

Misc. Case No. 582 of 2024

Order dated 22.10.2024

Today it is fixed for hearing and order.

Heard the Ld. Advocate for the applicant. The Ld. Advocate for the applicant produced the original documents before this Court and same are returned to the applicant/petitioner. The photo copy of the same are already with the case record.

The applicant/petitioner also filed one Affidavit affirming by the authorized officer that the applicant/petitioner has exhausted all sorts of procedures as enumerated in the said Act and the mortgaged properties in question, there is no stay order or injunction as has been passed by any competent Court or any Higher Authority and at present lying vacant which is free from all encumbrances. The applicant/petitioner also filed some photo copies of documents showing that the notice in terms of symbolic possession of the properties in question have been affixed on the conspicuous part of the premises.

The record is taken up for passing order pursuant to hearing the applicant/party.

It appears that the application has been filed by Bank of India, by its authorized officer, having its 1st Floor, 43 G.R. Road, (South) Howrah – 711 101.

The gist of the fact is that the respondent(s)/Borrower(s)/O.Ps. approached the applicant/petitioner for financial assistance by mortgaging immovable house property and on consideration, a loan of Rs.15,00,000/- was sanctioned vide letter dated 06/03/2019 by way of securing or mortgaging immovable house property situated at under Chatterjeehat P.S., Dist. - Howrah in equatable monthly installments thereby depositing the original title deeds of the immovable property. Later on the respondent(s)/Borrower(s)/O.Ps. defaulted in satisfying the loan amount and finally, on 28/09/2023 since, the said loan became due and unpaid, thereby classified as 'N.P.A.'. The applicant issued a notice on 30/09/2023 upon the respondent(s)/ Borrower(s)/O.Ps. U/s. 13(2) of the SARFAESI Act requesting them to meet up the outstanding amount of Rs.13,52,477.58 (Rupees Thirteen Lakhs Fifty Two Thousand Four Hundred Seventy Seven and Fifty Eight Paise only) within the stipulated 60 days. The notice was duly served upon the respondent(s)/Borrower(s)/O.Ps. Thereafter, the applicant took recourse to Section 8(1) of the Rules, 2002 on 11/01/2024 by taking symbolic possession and thereby circulating notice on 16/01/2024 in two leading news papers but yielded no fruitful result. It is pertinent to mention herein that while taking the loan amount, the respondent(s)/ Borrower(s)/O.Ps deposited the original title deeds of the property being the secured assets in favour of the applicant/petitioner as per agreement executed between the parties.

From the documents filed by the applicant/petitioner it appears that the scheduled properties were given in equitable mortgage by the Respondents to the applicant and they took the loan amount from the applicant/petitioner and thereafter they defaulted and could not repay the loan amount as above.

The applicant/petitioner has filed the documents to take physical possession of the secured assets as mentioned in the schedule of the petition to satisfy their dues. From the documents so filed, it appears that the lenders duly placed the scheduled properties in mortgage by furnishing the original title deed. Later one affidavit has also been filed by the applicant stating that there is no stay order or injunction issued in respect of any proceedings pending before any court of Law in respect of the property.

The process U/s. 13(4) of the said Act having failed to yield the desired relief; hence, considering the fact that the secured assets are situated within the jurisdiction of this Court and the documents and Affidavit filed thereon by the petitioner/applicant, I find it fit to pass

an order as prayed for, in favour of the petitioner/applicant, for taking physical possession of the secured assets under Section 14 of the Act as mentioned in the schedule of the application.

Accordingly, it is

ORDERED

that the petitioner/applicant is permitted to take physical possession of the immovable properties of the respondent(s)/Borrower(s)/O.Ps as described in schedule of the application which are well within the jurisdiction of this Court -

that piece and parcel of a flat No. 101 on the first floor, measuring about 815 Sq. Ft. at HMC Holding No. 85/3/2 and 82/2 Abinash Banerjee Lane and after amalgamation holding became know as Holding No. 82/2, Abinash Benrejee Lane, Ward No. 33, P.S. - Shibpur, presently under Chatterjeehat P.S., Borough - V, Dist. - Howrah 711104 within the jurisdiction of this Court.

The Head Clerk, C.J.M. Court, Howrah is directed to take physical possession of the scheduled property and after taking the same will be handed over to the authorized officer of the applicant creditor executing proper receipt as per Law, if the properties in question are found free from all encumbrance.

If the scheduled property is under lock and key, the petitioner may break open the same on certain terms and conditions:-

1. The petitioner/applicant to remain present with proper identity proof, authorization paper and connected documents at the time of executing the order for the purpose of identification of the property in dispute.

2. The padlock/lock and key of the flat/premises/godown/office unit in question as mentioned in the application will be broken in presence of Authorized Officer of Bank of India or its competent representatives and police.

3. One person of the locality may be present during breaking the padlock.

4. The Bank of India authority will prepare an inventory list in respect of the articles lying inside the premises/compound concerned.

5. After completion of the inventory, a list will be handed over to the Head Clerk, C.J.M. Court, Howrah, the Opposite party and a copy of the list is also to be submitted before the Court.

6. The Head Clerk, CJM Court, Howrah is at liberty to take the help of the I/C, Chatterjeehat P.S. if he faces any obstruction and to submit a compliance report.

7. The applicant is to bear the stipulated cost for providing force by the police.

Let a copy of this order be supplied to the Head Clerk for compliance. Let the original documents, if any, be returned.

Fix 19/03/2025 for compliance report by Head Clerk.

Dictd & cortd by me

CJM

Chief Judicial Magistrate, Howrah