

IN THE COURT OF DEPUTY COMMISSIONER UTTARA KANNADA KARWAR

Present: Sri. S S Nakul, I.A.S.
Deputy Commissioner,
Uttar Kannada, Karwar.

DCB/MAG-3/Securitization/CR-3/2017-18

Between

1. Canara Bank ARM Branch, Circle Office, Balmatta Road,
Opp. Hotel Roopa, Mangalore-575001.
Represented by its Chief Manager : Mr. Vijay Kumar B. Patil,
S/o Bapugowda Patil.
(Represented through Advocate R.V.Bhat)

.... Petitioner

V/s

1. Mr. P.I Thomas S/o Late P.I.Ittoo,
Co-operative Tile Factory,
Mirjan Post, Kumta Taluk.
2. Mrs. Jessy Thomas W/o P.I.Thomas,
"Puttenvittil House", Post Jamuna Nagar,
Koratty, Chalakkuddy (via),
Trisur District-680308.
3. Mr.Xaviour Thomas, S/o P.I.Thomas
"Puttenvittil House", Post Jamuna Nagar,
Koratty, Chalakkuddy (via),
Trisur District - 680308
All are the Partners of M/s Tip Top Tiles,
Post Mirjan, Taluk Kumta - 581440.
(Respondents Represented through Advocate Mr.P.V.Venugopal)

.... Respondents

Sub: Application filed U/S 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SRFAESI) for enforcement of security interest in Sy No. 33 an extent of 10-28-0 (A-G-A) situated in Ettinabail village of Kumta Taluka Uttar Kannada District.

Preamble:

The instant case has been filed by Chief Manager Canara Bank ARM Branch Mangaluru under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI) praying that the suit properties be handed over to the Bank as provided u/s/ 14 of the Act, since Respondents have defaulted in payment of the loan availed from the bank. Notices were issued to both sides.

The respondents as partners of M/s Tip Top Tiles Taluk Kumta have taken loan of Rs.2.04 crores (Rs. Two Crore Four lakh Only) for financial assistance to M/s Tip Top Tiles having its registered office at Ramanagar, Ettinabail village, Post: Mirjan, Taluk Kumta on executing agreement and other relevant documents including personal guarantee of the respondents in favour of Canara Bank Kumta Branch Kumta on 22-11-2010. The respondents have also created mortgage of the immoveable property in Sy No.86 SD No.33 to an extent of 10-28-0 (A-G-A) situated in Ettinabail village of Kumta Taluka which is more fully described in the schedule

and they have deposited the title deeds with the Bank with an intention to create mortgage of the said property which is non-agricultural land. The respondents have failed to clear the loan despite several reminders besides meeting them personally. Therefore, the petitioner Bank, in terms of RBI guidelines as to the Income Recognition and Prudential Accounting Norms, has classified the loan account as Non-Performing Asset as on 06-01-2014.

The Authorized Officer of petitioner Bank has issued notice to respondents on 22-1-2014 u/s 13(2) of SARFAESI Act 2002 demanding repayment of Rs. 2,25,90,676/- (Rupees Two Crores Twenty Five Lakhs Ninety Thousand Six Hundred Seventy Six Only) within a period of 60 days from the date of the receipt of the notice and further informed that if they failed to pay the amounts within the notice period of 60 days, the petitioner would be taking action U/s 13 (4) of SARFAESI Act. The respondents however have failed to discharge their liability during the stipulated period despite service of the Demand Notice personally. Therefore the petitioner has taken symbolic possession of the schedule property on 24-04-2014 as per possession notice duly published in two leading newspapers, one in vernacular language having sufficient circulations in the locality where the schedule property is situated. In spite of the said possession notice U/s 13 (4) of the SARFAESI Act, the respondents failed to repay the amount due to the petitioner. Now the loan accounts of the respondents are transferred to petitioner Canara Bank, ARM Branch, Mangaluru for the purpose of recovery and as such further recovery action is continued by petitioner Canara Bank ARM Branch, Mangaluru. A recovery suit filed against the respondents before the Debts Recovery Tribunal, Bengaluru is decreed for Rs. 4,04,51,594/ (Rupees. Four crore four Lakh fifty one thousand five hundred ninety four only) as on 30-06-2017 with future interest and expenses. The schedule property is situated within the jurisdiction of this Court. In view of these facts, the petitioner Bank has requested that the Suit property be handed over to the Authorized Officer of the petitioner Bank as contemplated u/s 14 (1) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.

During pendency of the proceeding, one Mr. Kunji Pailan resident of Kumta has filed interim application for impleading him as a respondent. His application was considered in the background of facts and circumstances of the matter. But it is found that he had no locus standie to get himself impleaded as a respondent. Since he has failed to produced any legal documentation linking him to the ownership of the property. Hence, there being lack of locus standie, his application was not allowed.

After going through the records and on perusal of the above facts, it is clear that all the requirements of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 contemplated for issuing direction U/s 14 have been met by the petitioner Bank. The factual matrix have been duly

supported by an affidavit of the petitioner Bank as required U/s 14 (1) of SARFAESI Act. This is a case of secured loan on the security of land in Sy.No. 86 SD No. 33 to an extent of 10-28-0 (A-G-A) as evident from the guarantee agreement dated 06-12-2010 and other relevant documents. Therefore, under these circumstances it is fit case to direct the Tahasildar, Kumta to hand over possession of suit property in Sy No.86 SD No.33 to an extent of 10-28-0 (A-G-A) situated in Ettinabail village of Kumta Taluka to the petitioner Bank.

DCB/MAG-3/Scuritization/CR-3/2017-18

Date: 18-06-2018.

ORDER

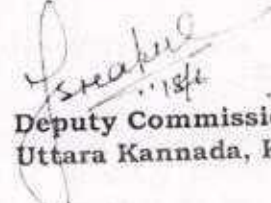
The petition is allowed and Tahasildar, Kumta is directed to hand over the possession of the suit property noted in the schedule, to the Authorized Officer of Petitioner Bank.

Schedule

All that part and parcel of the property land and building in Sy No.86 SD No.33 to an extent of 10-28-0 (A-G-A) situated in Ettinabail village of Kumta Taluka with the following boundaries.

East - Private Vacant Land
West - Road
North - By Forest RS.No. 31
South - By Forest S.No. 31

(Order dictated to the Stenographer, got computerized, verified and pronounced in open court on 18-06-2018)


**Deputy Commissioner,
Uttara Kannada, Karwar**

Copy to

1. Tahasildar Kumta for necessary action
2. Canara Bank ARM Branch, Circle Office, Balmatta Road, Opp. Hotel Roopa, Mangalore-575001.
3. Mr. P.I Thomas, S/o Late P.I.Ittoo, Co-operative Tile Factory, Mirjan Post, Kumta Taluk.
4. Mrs. Jessy Thomas, W/o P.I.Thomas, "Puttenvittil House", Post Jamuna Nagar, Koratty, Chalakkuddy (via), Trisur District-680308.
5. Mr. Xavior Thomas, S/o P.I.Thomas "Puttenvittil House", Post Jamuna Nagar, Koratty, Chalakkuddy (via), Trisur District - 680308 Post Mirjan, Taluk Kumta - 581440