KAHV020032342023

IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE HAVERI, AT: HAVERI

Present: Sri. Prakash V. BAL., LLB.
Prl.Senior Civil Judge & CJM.,
Haveri

CRI.MISC. No.94/2023

DATED 16TH DAY OF OCTOBER, 2023

Petitioner: Chetana Financial Services
Haveri Limted (CFSPL)
Hangal Branch, Registered & Head
office at No.CTS No.3341/26, Navachetana
Eights, 2nd floor, 1st cross, Ashwini Nagar,
Haveri-581110.
Represented by its Authorized Officer
Sri. Manjayya Pujar
S/o Paramayya
Aged about 28 years.

(Represented by S.A., Advocate)

AND

Respondents: 1. Mr. Mahantesh Mayyappa
Karabannanavar,
Age: 55 years,
S/o: Mayappa,
R/o: Near Durgadevi Temple,
Kalasur, Kalasur village and post,
Savanur Taluk, Haveri-58112.

2. Mrs. Sudha Mahantesh Karabannanavar,
Age: 40 years,
W/o: Mahantesh,
R/at:Near Durgadevi Temple,
Kalasur village, Savanur Taluk,
Haveri-581112.

3. Mr. Mahantesh Puttappa Bakkannanavar,
Age: 39 years,
S/o: Puttappa,
R/at:Near Anjaneya Temple,
Kalasur village, Savanur Taluk,
Haveri-581112.

4. Mr. Jayappa Emmi,
Age: 38 years, S/o: Basappa,
R/at: Kalasur village,
Savanur Taluk, Haveri-581112.

(Nil)

ORDER

This is petition U/Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, with a prayer to order for to take physical possession of schedule property and to appoint Officers of this Hon'ble Court to take vacant possession of Schedule property and hand over to the petitioner and direct the jurisdictional Police to assist to take physical possession of the schedule property and pass such other orders as deems fit to grant in the circumstances of the case.

2. <u>The case of the petitioner is as follows:</u>

The petitioner averred that the respondents have borrowed a loan of Rs.1,50,000/- and mortgaged the schedule property and executed necessary documents and agreed to pay the principle amount, interest and other dues to the petitioner finance and created Deposits of Title Deeds over the schedule property in favour of Petitioner finance.

3. It is further contended that, after availing the loan, the respondents failed to make payment as promised and became default in payment of loan with interest. Thereafter the Loan account classified as non performing asset on 29.03.2022 and the respondents due a sum of Rs.2,42,992/- as on 20.04.2023 with further interest. The petitioner has issued Demand Notice U/sec. 13(2) of the Act through RPAD on 28.04.2023 demanding to pay due amount within 60 days from the date of service of notice. Inspite of that, the respondents not made any representation or objections and not complied the demand notice.

4. The petitioner further contended that Possession Notice U/sec.13(4) of SARFAESI Act also issued on 08.07.2023 and also published in two leading News Papers on 13.07.2023. Inspite of that the respondents not complied the Demand Notice and the petitioner apprehends that the respondents may resort to dispose off or transfer or alienate or otherwise deal with the property in order to defeat the legitimate right of the petitioner and respondents may abstract from taking possession of the schedule property. Hence, this petition is filed for the relief sought in the petition.

5. The Authorized Officer of the Petitioner finance Sri. Manjayya Pujar filed affidavit and furnished original documents. Thereafter originals compared with the true copies and returned the original documents to the petitioner.

6. Heard arguments.

7. The following points that arise for my consideration:-

POINTS

1. Whether the petitioner satisfies that the respondents have borrowed a Loan of Rs.1,50,000/- by mortgaging the schedule property.?

2. Whether the petitioner satisfies that the respondents have due outstanding amount of Rs.2,42,992/- as on the date of Demand Notice and the said Loan Account is classified as non performing asset ?

3. Whether the petitioner satisfies that the respondents have failed to discharge due amount in spite of service of Demand Notice issued U/sec. 13(2) of SARFAESI Act. ?

4. Whether the petitioner is entitled the relief sought in the petition. ?

5. What order. ?

8. On the basis of material available on record and under the circumstances of the case my findings to the above points are as under:

Point No.1 : In the Affirmative
Point No.2 : In the Negative
Point No.3 : In the Negative
Point No.4 : In the Negative
Point No.5 : As per the final order for the following.

