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**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 8<sup>TH</sup> DAY OF APRIL, 2026**

**BEFORE**

**THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

**WRIT PETITION NO. 17374 OF 2022 (GM-DRT)**

**BETWEEN:**

MAGAN RAM CHOUDHARY  
AGED ABOUT 53 YEARS,  
S/O SRI BABULAJI  
R/ATNO.24/1-1, 2ND FLOOR,  
ADI ENCLAVE,  
SOWRASTRAPET CITY,  
BANGALORE SOUTH  
BENGLAURU-560 053.

...PETITIONER

(BY SRI. KIRAN B S.,ADVOCATE)

**AND:**

1. THE AUTHORISED OFFICER  
M/S. VYSYA CO OPERATIVE BANK LTD  
OFFICE AT DR.SRI SRI SHIVAKUMARA  
SWAMIJI CIRCLE,  
B.H.ROAD, TUMAKURU-572 102.
2. M/S VYSYA CO OPERATIVE BANK LTD  
REP BY ITS CHIEF EXECUTIVE OFFICER  
OFFICE AT DR.SRI SRI SHIVAKUMARA  
SWAMIJI CIRCLE, B.H.ROAD,  
TUMAKURU-572 102.





3. SRI.RAMESH BABU K N  
AGED ADULT  
S/O LATE K.S.NARAYANASETTY  
R/AT NO.82/4, SAI RATHNA,  
4TH FLOOR, 2ND CROSS,  
2ND BLOCK,  
THYAGAAJANAGAR,  
BENGALURU-560 061  
  
ALSO AT NEW NO.567,  
3RD FLOOR, 10TH CROSS,  
JAYANAGAR, 7TH BLOCK,  
BENGLAURU- 560 078.
4. SMT.K.R.SADHANA  
AGED ADULT  
W/O SRI RAMESH BABU K.N.  
R/AT NO.82/4, SAI RATHNA,  
4TH FLOOR, 2ND CROSS,  
2ND BLOCK,  
THYAGARAJANAGAR,  
BENGALURU- 560 061.
5. SMT.K.R.MEGHANA  
AGED 30 YEARS,  
D/O SRI RAMESH BABU K.N. AND  
W/O BHARGAV  
R/AT NO.38/2-3 FLAT NO. 409,  
A BLOCK, BRINDAVAN GARDEN APT  
VASANTHAPURA VILLAGE,  
KANAKAPURA MAIN ROAD,  
DODDAKALLASANDRA



BENGLAURU-560 062.

6. SMT.K.R.SAI SINCHANA  
(AGED ADULT)  
D/O SRI RAMESH BABU K.N.  
R/AT NO.82/4, SAI RATHNA,  
4TH FLOOR, 2ND CROSS,  
2ND BLOCK,  
THYAGAAJANAGAR,  
BENGALURU-560 061.

...RESPONDENTS

(BY SRI. KIRAN.B.CHANDEAN, ADVOCATE FOR  
SRI. SHIVASHANKARA A., ADVOCATE FOR R1  
AND R2)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DTD. 28.02.2022 (ANNX-A) IN C.MISC.NO.202/2022 OF THE IX ACMM BY HOLDING THAT THE SAME IS UNSUSTAINABLE / NOT BINDING AGAINST THE PETITIONER.DIRECTING THAT THE PETITIONERS BE ALLOWED TO KEEP POSSESSION OF THEIR RESPECTIVE PROPERTIES.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



**ORAL ORDER**

The present writ petition is filed seeking the following prayer:

***"A) SETTING ASIDE the impugned Order dated 28-02-2022 (ANNEXURE-A) in C.Misc No.202/2022 of the IX ACMM by holding that the same is unsustainable/not binding against the Petitioner;***

***B) DIRECTING that the Petitioners be allowed to keep possession of their respective properties.***

***C) GRANTING all other reliefs as this Hon'ble Court may deem fit, proper and necessary under the facts and circumstances of the case."***

2. It is the case of the Petitioner that he had purchased the property by way of a registered sale deed dated 19.09.2019, and the predecessor-in-title of the petitioner had purchased the said property in the year 2013. It is stated that, after selling the property to various purchasers, respondent No. 3 applied for a loan on 13.02.2017 and borrowed a sum of Rs.3 crores on 21.02.2017 from Respondent No. 2 Bank by



fraudulently mortgaging the property by concealing the fact of prior sale. Thereafter, respondent No.6, who is the daughter of Respondent No. 3 and was a 17-year-old minor at the the time, also applied for a loan and borrowed Rs.67 lakhs on 31.03.2018 from Respondent No. 2 Bank by again fraudulently mortgaging the same property fraudulently by concealing the fact of prior sale/conveyance of the flats.

