IN THE COURT OF ADDL. CHIEF METROPOLITAN MAGISTRATE, 3RD COURT, ESPLANADE, MUMBAI
(Presiding Officer – Shri J. C. Yadav)

Case No.603/SA/2023
(CNR NO.MHMM11-006503-2023)
Dated – 17/10/2023

State Bank of India,

Having its Office at Retail Assets Centralized Processing Centre, Mumbai South, 1st Floor, Voltas House-A, Dr. Ambedkar Road, Chinchpokali East, Mumbai – 400 033. Through its Authorized Officer. …. Applicant

Versus

Shri Kirit Bhagwandas Soni,

Residing at Flat No.502, Divani Mahal, Gulmohar Road No.1, JVPD Scheme, Juhu, Vile Parle West, Mumbai – 400 048.

Alst at :

Girish Kunj, Manav Pada Road, Virar East, Taluka Vasai, Palghar – 401 303.

Also at :

M/s. Bhavna Jewellers, Shop No.28, Natraj Market, S. V. Road, Malad West, Mumbai – 400 064. …. Respondent

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Appearance :-
For Applicant :- Advocate Nayana Raut.

ORDER BELOW EXH.1

1] This is an application Under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (in short **"SARFAESI Act**") for taking possession of the secured asset known as :-

"Flat No.502 on the 5th Floor of the building known as Diwani Mahal, admeasuring 919 sq.ft., CTS No.9A/1/B situated at Village Juhu, Mumbai"

2] Brief contents of application are as under :-

Applicant has granted to the respondent **Home Loan of Rs.30,00,000/- (Rupees Thirty Lakhs Only) vide Sanction Letter dated 19/06/2003.**

As against the aforesaid financial assistance, respondent has created security interest over above referred secured asset in favour of the applicant. The secured asset is situated within territorial jurisdiction of this court. Till the date of filing of this application, applicant is holding a valid and subsisting security interest over secured asset. In pursuance to grant of financial assistance and creating of security interest over secured asset, various documents are executed by respondent in favour of the applicant. In due course, borrower has committed default in repayment of the financial assistance. Thus, the account of the borrower has been classified as **"Non Performing Asset" on 27/08/2018**. In sequel, **Demand Notice dated 31/10/2020** U/Sec.13(2) of the SARFAESI Act was issued to their last known addresses and they were called upon to repay outstanding amount within 60 days from the date of service of notice. The said demand notice was sent to the respondent by RPAD, however, the same was returned back. Therefore, applicant bank have served the demand notice through Paper Publication. Despite, the service of said notice, respondent had not complied with the requisitions for payment of outstanding loan amount within stipulated period of 60 days. Hence, applicant is constrained to file this application, which is well in limitation.

3] In catena of judgments Hon'ble Supreme Court and Hon'ble Bombay High Court have settled the position of law that no notice is required to be issued to borrowers and guarantors when application Under Section 14 of SARFAESI Act is filed. Thus, no notices are issued by court to respondents.

4] It is requirement of Section 14 of SARFAESI Act that Authorized Officer of applicant financial institute has to file affidavit containing therein facts mentioned in Section 14(1)(b)(i) to 14(1)(b)(ix). Accordingly, Authorized Officer had filed **Affidavit at Exh.06**. In addition to affidavit, copies of certain documents are placed on record. Authorized Officer has also tendered original documents before Court, for verification with copies on record. Such documents are loan sanction order, loan agreement, memorandum of deposit of title deed, title deeds of mortgage property, notice given under section 13(2) of SARFAESI Act to respondent, postal receipt, returned envelopes, paper publication, etc. Further, applicant has filed on record CERSAI Report with regard to compliance under section 26D of SARFAESI Act.

5] Perused the application, affidavit submitted by the authorized officer of the applicant and documents filed on record of the case. Heard Ld. Advocate for applicant. It comes to my knowledge that applicant has granted the aforesaid financial assistance to respondent. In pursuance of such financial assistance, respondent had executed various documents in favour of applicant to create security interest over the aforesaid secured asset. However, in due course respondent failed to repay the loan amount. Thus, applicant is constrained to declare borrower's account as "Non Performing Asset" and constrained to issue **Demand Notice dated 31/10/2020** U/Sec.13(2) of SARFAESI Act, demanding total outstanding amount of **Rs.7,39,739/- (Rupees Seven Lakhs Thirty Nine Thousand Seven Hundred Thirty Nine Only)**, but in vain. Respondents had not complied the notice within stipulated period of 60 days. Thus, present application came to be filed. Whereas secured asset is located in territorial jurisdiction of this Court and claim of applicant is well in limitation. More so, as per the pleading, documents filed on record and affidavit of authorized officer of applicant, it transpired that secured asset is not in possession of any lessee or tenant and there is no stay to present proceeding by any competent Court. So, I do not found any barrier to pass order in favour of the applicant under Section 14 of SARFAESI Act to take over possession of aforesaid secured asset.

6] As per Section 14(1A) of the SARFAESI Act this Court may authorize any subordinate officer of court to take over possession of secured assets. However, looking that this court is flooded with applications under section 14 of SARFAESI Act and considering that already subordinate officers of this court are overburdened with workload, it seems that it is neither practicable nor feasible to take over possession of secured assets expeditiously by authorizing subordinate officer of this court for taking over possession of secured assets. In this scenario, it is significant to take aid of ratio laid down by **Hon'ble Supreme Court of India in NKGSB Co-operative Bank Ltd. Vs. Subir Chakravarty SPL (C) 30240 of 2019, Order dated**

25/02/2022 to appoint additional members from Bar as Court Commissioner. Hence, in consultation with The Bombay Metropolitans' Courts' Bar Association, Esplanade Court, Mumbai, this Court has prepared a list of Advocates, who are interested to work as Court Commissioner. From the said list, **Advocate Yogesh Shivani Palve** is appointed as a Court Commissioner for taking over the possession of the aforesaid secured assets.