REASONS

9. **POINT NO.1:-** In order to substantiate the facts narrated in the petition. The Authorized Officer of the Petitioner finance filed affidavit reiterating the petition averments in his affidavit and supported by the documents. In order to substantiate for borrowing a Loan, the petitioner has produced true copies of loan application dated 28.08.2018, Loan sanction letter dated 28.08.2018, Loan committee approval form dated 28.08.2018, Loan Agreement dated 28.08.2018, memorandum of deposit of title deeds dated 27.08.2018, sale deed dated 18.07.1960, CERCAI certificate Security interest ID No.400001177024781.

10. As per loan application, the respondent No.1 applied for loan of Rs.1,50,000/-. As per the Loan Sanction letter, the petitioner finance has sanctioned loan of Rs.1,50,000/- to the respondents. As per loan agreement, the respondents have borrowed loan of Rs.1,50,000/- from petitioner finance. The respondent no.2 to 4 stood as personal Co-borrowers. As per Memorandum of deposits of title deed the respondent No.1 has executed the said document by creating Deposits of Title Deeds in respect of loan over the petition scheduled property in favour of petitioner finance for the security of the Loan. The respondents have not disputed these documents. Under these circumstances, it is clearly establish that the respondents have borrowed a Loan from the Petitioner finance by mortgaging the petition schedule property by executing deposit of title deeds. There are no material grounds to disbelieve the affidavit of petitioner and documentary evidence in respect of loan transaction. Hence, I answer ***Point No.1 in the affirmative.***

11. POINT NO.2:- The petitioner further contended that, the respondents have due outstanding amount of Rs.2,42,992/- as on 20.04.2023 and the said loan become non performing asset. As per the terms and conditions of Loan Sanctioning letter and loan agreement, the respondents have to pay 36 monthly installments. The petitioner has not produced Loan Account statement to show the balance amount as on 20.04.2023.

12. The petitioner has issued Demand Notice on 28.04.2023 calling upon the respondents to pay due amount of Rs.2,42,992/- including further interest. As per the Loan Sanctioning letter and Loan Agreement the respondents have to pay loan amount with interest in 36 monthly installments. But, the petitioner has not produced any Loan Account statement to show that, how many installments were paid and how many installments were due. The loan account statement is material document to show the balance amount and loan transaction. Non production of material document is fatal to the case of petitioner.

13. The petitioner finance is maintaining the account statement as per rules and regulations. When the material document is under the custody of petitioner finance and when not produced, an adverse inference can be drawn. The demand notice is not a material document for the proof of balance amount. The demand notice is to be supported by material documents for the proof of due amount. The petitioner is required to satisfy the court by producing material documents. The petitioner has not produced any documents about classifying the loan account as non performing asset. The petitioner failed to satisfy that, the respondents have due a sum of Rs.2,42,992/- as on 20.04.2023. Hence, I answer ***Point No.2 in the Negative.***

14. POINT NO.3:- If the respondents/borrowers failed to comply the Loan Agreement, the petitioner can recover due amount in accordance with law and the petitioner also having a right to take physical possession of the mortgaged property to recover outstanding due amount. Before proceeding on the immovable properties, the petitioner has to issue demand notice under section 13(2) of SARFAESI Act with a prayer to demanding to pay the due amount within 60 days from the date of service of notice and if they failed to comply the Demand Notice, then the petitioner can proceed against immovable property.

15. The petitioner has issued Demand Notice on 28.04.2023 through a registered post. The said demand notice personally served on the respondents. The petitioner also issued possession notice on 08.07.2023 and also published in two leading news papers. When the petitioner failed to satisfy that, the respondents have due a sum of Rs.2,42,992/- as on 20.04.2023, the service of demand notice and possession notice is not sufficient ground to come to conclusion that, the respondents have failed to pay due amount of Rs.2,42,992/- in complying the demand notice. The petitioner has not complied the statutory provision of act and rules. Hence, I answer ***Point No.3 in the Negative.***

16. **POINT NO.4:-** As per Sec.13(2) of the SERFAESI Act the petitioner is required to comply the strict rules to obtain possession order U/Sec.14 of the act. In the present petition the petitioner has seeking physical possession of mortgaged property. In order to get relief mentioned U/sec. 13(4) of the SARFAESI Act. The petitioner has to file the petition by complying the rules prescribed in the act and rules.

