17.11.2023

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 Sheristedar of this Court to take possession of the property bearing Old Khatha No.23, New Khatha No.312/1, House List No.32, situated at Kathriguppe Village, Uttarahalli Hobli, Bengaluru South Taluk, measuring East to West 60 feet and North to South 30 feet and bounded on East by Road, West by Mrs.Siddamma Siddareddy Kalyan Mantapa and Symanna's House, North by Mr.Sanjeevappa's site No.33 and South by Site No.31, Mr.Krihnappa's property (herein afterwards referred to as petition schedule property) from the respondents or their tenants or their henchmen or or anybody claiming through them by exercising the powers conferred under Section 14(1) of the Act; to direct to prepare inventory and Panchanama; to direct the jurisdictional Police to assist the petitioner in taking possession of the petition schedule property from the respondents or their tenants or their henchmen or anybody claiming through them; to direct the jurisdictional Police to assist or give protection for peaceful taking possession of the petition schedule property from the respondents or their tenants or their agreement/leaseholders or any third persons representing or in possession of the petition schedule property; to break open the lock of the petition schedule property if found locked; give suitable directions or orders in terms of Section 14 of the Act for the purpose of taking possession of the petition schedule property and to handover the possession of the petition schedule property to the petitioner.

2. According to the petitioner Bank, the respondents have borrowed loan of Rs.1,56,35,253/- from the petitioner. It is repayable with interest at the rate of 10% p.a. in 180 Equated Monthly Installments. On 23.06.2022, the respondents have executed the Loan Agreement. The respondents have mortgaged the petition schedule property by way of deposit of its title deeds in favour of the petitioner. But, the respondents have failed to repay the said loan. Their loan account become NPA on 05.04.2023. On 18.05.2023, the petitioner issued Demand Notice under Section 13(2) of the Act calling upon the respondents to pay outstanding amount within 60 days from the date of notice. It was served on the respondents. In spite of it, the respondents have not repaid the outstanding dues. On 03.05.2023, the petitioner issued Possession Notice under Section 13(4) of the Act. It was also published in The New Indian Express and Samyuktha Karnataka news papers dated

08.08.2023. As on 16.05.2023, the respondents were due to pay Rs.1,68,56,170.44 to the petitioner. The petition schedule property is a secured asset as per the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. The petitioner is required to take possession of the petition schedule property under the provisions of the Act. The respondent may prevent to take physical possession of the petition schedule property. Hence, this petition is filed.

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 obligor 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.

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

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 Sri.Umesh C., Advocate, Enrollment No.KAR/2250/2009 as an Court Commissioner to take possession of the petition schedule property.

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 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.

It is hereby further ordered that direct the jurisdictional Station House Officer to give necessary assistance to the petitioner bank while taking possession of the petitioner schedule property from the respondents.

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 issue Commissioner Warrant and 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 17.11.2023)

(VEDAMOORTHY B.S.)
II Addl. Chief Metropolitan Magistrate,
Bengaluru.