IN THE COURT OF THE XXXII ADDL. C.M.M., BENGALURU.

Dated this the 05th April, 2023

Present :
Smt.Latha.J, B.Com.,LL.B.,
XXXII ACMM, Bengaluru

Crl.Misc.No.4779/2022

Petitioner: JANA SMALL FINANCE BANK LIMITED,
having its registered office at 'The Fairway Business Park',
No.10/1, 11/2 and 12/2B,
off:Domlur,
Koramangala Inner Ring Road,
Next to Embassy Golf Links,
Challaghatta, Bengaluru.
Represented by its Authorized Officer,
Mr.Babu Sreejith

V/S

Respondents : 1. Mr.Riyaz Ahmed,
S/o Nazeer Ahmed,
No.37/1, 1st Main Road,
Dinnuro Kausar Nagar,
R.T.Nagar, Bangalore,
Karnataka-560032.

2. Mrs. Umme Kulsum,
D/o Syed Abdul Razakh,
No.37/1, 1st Main Road,
Dinnuro Kausar Nagar,
R.T.Nagar, Banglore

Karnataka-560032.

ORDER

This is a petition filed by **JANA SMALL FINANCE BANK LIMITED** U/Sec.14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, seeking permission for taking physical possession of the schedule property.

2. The grounds urged by the Petitioner/Bank are as under:

The Respondents approached the Secured Creditor/ petitioner for Public House Loan/facility and the copy of the loan application is produced and considering the request of the Respondents, the petitioner had sanctioned a sum of Rs.7,09,782/-(Rupees Seven Lakhs Nine Thousand Seven Hundred and Eighty Two Only). The schedule property was mortgaged by the respondents.

2(b). The respondents have failed to repay the dues to the petitioner and the asset of the respondents is classified as non performing asset on 01/01/2022.

2(b). As on 29/01/2022 the outstanding due of the loan is Rs.7,28,103.34/-(Rupees Seven Lakhs Twenty Eight Thousand One Hundred and Three and Thrity Four Paisa Only).

2(c). Demand Notice dated 29/01/2022 issued to the respondents demanding them to pay the due amount to the petitioner within 60 days and further informed that if they failed to repay the amount due, the petitioner would be taking action U/Sec.13(2) of SARFAESI Act 2002. In pursuance of the above said notice the respondents have not cleared off the loan.

2(d). The petitioner has taken symbolic possession and issued Possession Notice on 03/06/2022 and the possession notice was published in two leading newspapers in The New Indian Express and The Kannada Prabha on 07/06/2022. But the respondents failed to clear off the loan amount.

2(e). The respondents have not challenged the steps taken by the Secured Creditor. On these grounds the Secured Creditor sought permission to take possession of the secured property under due process of law and also sought for police help.

3. Alongwith the petition, the affidavit of the Authorized Officer of the Secured Creditor/ petitioner is filed by complying the requirements U/Sec.14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

4. After presentation of the petition, the issuance of notice to the respondents is dispensed with, since respondents have no right to be heard before passing orders as contemplated U/s.14 of the SARFAESI Act. At this juncture it is relevant to refer a decision of the Hon'ble High Court of Karnataka reported in ILR 2006 KAR page 4663. In the matter between Vijaya Bank, S.D.Road Branch V/S M.S. Shameem Transport, wherein it has been held that-No such notice is required to be given to the borrower or any person by the Chief Metropolitan Magistrate before passing orders for possession. In view of the above decision, separate notice to the respondents on the present petition is not necessary.

5. The original documents are produced.

6. Memo filed on behalf of the petitioner/Secured creditor seeking appointment of Advocate Commissioner, for taking physical possession of the secured property the respondent.

7. After going through the petition averments and considering the contents of the affidavit coupled with the documents produced by the Secured Creditor/Bank , this court comes to the conclusion that documents produced by the Secured Creditor/ petitioner are supporting its pleadings and there are good and sufficient grounds to accord permission to the Secured Creditor/ petitioner to take possession and also there are good and sufficient grounds to direct the police to extend assistance to the petitioner in taking possession of the secured property. With these observations, I proceed to pass the following...

ORDER

The petition filed on behalf of the JANA SMALL FINANCE BANK LIMITED, Petitioner-U/Sec.14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is hereby allowed.

Accordingly, Sri.Sachin Advocate (KAR1963/2018) is hereby appointed as Court Commissioner to take physical possession of the schedule property and hand over to the petitioner.

The Court Commissioner is hereby permitted to take possession of the Schedule property (ie) Secured property and hand it over to the petitioner.

The Police Inspector of RT Nagar Police station, is directed to extend help/assistance to the Court Commissioner of the Secured Creditor/petitioner in taking possession of the secured property.

Issue intimation to the Police Inspector of RT Nagara police station, along with the copy of this order.

Office to return the original documents to the petitioner retaining the copies.

Office to issue Court Commissioner warrant, if Court Commissioner fee of Rs.5,000/- is deposited.

MORTGAGED IMMOVABLE PROPERTY

All that piece and parcel of the Southern Portion of Property bearing Old No.35, New BBMP No.43 Vide Old PID No.98-22-43, New PID No.020-W0267-2, Measuring East to West 37 ft and North to South 10 ft Total measuring 370 Ft. Situated at 4th main, Kousar Nagar, R.T.Nagar, Bengaluru within the jurisdiction old ward No.98, New Ward No.33 of BBMP and Bounded on:-

East By : Road

West By: Private Property

North By: Remaining portion of the same property sold to Mrs.Asma Begum

South by: Private Property.

(*Typed to my online dictation by the stenographer, print- out corrected and then pronounced by me in the open court on the 05th April, 2023).*

(LATHA J.),
XXXII A.C.M.M.,
Bengaluru.