17. The petitioner has produced registration certificate. As per the said certificate, the petitioner finance has no authority for acceptance of public deposits. Under these circumstances, the petitioner finance is a non banking company. As per Sec.2(1)(m)(iv) of SARFAESI act, non banking financial company has to be notified by the Central Government in order to get relief under the SARFAESI act. The petitioner has not produced any notification issued by the central government notifying as a financial institution for the purpose of this act to take measures provided U/Sec.13 of the act. Sec.2 (1)(m)(iv) reads as follows:

> **Section 2 (1) (m) (iv)**:Any other Institution or non banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934(2 of 1934), which the Central Government may, by notification, specify as financial institution for the purposes of this Act.

18. The ministry of finance issued notifications on 24.02.2020 and 12.02.2021 which reads as follows

MINISTRY OF FINANCE

(Department of Financial Services)

NOTIFICATION

New Delhi, the 24th February, 2020

S.O. 856(E).—In exercise of the powers conferred by sub-clause (iv) of clause (m) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), and in supersession of the notifications of the Government of India, Ministry of Finance numbers S.O. 2641(E), dated the 5th August, 2016, S.O. 4176 (E) dated the 27th August, 2018, and S.O. 5391(E) dated 24th October, 2018, except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies such non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act,1934 (2 of 1934), having assets worth rupees one hundred crore and above, which shall be entitled for enforcement of security interest in secured debts of rupees fifty lakh and above, as financial institutions for the purposes of the said Act.

MINISTRY OF FINANCE

(Department of Financial Services)

NOTIFICATION

New Delhi, the 12th February, 2021

S.O. 652(E).—In exercise of the powers conferred by sub-clause (iv) of clause (m) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government of India, Ministry of Finance (Department of Financial Services), number S.O. 856(E), dated the 24th February 2020, published in the Gazette of India,extraoridinary part II, Section 3, Sub-Section (ii) dated the 25th February, 2020 namely:-

In the said notification, for the words, "rupees fifty lakh and above" the words "rupees twenty lakh and above" shall be substituted.

19. As per the above notification, the secure debt is to be 20 lakhs and above. Then only the financial institution having a righto to take physical possession of mortgaged property. In the present petition, the secured debt is claimed by the petitioner is at Rs.2,42,992/-. As per the above notifications, the financial institutions notified under notification S.O. No.2641(E), S.O.4176(E), S.O. No.5391(E) which shall be entitled for enforcement of security interest in secured debt of rupees 20 lakh and above. The petitioner finance is also a non banking financial institution, the petitioner has not produced any notification, whether the said financial institution covered under above notifications or not. If a financial institutions not notified U/Sec.2(1)(m)(iv) of SARFAESI Act, the said financial institution is not entitle to enforcement of security interest to take physical possession of mortgaged property.

20. As discussed above, the petitioner failed to satisfy that, the respondents have due a sum of Rs.2,42,992/- as on the date of demand notice and not produced any notifications issued by Government of India notifying the petitioner finance. the petitioner not complied the mandatory requirements of law. Mere, registration of secured interest in Central registry is not a ground to grant relief U/Sec.13(4) of the Act. Under these circumstances also the petitioner is not entitle any relief in the present petition. There are no material grounds to allow the petition. Hence, I answer Point No.4 in the **Negative.**

21. <u>POINT NO.5</u>:- For the reasons stated above and under the facts and circumstances of the case, I proceed to pass the following:

<u>ORDER</u>

The present petition filed by the petitioner under Section 14 of the SARFAESI Act is hereby dismissed.

(Dictated to the Stenographer, transcribed and typed by her, corrected and pronounced by me in the open court on this the **16th day of October 2023)**

(Prakash. V)
Prl. Senior Civil Judge & CJM,
Haveri.

<u>SCHEDULE</u>

All that piece and parcel of the land with construction there on premises the subject property VPC No.262/A measuring plot area 1653 Sq. ft., and built up area is 950 Sq. ft at Kalasur village, Savanur Taluk, Haveri District.

Bounded as:

East : Property of Basapp S Kyalkond,

West : Property of Durga and Panchayath road,

North : Property of Sudha Karabannanavar,

South : Govt road.

(Prakash V.)
Prl. Senior Civil Judge & CJM,
Haveri.