



Received on : 26/06/2024

Registered on : 26/06/2024

Decided on : 31/07/2024

Period : 00 01 05
Years Months Days

**IN THE COURT OF 5th ADDTL. CHIEF JUDICIAL MAGISTRATE,
COURT NO.19, AHMEDABAD CITY**

CRIMINAL MISC. APPLICATION NO. 8679/2024

Exh.05

Applicant : BANK OF INDIA [Nationalised Bank]
Having Its Head Office,
At Star House C-5, G Block, B
Bandra Kurla Complex,
Bandra (EAST), Mumbai.
And It's Branch, Himmatlal Park 3 A Himmatlal Park Soc. Ambavadi,
Ellisbridge, Ahmedabad, Gujarat - 380015
Through its Authorised officer, Alka Uniyal on behalf of Bank of India

VERSUS

Opponents : (1) Mr. Amrit Manoj Talati,
Flat No.A/706, 7th Floor, Shalin Heights - 5, Hathijan Circle,
SP Ring Road, Vinzol, Ahmedabad, Gujarat.

Also at : B/403, Milenium Plaza, Opp. Swaminarayan Mandir,
Vastrapur, Ahmedabad.

Also at : B/203, Swastik City, Opp. Ashirwad Hotel,
Lambha, Ahmedabad -382405.

(2) Mrs. Manishaben Amrit Talati,
Flat No.A/706, 7th Floor, Shalin Heights - 5, Hathijan Circle,
SP Ring Road, Vinzol, Ahmedabad, Gujarat.

Also at : B/403, Milenium Plaza, Opp. Swaminarayan Mandir,
Vastrapur, Ahmedabad.

Also at : B/203, Swastik City, Opp. Ashirwad Hotel,
Lambha, Ahmedabad -382405.

Appearance :

Mr, K. R. Modh, learned Advocate for the Applicant

None for the Opponents

Subject: Application under Section-14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002

ORDER

1) The present application is moved by the applicants under Section-14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 ("SARFAESI ACT" for short) on the ground that, on the basis of the representations so made and on the basis of the terms so agreed and on the basis of the documents filed by the Opponent/s, the Applicant agreed to provide the financial assistance of Rs.28,00,000/- and created the charge on the property mentioned in Para No.3 of the present application.

2) The applicant has submitted that the opponent/s has/have failed to make the repayment of the dues and therefore, account of the opponent/s was classified as NPA on 28/06/2023.

3) The applicant has issued notice under Section-13(2) of the SARFAESI on 02/12//2023. The said notice was duly served upon the Opponents. That by way of the said notice, the opponent/s was/were called upon to pay the outstanding amount of Rs.27,13,456/- as on 02/12//2023 with further interest and charges till the date of realization of payment within the statutory period of 60 days from the date of the said notice, is due as outstanding. However, the borrower has failed to repay the same.

4) Heard the learned Advocate for the Applicants. Perused the application, affidavit submitted by the Authorised Officer of the Applicant and documents filed on record of the case.

5) Having gone through the present application and documentary evidence produced by the applicant in support thereof, the moot question for determination of this application is revolving around Section 14 of the SARFAESI Act. It has been provided in Section 14(1) that where the possession of any secured assets is required to be taken by the Secured Creditor. It has been further contemplated in the proviso to Section 14(1) that on receipt of the affidavit from the Authorised Officer, the District Magistrate or Chief Metropolitan Magistrate, as the case may be shall, after satisfying the contents of the affidavit, pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date

of application. At this stage, it would be apposite and relevant to refer to the observations made by the Hon'ble High Court of Gujarat in the case of *IDBI Bank Ltd. vs. District Magistrate & Ors.* in para-8(xi) of the judgment delivered in *Special Civil Application No.215 of 2011* as under:

"8 (xi) All such determination is to be made by the Debts Recovery Tribunal including the question whether the asset is a secured asset or not and the Chief Metropolitan Magistrate or the District Magistrate has not been empowered to adjudicate such dispute, but is directed only to assist the secured creditor in taking possession of the secured asset. If they are not empowered to adjudicate the dispute, they cannot also call for the secured creditor to produce any document to decide whether the asset is secured asset or not, which will be futile exercise in absence of power to adjudicate such issue. Under Clauses (a) and (b) of Section 14(1), the Chief Metropolitan Magistrate or the District Magistrate and on request, are bound to take possession of the secured assets as also the documents relating thereto. If the documents are to be obtained by them, the question of asking the secured creditor to produce the document in all cases does not arise. Therefore, they do not have jurisdiction even to call for the documents."

