to take possession of the secured assets as also the documents relating thereto. If the documents are to be obtained by them, the question of asking the secured creditor to produce the document in all cases does not arise. Therefore, they do not have jurisdiction even to call for the documents.

9. Sufficient time is given by the applicant to the opponent to make repayment of the outstanding dues but opponent has not paid the outstanding amount. Hence, considering the above facts of the application and in view of the above Judgments of the Hon'ble High Court, this court has no power to adjudicate the dispute between the parties. Hence, passed the following order :-

O R D E R

1) The Application of the applicant is hereby granted.

2) I authorize Mr. J.C. Vyas, Asst. Superintendent, of this Court, as Court Commissioner U/s.14 (1-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. (in short SARFAESI ACT).

3) Court Commissioner is directed to take possession of properties mentioned in Para No.2 of the present application under the heading DESCRIPTION OF THE MORTGAGED SECURED ASSETS. The description of the properties is as under:-

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DESCRIPTION OF THE MORTGAGED SECURED ASSETS.

(1) All the part and parcel of the properties owned by Shri Ajaykumar Kishorkumar Shara [Opposite Party No.1] being Shop No. 123 admeasuring 205 Sq.Ft. on First Floor in the Scheme popularly known as "Aakar Complex" in Nilisha Owners Association constructed on land admeasuring about 902 Sq.Yards bearing Survey No. 271 Now Town Planning

scheme No. 53[Draft] Final Plot No. 75 Mouje Isanpur Taluka City [East] District Ahmedabad and Registration Sub District Ahmedabad[5] Narol held by Ajaykumar Kishorkumar Sharma as a member situated at Narol Circle, Lake View Hotel, Narol, Ahmedabad-382405 bounded as:-

On the North by	**: Common Wall with Common Plot**
On the South by	**: Common Wall with Shop No. 124**
On the East by	**: Common wall with Common Stairs.**
On the West by	**: Common Passage and thereafter Open Side Marginal Space.**

2) All the part and parcel of the properties owned by Kishorkumar M. Shara [Opposite Party No2] being Shop No. 223 admeasuring 360 Sq.Ft. on Second Floor in the scheme popularly known as "Aakar Complex" in Nilisha Owners Association constructed on land admeasuring about 902 Sq.Yards bearing Survey No. 271, now Town Planning Scheme No. 53[Draft] Final Plot No. 75 Mouje Isanpur Taluka City [East] District Ahmedabad and Registration Sub District Ahmedabad[5] Narol held by Kishorkumar M. Sharma as a member situated at Narol Circle, Lake View Hotel, Narol, Ahmedabad-382405 bounded as :-

On the North by	**: Common Wall with Shop No.222**
On the South by	**: Common wall with Shop No. 224**
On the East by	**: Common Passage.**
On the West by	**: Open Side Marginal Space.**

4) If the secured assets is found in closed condition, the Court Commissioner may take possession of this secured assets by breaking / opening the lock or may take any other steps he may think fit.

5) After taking the possession of the secured assets, Court Commissioner shall prepare the inventory of any item, Documents relating to the assets if found in secured Assets and handover the same to the applicant.

6) The Court Commissioner may take assistance of the concerned police station and may take or cause to be taken such steps and use, or cause to be used such force, as may, in his opinion be necessary.

7) Applicant shall bear the expenses incurred in taking possession of the secured assets and shall provide all necessary assistance to the court commissioner in taking possession of the secured assets.

8) Applicant is hereby directed at present to deposit lumpsum amount of Rs. 30,000/- towards the expenses and remuneration of court commissioner. On depositing the above said amount in the court, the Court Commissioner is directed to complete the said procedure within 90 days or within the time limit extended by the court and submit the compliance report of completion of proceedings.

9) The court commissioner shall carry out the said proceedings on public holidays or except court working hours.

Pronounced in the open court today i.e. on 26/08/2019.

Date: 26 /08/2019
Place: Ahmedabad.

[A.Y. Dave]
Chief Metropolitan Magistrate,
Ahmedabad.
Code No. GJ00451