3. Even the Bruhat Bengaluru Mahanagara Palike has issued a khata in favour of the Petitioner in respect of the said property. The petitioner has been paying property tax on the said immovable property till date. Thereafter, without informing the Petitioner, respondent No. 2 Bank issued a notice dated 18.10.2021 to Respondent Nos. 3, 4, 5, and 6, recalling both the said loans and demanding immediate payment of a total sum of Rs.4,01,36,152/-. The petitioner was not served with a copy of the said notice. Subsequently, the Bank filed an application before the learned Magistrate under Section 14 of the Securitisation and Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 (for short 'SARFAESI Act'), registered as CrI. Misc. No. 202/2022, seeking



enforcement of its security interest and praying that respondent No.2 Bank be put in possession of the said property allegedly mortgaged by respondent Nos. 3 and 6. The learned Magistrate disposed of the said application by way of the impugned order dated 28.02.2022. It was only upon issuance of a possession notice dated 02.03.2022 that the petitioner has come to know about the said proceedings. Thereafter, the petitioner approached the Debt Recovery Tribunal (for short, 'DRT') by filing an application on 07.03.2022 under Section 17 of the SARFAESI Act, seeking to restrain the Respondent Bank from taking possession of the property. However, there is a reasonable apprehension that respondent No. 1-Officer and respondent No.2 Bank may forcibly take over the petitioner from lawful possession of the property. Hence, the petitioner has come before this Court.

4. Learned counsel for the petitioner submits that there is collusion and fraud between the borrower and the Bank. It is contended that the property had already been sold in the year 2013 and despite the same, the Bank has granted loans by treating the said property as a secured asset. It is the



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specific contention of the petitioner that the said property does not constitute a secured asset and was not mortgaged to the Bank. It is further submitted that the Petitioner is neither a borrower nor a guarantor. In such circumstances, the respondent Bank has no authority to initiate proceedings under the SARFAESI Act against the Petitioner's property. Upon a specific query by this Court with regard to the maintainability of the present writ petition, particularly in the light of the availability of an effective alternative remedy before the DRT and especially when the petitioner has already approached the DRT by filing an application, learned counsel for the petitioner submitted that the DRT has no jurisdiction to adjudicate the present case. It is further submitted that Section 17 of the SARFAESI Act provides that any person, including a borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or its Authorised officer under the said Chapter, may approach the DRT having jurisdiction. Reliance is placed on Section 13(4) of the Act in support of the said contention.

5. He submits that Section 13(4) comes into operation only in cases where the borrower fails to discharge his liability



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in full within the period specified under Section 13(2), upon which the secured creditor may take recourse to one or more of the measures provided therein. It is further submitted that a reading of Section 13(4) makes it clear that such measures are primarily directed against the borrower and any subsequent actions emanating there from would also relate to the borrower. Therefore, when Section 13(4) is read in conjunction with Section 17 of the SARFAESI Act, it is contended that only the borrower has the right to approach the DRT.

6. Learned counsel for the petitioner has relied on the judgment of the Honb'le Apex Court in ***KUT Energy Private Limited and Others vs. Authorized Officer, Punjab National Bank***, wherein paragraph No.12 reads as follows:

***"12. Going by the law laid down by this Court in Axis Bank<sup>3</sup> the 'secured creditor' would be entitled to proceed only against the 'secured assets' mentioned in the notice under Section 13(2) of the SARFAESI Act. In that case, the deposit was made to maintain an appeal before the DRAT and it was specifically held that the amount representing such deposit was neither a 'secured asset' nor a***



***'secured debt' which could be proceeded against and that the appellant before DRAT was entitled to refund of the amount so deposited. The submission that the bank had general lien over such deposit in terms of Section 171 of the Contract Act, 1872 was rejected as the money was not with the bank but with the DRAT. In the instant case also, the money was expressly to be treated to be with the Registry of the High Court."***

7. He has further relied on a judgment of the Co-ordinate Bench of this Court ***Mr. M.N. Kumar vs. ARC and another***, arising out of ***W.P.No.17494/2025***, wherein paragraphs 23 and 24, reads as follows:

***"23. The expression "secured assets of the borrower" used in clause (a) of Section 13(iv) leaves no manner of doubt that the secured creditor can proceed to recover the secured debt only by taking possession of the secured assets of the borrower and not of any other person.***

***24. In the instant case, as already discussed above, the petitioners were not the borrowers of the loan from respondent No.1 and respondent No.1 had not derived any security interest***



***over the schedule property. Therefore, none of the measures provided under Section 13(4) of the SARFAESI Act were available to respondent No.1. As a result, the action initiated by respondent No.1 taking a symbolic possession of the schedule property is patently illegal and without authority of law and contrary to Section 13 of the SARFAESI Act."***

8. Learned counsel has also placed reliance on the judgment of ***BSFC vs. Chottanagar Minerals and Others***<sup>1</sup>, wherein paragraph No.20 reads as follows:

***"20. A bare perusal of the aforementioned provisions would clearly go to show that the statutory power vested in the Corporation must be exercised only in respect of the properties which were mortgaged. This aspect of the matter has been considered by this Court in Ormi Textiles and Another v. State of Uttar Pradesh and Others [(2008) 5 SCC 194], holding:***

***"15. For the purpose of invoking Section 29 of the Act, the borrower must have a liability to the Corporation under an agreement. It must make a default in repayment of any loan or advance, etc. The Corporation in such a situation shall inter alia have the right to take over the management or possession or both of the industrial concerns. This power is in addition to the power of the right to transfer by way of lease or sale and realize the***

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<sup>1</sup> (2009) 2 SCC 471



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*property pledged, mortgaged, hypothecated or assigned to the Corporation. The right to transfer by way of lease or sale, however, is not an independent right. Only in case of default, such a right can be exercised. We must keep in mind that the powers contained in two parts of Section 29 of the Act are separate and distinct. The power to take over the management is ordinarily exercised when the concern is an ongoing one. But, when a power is conferred to sell the property unilaterally, the same must have a nexus with the mortgaged property. The power to sale cannot be read in isolation. It can also realize the mortgaged property which would mean that when a property had been sold, only the mortgaged property can be realized and not any other property which was not the subject matter of mortgage. What can be transferred by the mortgagee even in terms of the provisions of the Transfer of Property Act is the property which was the subject matter of mortgage and not any other. A power to take over the management or possession is a statutory power. As and when the debt is realized, the Corporation would be bound to handover the management or possession of the property, as the case may be, back to the industrial establishment.*

*16. A mortgagee can have a right to sell a property even under the contract. The same must necessarily mean that the property to be sold is the one over which he has the right, title and interest. A sale without any right would be a nullity.*

*17. For proper construction of the provisions of the Act, we may notice the provisions of Section 31 thereof. It provides for an additional remedy. Whereas Section 29 confers a power to sale the property unilaterally, Section 31 provides inter alia for the same power only through the intervention of the court.*

*18. Clause (a) of Sub-section (1) of Section 31 of the Act categorically states that the jurisdiction of the District Judge can be invoked for order of sale of the mortgaged or assigned property in favour of the Corporation. Clause (b) thereof provides for transferring the management of the industrial concern. Clauses (aa) and (c) of Sub-section (1) of Section 31 of the Act provide for additional*



*remedies. When an application is filed in terms of Section 31 of the Act, the procedures laid down in Sub-section (1A) of Section 32 of the Act are required to be followed. A further 14 additional remedy has been provided to a Financial Corporation in terms of Section 32G of the Act. In that view of the matter, there cannot be any doubt whatsoever that the appellant did not have any right to sell any property which was not the subject matter of the deed of mortgage. Any action taken in that behalf must be held to be wholly illegal and without jurisdiction. Appellant, therefore, was liable for payment of damages as had been opined by the courts below."*

9. He has further relied on the judgment of **BOI vs. Abhay D Narottam and Others**<sup>2</sup>, wherein paragraphs.10 and 11, reads as follows:

*"10. As far as the land is concerned, we agree with the learned Judge that a mere undertaking to create a mortgage is not sufficient to create any interest in any immovable property.*

*11. As far as the flat is concerned, it needs no authority to say that a contract for sale of immovable property does not of itself create any interest in or charge over such property. This is provided in Section 54 of the Act and is*

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<sup>2</sup> (2005) 11 SCC 520



***well-settled law. In this case, the agreement for sale which was deposited by Respondent 2 with the appellant Bank was not an agreement by which Respondent 2 agreed to sell the property to a third party, but an agreement to sell the flat to Respondent 2. No interest was created in favour of Respondent 2 by virtue of this agreement for sale which could have been transferred by way of security to the appellant Bank. There is as such no question of the appellant Bank having any charge over such non-existent interest."***

10. Relying on the aforesaid judgments, learned counsel for the petitioner submits that a third party cannot go before the DRT under Section 17 of the SARFAESI Act.