It is, thus, transpired on perusal of the aforesaid observations of the Hon'ble High Court of Gujarat that the Chief Metropolitan Magistrate has very limited scope with respect to the cases u/s. 14 of the SARFAESI Act. Hence, this Court cannot go into the merits of the claim.

6) Upon perusal of record, I am satisfied that the contents of the affidavit are fully supported by the documents produced. That apart, adequate time has been given by the applicant to the opponent to make repayment of the outstanding dues but opponent has not paid the outstanding amount. Hence, considering the above facts of the application and in view of the above Judgment of the Hon'ble High Court of Gujarat, this Court has no power to adjudicate the dispute between the parties. In the result, the following order is passed:

O R D E R

- A) The Application is hereby allowed.
- B) Mr. J. R. Banker, Assistant Superintendent of Account Branch, is hereby appointed and authorised as the Court Commissioner U/s.14 (1-A) of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 ("SARFAESI Act" for short).

- C) The Court Commissioner is directed to take possession of property mentioned in Paragraph No. 3 of the present application, which reads as under:

"All that piece or parcel of property being Flat No.A/706, having carpet area admeasuring 61 square meters & 3.20 Square meters of Balcony area on 7th Floor of Shalin Heights -5, Scheme together with undivided share in the land admeasuring 28.60 Square meters out of N.A land for 5107 Square meters comprising of (1) 1375 Square Meters of land of Final Plot No. 25/1/1 (allotted in lieu of 2292 Square meters of land of Revenue Survey No. 56/1 paiki) & (2) 3732 Square meters of land Final Plot No. 25/2/1(allotted in lieu of 6220 Square meters of land of revenue Survey No.56/2/1) of T. P. Scheme No. 73 (Vinzol) situated, lying and being at Mouje Vinzol, Taluka Vatva, within the Registration Sub District Ahmedabad- 11 (Ashali) and District Ahmedabad."

- D) If the Secured Asset is found in closed condition, the Court Commissioner may take possession of the Secured Asset by breaking / opening the lock or may take any other steps he may think fit.
- E) After taking the possession of the Secured Asset, the Court Commissioner shall prepare the inventory of any item, documents relating to the assets if found in Secured Asset and hand over the same to the applicant.
- F) The concerned Police Inspector of the concerned Police Station, under whose jurisdiction the aforesaid Secured Asset is situated, shall provide necessary police assistance / protection to the Court Commissioner on the date appointed by the Court Commissioner for taking possession of the Secured Asset as per the **Circular of Home Department, Bearing No SB-II, GNH/112017/998-PART FILE Dated 03rd December 2020. As per the said Circular when the question of giving police protection under the SARFAESI Act arises, at that time, the Police Authority shall not record any statement of any person nor should call any person to police station for recording the statement and police shall provide the police assistance to the secured creditor on production of the copy of this order before the concerned police station.**

The Police Inspector of the concerned Police Station, shall provide police protection within 30 days from the receipt of the copy of this Court order.

The Applicant - Bank shall complete the necessary formalities for seeking police protection and also bear the expenses thereof. The Court Commissioner may take or cause to be taken such steps and use, or cause to be used such force, as may, in his opinion be necessary. A copy of this order be sent to the concerned Police Station.

- G) The applicant shall bear the expenses incurred in taking possession of the Secured Asset and shall provide all necessary assistance to the Court Commissioner in taking possession of the secured assets.
- H) At present, the applicant is hereby directed to deposit a lump sum amount of Rs. 20,000/- towards the expenses and remuneration of the Court Commissioner within One Month from the date of this Order. On depositing the above said amount in the Court, the Court Commissioner is directed to complete the said procedure within 90 days or within the time limit extended by the Court and submit the compliance report of completion of proceedings. If no occasion arises for the Court Commissioner to take possession of the secured asset due to partial or full payment of the outstanding amount by the opponent/s or there is any settlement terms arrived between the applicants and the opponents, the Court Commissioner shall be paid the remuneration of Rs.2,000=00 (Rupees Two Thousand Only) instead of Rs.20,000=00 and balance amount of Rs.18,000=00 from Rs.20,000=00, which is deposited by the applicant, shall be refunded to the applicant after due verification as per rules.
- I) The Court Commissioner shall carry out the said proceedings on public holidays or except court working hours.

Pronounced in the open Court today i.e. on this 31st Day of July Month Year: 2024

Date: 31/07/2024
Place: Ahmedabad.

[Kamlesh Nathabhai Prajapati]
5th Addtl. Chief Judicial Magistrate,
Court No.19, Ahmedabad City
(Code No. GJ00886)