

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND CJM**  
**AT CHAMARAJANAGAR**

**Dated this the 13<sup>th</sup> day of October 2023**

**Present:**

**Sri. B.S. HONNASWAMY, B.A. LL.M.**  
Senior Civil Judge and CJM  
Chamarajanagara

**Crl.Misc No.83/2023**

**Petitioner:-**

**BANK OF BARODA**

Sayyaji Rao Road branch Mysuru  
Represented by its Authorised  
Officer / Chief manager  
Mr. Marala Vidya Sagar.  
S/o M.Narayaswamy,  
Aged about 45 years.

**(By Sri.S.S.S., Advocate)**

**V/s**

**Respondents:**

**1. M/S FACILE ROC**

**A Partnership Firm**

Having its place of business  
At, No.102, Yadabetta Temple Road,  
Yadapura Village,  
Shivapura Post,  
Chamarajanagar,  
Karnataka – 571313.

**2. Mr.Mohammed Haris**

S/o M.Abdul Majid,  
Aged about 31 years,  
R/at # 935, Behind Madegowda Circle,  
1<sup>st</sup> stage, Rajiv Nagar  
Mysuru- 570019

**3. Mr.Farooq Ahmed Jeelani**

S/o Javed Ahmed Jeelani  
Aged about 38 years,  
R/at # 17, Arch Gate,  
Mysuru-Banglore Road,  
Lashkar Mohalla,  
Mysuru -570007.

**4. Mr.Mohammed Wiqass UL Haq N**

S/o Mohammed Naim UL Haq  
Aged about 29 years,  
R/at # 6/170, G.P. Road,  
G.K.Mohalla,  
Chamarajanagar- 571313

**5. Mrs.N.Sadiya Haleema**

W/o Mohammed Naim UL Haq  
Aged about 49 years,  
R/at # 6/170,  
G.P.Road, G.K.Mohalla,  
Chamarajanagar – 571313.

**ORDERS ON APPLICATION FILED U/S 14 OF THE  
SECURITIZATION AND RECONSTRUCTION OF  
FINANCIAL ASSETS AND ENFORCEMENT OF  
SECURITY INTEREST ACT, 2002**

That the Petitioner Bank by its Authorized officer has filed the instant application u/s.14 of the **Securitisiation and Reconstruction of Financial Assets and Enforcement of Security Interest Act-2002**. Herein after referred to as allied act for the purpose brevity, seeking the leave of court to take physical and vacant possession of schedule property with police head and assistant, interalia to evict the Respondents from the schedule and to direct the full time officer of the court to take physical possession of the schedule property to carry out the inventory and panchanama of articles found therein and handed over the possession of same to the Petitioner and for such other and favorable reliefs this court deems fit in fact and circumstances of case.

2. That, it is averred in the Petition that, the Respondents are approached the Petitioner Company for grant of loan for sum of **Rs.40,00,000/-** by mortgaging the property by deposit of title deeds in respect of the schedule property i.e., immovable property all that piece and parcel of the property bearing Panchayah Khatha / Janjar No.120 Formed in property bearing Survey No.124/5 Total Land area measuring 3 acres 35 guntas or 168795 Sqmtrs situated at Yadapura Village, Kaaba Hobli, Chamarajanagar Taluk and District, bounded on East by Road, West by Land of Gangavdi Shivaiah, North by Land of Gangavdi Shivaiah and South by Land of Puttaiah. Further Respondents also executed Loan Agreement dated 27.03.2019. Accordingly after complying all the formalities, terms and conditions the Petitioner had sanctioned term loan of **Rs.40,00,000/-** and the loans were guaranteed by Respondents. That, in turn the Respondents had executed all the necessary documents in

its favour and created mortgage of the immovable property i.e. suit schedule property.

**3.** That, after availing the said financial assistance, but to the dismay the Respondents have failed to adhere akin to the terms and condition of the loan agreement and became chronic defaulters due to the default committed by the Respondents, the secured creditor account has been classified as Non -performing Assets (NPA) as defined section 2 (zd) of the Act on 07.04.2021.

**4.** Since the Respondents have committed default in payment the Petitioner has issued notice u/s 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on 07.04.2021 calling upon of Respondents to pay the outstanding dues of **Rs.46,50,683.98/-**. On service notice, the Respondents are refusing to comply with the entire demands made therein and avoiding the action initiated by the Petitioner.

5. That, in order to take possession of over the schedule property, the notification were made in the leading newspapers and thereupon the Petitioner has invoked section 14 of act to take actual possession of the Petition of the schedule property. The Respondents are jointly and severally liable to pay **Rs.46,50,683.98/-** along with other incidental charges.

6. That, in view proclamation the respondents have not handed over the possession of the schedule property, hence assistance of police while taking possession of mortgaged property he is necessary, further the respondents have not obtained any stay order against them for taking possession of the property, as per the law laid down by the Hon'ble Bombay High court in **AIR 2010 BOM 150**, there is not necessity to issue notice to the respondents for passing order in the presence situation. In this context, it is vital to state that, the respondents are

till date in occupation of the schedule property, hence the petitioner bank is not in a possession to peacefully exercise its statutory rights of repossessing the schedule property. Hence, the Petitioner was constrained to file this Petition.

7. That, The Petitioner has produced the Loan application, loan agreement, sanction Letter, certified copy of memorandum of confirming deposit of title deeds, demand notice u/s 13(2) legal notice on respondent, copy of Demand Notice, Postal receipt and acknowledgment, copy of paper publications of possession notice. In this context it is vital to rely the dictum of the **Hon'ble Supreme Court**, reported in **(2013) 9 SCC 620** title as **Standard Chartered Bank V/s V. Noble Kumar** and held as under:

*“ It is not mandatory for secured creditor (Bank herein) to make an attempt to obtain possession on his parties to bear*

*their own costs. Before approaching Magistrate- Secured creditor Bank/FI can resort to any one of three methods available to it to take possession of secured assets: (1) by giving notice under R. 8 (1) of 2002 Rules if no resistance from borrowers is met; (2) by making application to Magistrate, when it meets with resistance from borrower after notice; or (3) by directly approaching Magistrate under Sec. 14”.*

**8.** It is clear that, as per Sec. 14 of the Act, this court is having jurisdiction to entertain an application filed under section 14 of the Act. The learned counsel for Petitioner filed to a memo suggesting the name of **Mr.Maveen Kumar**, Advocate, Roll No.KAR/2617/2019, # 64, Nanjangud Road, Chamarajanagar as Court Commissioner akin to the statutory provisions. Hence this court proceed to pass the following:-

-: **ORDER:-**

That, the application filed by the petitioner U/s 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act is Allowed with terms and conditions imposed infra:-

i . That, Respondent No.1 to 4 are directed to surrender physical possession of the schedule property in favour of petitioner and petitioner is permitted to take physical possession of same.

ii. That, the jurisdictional police is hereby directed to provide police aid in taking possession of the schedule property, if circumstances warrants as such.

iii. That, **Mr.Maveen Kumar**, Advocate, Roll No.KAR/2617/2019 is appointed as Court Commissioner to execute the order made by the Petitioner and the Commissioner's fee is fixed at Rs.10,000/-.

Accordingly petition stands Disposed  
thereof.

(Dictated to the stenographer directly on Computer,corrected, initiated and then pronounced by me in the open Court, on this the **13<sup>th</sup> day of October 2023**).

**(B.S. HONNASWAMY)**  
**Senior Civil Judge & CJM**  
**Chamarajanagara.**