

26.09.2022

This case is called and orders pronounced in the Open Court as under

**ORDERS**

This petition is filed under Section 14 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 by the petitioner against the respondents seeking for an order to direct the full time officers/Sheristedhar of this Court to take possession of the immovable property i.e., partial non-residential property and partial residential property bearing BBMP Municipal New No.37 (Old No.1302), presently within the jurisdiction of BBMP bearing PID No.58-62-37, 25<sup>th</sup> Main Road, 9<sup>th</sup> Block, Jayanagar (Old Jayanagar Extension), Bengaluru measuring East to West 40 feet and North to South 30 feet totally measuring 1200 sq.ft. along with building comprising of ground floor non-residential building with 800 sq.ft of built up area and 1<sup>st</sup> floor residential building with 100 sq.ft of built up area totally 900 sq.ft of built up area and bounded on East by road, West by property No.1326, North by property No.1301 and South by property No.1303 together with existing buildings and structures thereon and buildings and structure as may be erected by constructed thereupon any time from/after the date of mortgage and all additions thereto and all

fixtures and furnitures, plant and machinery attached to the earth and permanently fastened to anything attached to the earth both present and future (herein afterwards referred to as petition schedule property) from the respondents or their henchmen or anybody claiming through them and forward the same to the petitioner exercising the powers conferred on this Court under Section 14(1) of the Act with further direction to prepare inventory and panchanama, to direct the authorized officer of the petitioner bank to take possession of the petition schedule property from the respondents, their henchmen or anybody claiming through them and forward the same to the petitioner, direct the jurisdictional police to assist the petitioner in taking possession of the schedule property from the respondents or their henchmen or anybody claiming through them or direct the jurisdictional police to assist or give protection for peaceful enforcement of taking possession by the petitioner from the respondents or any third person representing or in possession of the petition schedule property and to order for breaking open of the locks if the schedule property is found to be locked at the time of possession activity.

2. According to the petitioner Bank, the 1<sup>st</sup> respondent has availed loan of Rs.1,20,00,000/- from the petitioner bank and respondents No.2 and 3 have stood as guarantors to the said loan availed by the 1<sup>st</sup> respondent. The respondents have agreed to repay the said loan and executed the loan documents. The 2<sup>nd</sup> respondent has borrowed Rs.1,90,00,000/- from the petitioner bank and agreed to repay the said loan together with interest in 84 EMIs. The 2<sup>nd</sup> respondent has also executed the loan

documents in respect of the said loan. The 3<sup>rd</sup> respondent stood as guarantor to the said loan. The 2<sup>nd</sup> respondent mortgaged the petition schedule property by way of Deposit of Title Deeds by executing the Memorandum of Deposit of Title Deeds dated 06.10.2020. But, the respondents have not repaid the said loan amount as agreed. Their loan accounts became NPA on 04.12.2021. Therefore, the petitioner called upon the respondents to repay the loan amount for which, they have failed. They committed default in payment of the loan amount. Therefore, the petitioner issued Demand Notice under Section 13(2) of the Act on 13.01.2022 as per law. The respondents have not complied with the Demand Notice. The petitioner taken symbolic possession of the petition schedule property by issuing Notice dated 13.04.2022 including publication in Newspapers. As on 31.01.2022, the respondents are due to pay a sum of Rs.2,19,92,093/- to the petitioner bank. Hence, the petitioner filed this petition.

3. The petition is supporting with the affidavit of the Authorized Officer of the petitioner Bank. The learned Counsel for the petitioner filed Original documents relied by the petitioner.

4. I have carefully read the petition averments, its annexed affidavit and the documents placed before this Court in support of the case of the petitioner Bank.

5. On careful perusal of the available materials, this Court is satisfied that the petitioner is a secured creditor, the

respondents are the secured obligators and that the petition schedule property is a secured asset for the debt borrowed within the meaning of the provisions of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. I am also satisfied that the petitioner Bank has issued 60 days Demand Notice as per Section 13(2) of the Act and that the respondents have not paid the said due loan amount to the petitioner bank in spite of due service of the said demand notice. Therefore, the petitioner Bank being the secured creditor is entitled to enforce security interest against the respondents for recovery of the loan dues. Under these circumstances, the petitioner bank is entitled for the relief under Section 14 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. Accordingly, a Court Commissioner is to be appointed to execute the order of the Court. Hence, I proceed to pass the following:-

### **ORDERS**

The petition filed by the petitioner under Section 14 of Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 is hereby allowed as prayed in the petition.

The petitioner Bank is entitled to take possession of the petition schedule property towards satisfaction of its due from the respondents.

Since appointment of Sheristedar or any officers of this Court as Court Commissioner is leading to hampering of public duty of this Court, it is just and necessary to appoint an Advocate Court Commissioner i.e. Sri.Shashidhara R., Advocate, Enrollment No.KAR/2314/2005 as Court Commissioner.

The Court Commissioner is hereby directed to take possession of the petition schedule property towards the satisfaction of the due of the petitioner Bank from the respondents with the assistance of jurisdictional police, to break open the lock of the petition schedule property if situation warrants, by conducting inventory and Panchanama and to report the same as early as possible as per the memo of instruction.

Further, petitioner bank is directed to forthwith furnish memo of instructions to the Court Commissioner.

The petitioner bank shall bear the legal expenses if any incurred in this regard.

Commissioner fee is fixed at Rs.5,000/-, which will be forthwith deposited by the bank.

Office is directed to return the original documents to the authorized person of petitioner bank or to its counsel on due verification.

(Typed by the Stenographer in the Court computer on my direct dictation, printout taken, corrected, signed and then pronounced by me in the open court on 09.09.2022)

**(VEDAMOORTHY B.S.)**

II Addl. Chief Metropolitan Magistrate,  
Bengaluru.