HC-KAR

NC: 2026:KHC:56334
WP No. 2734 of 2024

CNR: KAHC010026222024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.2734 OF 2024 (GM-DRT)

BETWEEN:

1. SMT. LAKSHMI K
AGED ABOUT 47 YEARS,
W/O SRI. KASHI LINGAM S,

2. SHRI. KASHA LINGAM S
AGED ABOUT 49 YEARS,
S/O LATE SUBRAMANI A

BOTH ARE RESIDING AT FLAT NO.F3,
VIMARSA RESIDENCY 2,
1ST FLOOR, 29TH MAIN, 2ND CROSS,
JAI BHEEM NAGAR, BTM LAYOUT,
1ST STAGE, BENGALURU-560 068.

...PETITIONERS

(BY SRI. ANKUSH NERLE, ADVOCATE FOR
SRI. ABISHEK N.N., ADVOCATE)

AND:

1. JANA SMALL FINANCE BANK LIMITED
HAVING ITS REGISTERED OFFICE AT
THE FAIRWAY BUSINESS PARK,
NO.10/1, 11/2 AND 12/2B OF COMLUR,
KORAMANGALA INNER RING ROAD,
NEXT TO EMBASSY GOLF LINKS,
CHALLAGHATTA,
BENGALURU-560 071
REPRESENTED BY ITS AUTHORIZED OFFICER
SRI. BABU SREEJITH.

2. M/S. JAYA SAI DRIVING SCHOOL
NO.1B, 1ST FLOOR,

CHAMUNDESHWARI NAGAR,
NYANAPPANAHALLI MAIN ROAD,
DEVARACHIKKANAHALLI,
BEGUR HOBLI, BENGALURU-560 076
REPRESENTED BY THE PROPRIETOR (JAMUNA).

3. MRS. JAMUNA
D/O BALARAJ,
AGED ABOUT 46 YEARS
THE PROPRIETOR OF
M/S JAYA SAI DRIVING SCHOOL
NO.1B, 1ST FLOOR, CHAMUNDESHWARI NAGAR,
NYANAPPANAHALLI MAIN ROAD,
DEVARACHIKKANAHALLI,
BEGURU HOBLI,
BENGALURU-560 076.

ALSO AT NO.17, SRINIVASA REDDY LAYOUT,
DEVARACHIKKANAHALLI, BG ROAD,
BENGALURU-560 076.

4. MR. MANOJ KUMAR S
S/O JAMUNA,
AGED ABOUT 30 YEARS,
NO.17, SRINIVASA REDDY LAYOUT,
DEVARACHIKKANAHALLI, BG ROAD
BENGALURU-560 076.

5. MR. SUPREETH S
S/O JAMUNA,
AGED ABOUT 28 YEARS,
NP.17, SRINIVASA REDDY LAYOUT,
DEVARACHIKKANAHALLI
BG ROAD, BENGALURU-560 076.

…RESPONDENTS

[BY SRI. V. SURESH, ADVOCATE FOR R.1 (V/C)]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 17.10.2023, PASSED BY THE XLI ADDL. CHIEF METROPOLITAN MAGISTRATE, AT BENGALURU IN CRL.MISC.NO.2212/2022, i.e., ANNEXURE-A, ETC.

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

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL ORDER

1. The petitioners have impugned the order dated 17.10.2023 [**impugned order**] passed by the XLI Additional Chief Metropolitan Magistrate, Bengaluru, in Criminal Miscellaneous No.2212/2022, whereby the petition filed by Jana Small Finance Bank Limited [**respondent No.1-Bank**] under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('Act' for short) seeking assistance to take physical possession of the secured asset, came to be allowed.

Brief Facts

2. Petitioner No.2 claims to have purchased the property bearing Assessment No.5/7, Katha No.17, situated at Devarachikkanahalli Village, Begur Hobli, Bengaluru South Taluk, [**schedule property**] from Mrs.Jamuna, Proprietor of M/s. Jaya Sai Driving School [**respondent No.3**] under registered sale deed dated 05.03.2015.

3. Respondent No.3 executed a gift deed dated 04.06.2015 in favour of her children, respondent Nos.4 and 5. This led to petitioner No.2 to institute O.S. No.7047/2015 against respondent Nos.3 to 5, seeking a declaration, possession and injunction. The parties subsequently entered into a compromise in the said suit on 02.03.2020. The petitioners claim that respondent Nos.3 to 5 acknowledged the rights of petitioner No.2 and delivered vacant possession of the schedule property to him. It is further stated that a deed of consent dated 17.12.2019 was executed and subsequent gift was cancelled vide cancellation deed dated 17.12.2019. Thereafter, petitioner No.2 executed a registered gift deed dated 29.10.2020 in favour of petitioner No.1, his wife.

4. In the meanwhile, respondent No.3, in her capacity as proprietor of M/s. Jaya Sai Driving School, had approached respondent No.1-Bank seeking financial assistance. The Bank sanctioned a loan of ₹10,00,000/-. According to the Bank, the schedule property was offered as security for repayment of the loan by deposit of title deeds on 27.05.2017. On account of default in repayment of the loan, the account was classified as a Non-Performing Asset (NPA) on 01.10.2018. Thereafter, the Bank

initiated proceedings under the Act by issuing the notices under Sections 13(2) and 13(4) thereof. The Bank subsequently filed a petition under Section 14 of the Act, seeking assistance to take physical possession of the schedule property. By the impugned order, the petition came to be allowed. Challenging the same, the petitioners are before this Court in this writ petition.

5. Learned counsel for the petitioners contends that petitioner No.2 acquired valid title to the schedule property under the registered sale deed dated 05.03.2015, much prior to the alleged creation of the mortgage in favour of respondent No.1-Bank on 27.05.2017. It is further contended that the petitioners neither had any role in the creation of the alleged mortgage nor executed any document creating a security interest in favour of respondent No.1-Bank. Nevertheless, the Bank has proceeded against the schedule property by treating it as a secured asset. Section 17 (1) of the Act reads as under:

> ***"17. Application against measures to recover secured debts.-****(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 alongwith such*

fee, as may be prescribed 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."

6. Section 17 of the Act provides that any person, including a borrower, aggrieved by any of the measures referred to in Section 13(4) of the Act may approach the Debts Recovery Tribunal. The expression “any person” employed in the provision is of wide amplitude and is not confined to the borrower or guarantor. It encompasses even a third party claiming an independent right, title or interest in the property against which measures have been initiated by the secured creditors.

7. In the present case, the petitioners claim an independent right over the schedule property on the strength of a registered sale deed dated 05.03.2015, whereas respondent No.1-Bank asserts that a security interest was created in its favour over the schedule property on 27.01.2017. The petitioners dispute the Bank’s entitlement to proceed against the schedule property. These are

matters falling within the statutory jurisdiction of the Debts Recovery Tribunal under Section 17 of the Act.

8. Significantly, the petitioners have themselves stated in the writ petition that they have already approached the DRT by filing S.A. No.298/2023, which is stated to be pending consideration. Thus, the petitioners have already invoked the statutory remedy provided under Section 17 of the Act. In such circumstances, this Court finds no justification to entertain a parallel challenge to the measures initiated by the secured creditor by exercising its jurisdiction under Article 226 of the Constitution.

9. Accordingly, the writ petition is ***disposed of*** with liberty to the petitioners to pursue the statutory remedy available to them under Section 17 of the Act.

10. This Court has not expressed any opinion on the rival claims of the parties.

Sd/-

JUSTICE K.S. HEMALEKHA

hkh.
List No.: 1 Sl No.: 6