7] Before parting with order, I would like to mention here that, this Court has experienced time and again that under the garb of settlement talks are going on, the applicant through its Authorized Officer is dictating/suggesting/directing to Court Commissioner that not to comply the writ of commission within stipulated time granted by the Court. Such attempt by Bank/financial institution may amounts to contempt of Court. Thus, such practices have to be deprecated. The Bank/financial institutes have to permit Court Commissioner to comply writ of commission and if any settlement works out then release the property to concerned. But at any cost not required to be restrained to Court Commissioner from compliance of writ of commission. Thus, I proceed to pass following order;

ORDER

I. Application Under Section 14 of the SARFAESI Act is allowed and Authorized Officer (as per SARFAESI Act) is permitted to take over possession of aforesaid secured asset on behalf of applicant.

II. **Advocate Yogesh Shivaji Palve**, **R/o**. 1:2, G-195, Preetisangam CHS, Sector-26, Vashi, Navi Mumbai-400 703 **And Also at :** 6/7, Rawaji Sojpal Compound, T. J. Road, Sewree, Mumbai 400 015 (Mobile No.9967273722/8050119048/8097359187) is hereby appointed as Court Commissioner to take over possession of the secured asset known as **"Flat No.502 on the 5th Floor of the building known as Diwani Mahal, admeasuring 919 sq.ft., CTS No.9A/1/B situated at Village Juhu, Mumbai"** and hand over to the Authorized Officer only, under panchanama, and not to handover to any other officer of the applicant, who is not Authorized Officer on record in this proceeding.

III. Applicant to pay **Rs.15,000/- (Rupees Fifteen Thousand Only)** for taking possession of aforesaid secured asset to the Court Commissioner as a fees as well as to and fro charges to him/her, by Cash/Pay Order/Demand Draft/cheque in favour of aforesaid Court Commissioner within fifteen days from the date of this order, and take care that cheque will not be bounced for any reason, otherwise it will be viewed seriously to take appropriate action against the concerned Authorized Officer.

IV. Authorized Officer to furnish his/her full office address, residential address, mobile number, land line numbers of office and residence, in order to facilitate Court commissioner to contact him/her. The Bank/Financial Institute, Authorized Officer are directed not to dictate/direct/suggest to Court Commissioner by any mode to deffer taking over possession of secured assets, unless stay granted by any Competent Court, and if any one does so, then it is subject to appropriate action against him or her whoever may be so.

V. Court Commissioner to issue 15 days advance notice to the concerned party/parties and to take such steps and use such force including breaking open the lock or any hurdle thereof by taking assistance of police if required at the expenses of the applicant and if any articles/documents found in the secured assets then deliver its possession to the Authorized Officer of the applicant after preparing panchanama and taking inventory.

VI. The Police Station Officer within whose territorial jurisdiction secured assets are located, is hereby directed to provide police aid to Court Commissioner if he/she required so for taking over possession of secured assets. Despite of advance letter from Court Commissioner to provide police aid, if such police officer failed to provide police aid for no reason or petty or unreasonable ground then it will be viewed seriously for taking appropriate action. Equally if such police officer gives any ill-treatment or insulting treatment to Court Commissioner, then it is also subject to appropriate action. Such police officer is also directed not to indulge himself in the issue of legality or illegality of order.

VII. Court Commissioner shall report the compliance within 90 days from the receipt of Writ of the Commission. However, in the meantime, if any Competent Court grants stay to execute this order then automatically until such stay order will be in force, time to comply writ of commission will be deemed to be extended and no separate application for extension of time for execution of writ of commission will have to be filed before this Court by the Court Commissioner.

VIII. If any person attempts to seek favour from Court Commissioner in order to delay the taking over possession of secured assets, then Court Commissioner is duty bound to communicate such fact to this Court and provide details of said person, including landline or mobile number of that person if any, to facilitate this Court to take appropriate action against said person.

IX. If Court Commissioner found to be indulged in favouring to any person for delay to take over possession of secured assets then such act will be subject to appropriate action, including reference to Bar Council of Maharashtra & Goa for necessary action for misconduct.

X. If Court Commissioner failed to execute possession warrant for any default on his part, then Court Commissioner fees as well as to and fro charges are subject to refund to applicant along with interest @18% per annum from the date of its receipt. Thus, before receipt of Court Commissioner fees, Court Commissioner to give undertaking accordingly.

XI. If any contingency arises in future to refund Court commissioner fees and Court Commissioner failed to repay it to applicant, then it is subject to reference to Bar Council of Maharashtra and Goa for taking appropriate action for misconduct.

XII. On compliance of Clause No. III & IV, issue Writ of Commission.

DISTRICT COURTS MAHARASHTRA

Digitally signed by JAYWANT CHANDRAKANT YADAV
Date: 2023.10.19 13:40:32 +0530

Mumbai
Dated : 17/10/2023

(Jaywant C. Yadav)
Additional Chief Metropolitan Magistrate,
3rd Court, Esplanade, Mumbai.