11. Per contra, learned counsel appearing for the Respondent Bank submits that other flat owners in the very same apartment had filed W.P. No. 20073/2022 and W.P. No. 8298/2022 and by orders dated 05.01.2026 and 20.11.2025 respectively, a Co-ordinate Bench of this Court, after considering the respective contentions, has observed that an



aggrieved party has an effective alternative remedy under Section 17 of the Act. Liberty was also reserved to the petitioners therein to avail such alternative remedy before the DRT. Based on the said orders, it is contended that the petitioner also has an efficacious alternative remedy and is at liberty to approach the DRT under Section 17 of the SARFAESI Act.

12. Having heard the learned counsel on either side, perused the material on record.

13. The first submission of the learned counsel for the petitioner pertains to the jurisdiction of the DRT and specifically, whether the petitioner, being a third party, can approach the DRT. In this regard, it is appropriate to have a look at Section 17 of the SARFAESI Act, which reads as follows:

***"17. [Application against measures to recover secured debts.] [Substituted Right to appeal' by Act No. 44 of 2016.]***

***(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an***



***application along with such fee, may he prescribed,] [Substituted by the Enforcement of Security Interest and Recovery of Debts Lars (Amendment) Act, 2004 (30 of 2004), Section 10, for may prefer an appeal (w.r.e.f. 21.6.2002).] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:***

***[Provided that different fees may be prescribed for making, the application by the borrower and the person other than the borrower.] [Inserted by the Enforcement of Security Interest unil Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 10 (w.r..f. 21.6.2007).J***

***[Explanation. For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-***



***section.] [Inserted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 10 (w.ref. 11.11.2004).J***

***(IA) [An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-***

***(a) the cause of action, wholly or in part, arises;***

***(b) where the secured asset is located; or***

***(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]***

***(2) [The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.] [Sub-sections (2) and (3) substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 10, (wa.f. 11-11-2004)]***



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14. As per the above provision, any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13, may approach the DRT. There is no ambiguity in the said provision, and the word “any person (including the borrower)” as incorporated in Section 17 of the Act clearly indicates that the remedy is not restricted to the borrower alone.

15. Hence, none of the judgments relied upon by the petitioner deal with the issue as to whether a third party can approach the DRT or whether the DRT has jurisdiction in such cases. A plain reading of Section 17 of the SARFAESI Act makes it clear that any person, including the borrower, aggrieved by any of the measures taken by the Bank can approach the DRT. All the questions raised before this Court, as well as the submissions made herein, can very well be decided by the DRT. The petitioner failed to make out any exceptional case involving a pure question of law which cannot be decided by the DRT and which requires exclusive adjudication by this Court.

16. It is also pertinent to note that, on 27.11.2024, a Co-ordinate Bench of this Court passed an interim order



restraining respondent Nos.1 and 2 from auctioning or bringing the property to sale till the next date of hearing, and the said interim order has been continued from time to time. The Hon'ble Apex Court has, time and again, deprecated the practice of High Courts entertaining writ petitions in SARFAESI matters, particularly when an effective alternative remedy is available. Apart from the same, similarly situated persons have been relegated to the DRT by virtue of the orders passed by the Co-ordinate Benches of this Court. In that view of the matter, this Court do not find any reason to entertain the present writ petition.

17. Hence, this Court is passing the following:

**ORDER**

- i. Accordingly, the writ petition is **disposed of**, giving liberty to the petitioner to avail the appropriate remedy before the DRT.
- ii. The petitioner shall have the benefit of Section 14 of the Limitation Act.
- iii. The interim order granted by this Court on 27.11.2024 shall remain in force for a period of four weeks.



- iv. Pending IAs., if any, shall stand closed.

**SD/-**  
**(LALITHA KANNEGANTI)**  
**JUDGE**

SMC  
List No.: 1 Sl No.: 4