

GJSK040034722023



**Order below Exh. 1 in Criminal Misc.
Application No.244/2023.**

**Applicant : Gruh Finance Limited (Now known as
" the Bandhan Bank")**

Having its Regional Office

At : Netaji Marg, Near Mithakhali Six Roads
Ellisbridge, Ahmedabad-380 006.

and a **Branch Office at :**

Bandhan Bank Limited (Gruh Centre)

2nd Floor, Avishkar Complex

Near Motipura Circle, Motipura

Himmatnagar - 3803001 (Guj).

Through its Authorised Officer

Mr.Mehul Bhikhabhai Suthar

Versus

**Opponents: (1) Mr. Minaben Kacharabhai Patel
W/o. Late Mr.Kacharabhai Becharbhai
Patel**

**(2) Mr. Kiranbhai Patel
S/o. Late Mr.Kacharabhai Becharbhai
Patel**

**(3) Mr. Tarun Patel
S/o. Late Mr.Kacharabhai Becharbhai
Patel
Legal heir of Late Mr.Kacharabhai
Becharbhai Patel**

Address :

Survey No.117, Plot No.12

Samarth Bunglows, Mohanpura Patiya

Opposite Court, At : Kushki Mohanpura

Taluka : Idar, District : Sabarkantha

Gujarat-383430.

Subject : An application filed under Section-14 of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI ACT, 2002").

Learned advocate Mr. D.K.Barot for applicant.

- 01.** Read application. Perused the documents annexed with application. Learned advocate for applicant remained absent.
- 02.** The applicant has made the application under Section-14 of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI ACT, 2002"), the opponents had taken loan on their property and failed to pay loan amount and though notice was issued under Section-13(2) of SARFAESI ACT, opponents failed to make payment of loan amount and therefore, present application is made under Section-14 of SARFAESI ACT for appointing Court Commissioner and getting physical seizure of that property and returning it to the applicant.
- 03.** Keeping in mind the documents of the present case, property situated at village : **Kushki Mohanpura, , Taluka: Idar, District, Sabarkantha.** The details of mortgaged properties of the borrower(s) and mortgage property being under loan account No.102/8937, **With all that part and parcel of the property admeasuring 111.15 Sq. Mtrs. situated at Survey**

No.117, Plot No.12, Samarth Bungalows, Mohanpura Patiya, Opposite Court, At : Kushki Mohanpura, Taluka : Idar, District : Sabarkantha, Gujarat-383430 owned by Mr.Kacharabhai Becharbhai Patel.

On this property, opponents got loan from applicant and failed to pay the loan amount and got NPA on **04.10.2021**. Therefore, applicant issued notice on **28.10.2022** u/S. 13(2) of SARFAESI ACT, which was served to opponents. R.P.A.D. acknowledgment receipt and affidavit are produced in that respect, however opponents have not paid the outstanding loan amount and therefore, the present application has been made for physical seizure of that property.

- 04.** In the present case, according to the principles established in the judgment of **Madras High Court** in the case of ***Indian Overseas Bank, K. Abhishekpuram Branch V. Shri Arvind Steel Ltd., AIR 2009, Madras,10***, application u/S. 14 of the Security Act, court shall not issue notice to the opponents. Court has only to keep in mind whether opponents are issued notice u/S. 13(2) by secured creditors. From the principle established in the aforesaid judgment, there is no need to issue notice to the opponents. **The learned advocate for the applicant has remained absent from last several adjournments for the hearing of this matter. Hence, this application is decided on merits.**

- 05.** Perusing the documents produced by the applicant,

opponents have failed to pay the dues, applicant issued notice u/S. 13(2) of SARFAESI ACT, which was served to opponents, however opponents have not paid the outstanding loan amount. Therefore, present application for physical seizure of property u/S. 14 of SARFAESI ACT is liable to be allowed. Relying upon para 48 of judgment of **Hon'ble Supreme Court** in the case of ***Authorized officer Indian Bank V. V.D. Vishalashi & Ors. Civil Appeal No.6295/2015*** wherein it has been stated that C.J.M. Court has the jurisdiction to determine the application u/S. 14 of SARFAESI ACT, therefore, this court has the jurisdiction to pass the determine the application and hence, the following order :

:: FINAL ORDER ::

- 01.** The present application of the applicant is hereby allowed.
- 02.** The Court Commissioner is appointed u/S. 14 of SARFAESI ACT.
- 03.** The Court Commissioner is directed to obtain secure possession of property mentioned in **para 5** of the application and give it to authorize officer of **Gruh Finance Limited (Now known as " the Bandhan Bank")**.
- 04.** If the mortgaged property is closed, the Court Commissioner should break the lock and obtain possession.
- 05.** If the possession is obtained after breaking the lock, the

Court Commissioner should make a list of immovable properties and give it to the authorized officer of **Gruh Finance Limited (Now known as "the Bandhan Bank")**).

- 06.** The applicant-**Gruh Finance Limited (Now known as "the Bandhan Bank")** has to obtain police protection at own cost from the nearby police station under jurisdiction. The Police Commissioner/District Superintendent are hereby directed that after getting application from applicant and payment of fees according to rule, Police protection be provided.
- 07.** The applicant to bear the cost of legal proceedings to obtain the possession of property and to help the Court Commissioner for that.
- 08.** The applicant should deposit the remuneration amount of **Rs.20,000/- (Rs. Twenty Thousand Only)** of Court Commissioner **within 15 days** from the date of this order. Only after the depositing of said amount, Court Commissioner has to do the legal proceedings of obtaining possession of secured property and before obtaining the possession, notice be issued to opponents **before 45 days**. So that the opponents get time to transfer their goods and make arrangement for their residence/business. After issuing notice and obtaining possession, the applicant to give possession to authorize officer and to submit detailed report of the same in Court.
- 09.** The Court Commissioner has to do the legal proceedings on non-working day or on working day

before or after working hours.

- 10.** The Order under this application is made as prayed by applicant and when the Court Commissioner submits the report, the said report be attached with this order.

Signed and Pronounced in Open Court on 12th day of October,2023.

Place : Idar

Date : 12.10.2023

(Archit Nilambhai Vora)

Additional Chief Judicial Magistrate

Principal Senior Civil Court

Sabarkantha @ Idar.

Judge Code No.GJ00849

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