IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-01-2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P.No.30459 of 2014
and M.P.No.1 of 2014

1. M/s. Kanderi Fruitpack Pvt. Ltd.,
Rep. by its Managing Director
Mr. Madan Mohan Kanderi

2. Madan Mohan Kanderi

3. Kavitha Kanderi ... Petitioners

Vs.

1. The Authorised Officer/Assistant
General Manager
Bank of Baroda
International Business Branch
45, Moore Street, 4th Floor
Chennai - 600 001

2. The Registrar
Debt Recovery Tribunal II,
4th Floor, Spencer Towers
770 A, Anna Salai
Chennai - 600 002

3. The Chief Metropolitan Magistrate
Egmore, Chennai - 600 008 ... Respondents

Writ Petition under Article 226 of the Constitution of India praying for a writ of certiorari to call for the records pertaining to the Order dated 16-04-2014 passed in Crl.M.P.No.1385 of 2014 on the file of the 3rd respondent and quash the same insofar as the petitioners concerned as illegal.

For petitioners Mr. R. Nagasundaram
For respondents Mr. M. Santhanaraman for R1
R2 - Tribunal
R3 - No appearance

ORDER

(Order of the Court is made by SATISH K. AGNIHOTRI,J.)

With the consent of both the parties, the writ petition is taken up for final disposal.

2. The challenge in this writ petition is to the order dated 16th April 2014 passed by the learned Chief Metropolitan Magistrate Court, Egmore, Chennai - 8 in Crl.M.P.No.1385 of 2014. The learned Chief Metropolitan Magistrate, while exercising his power under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act 2002"), allowed the application filed by the respondent-Bank to take possession of the property mentioned in the Schedule hereunder:

> "All that piece and parcel of land and building (Flat) bearing No.C(Now F1) in Plot No.W-811, 9th Street, Syndicate Bank Colony, Anna Nagar West Extn., Chennai - 101, measuring an extent of 1325 Sq.ft. super plinth area inclusive of all common area along with UDS of 874 Sq.ft. comprised in R.S.No.155 Part and 151/2 Part of Padi Village.
>
> North by :: 30 feet Road;
> South by :: Plot No.860;
> East by :: Plot No.812 and
> West by :: 30 feet Road.
>
> Situated within the Sub Registration District of Villilvakkam and Registration District of Chennai."

3. The learned counsel appearing for the petitioners questions the legality of the impugned order on the ground that before making an application under Section 14 of the Act 2002 to take over the possession of the secured asset, the first respondent ought to have accepted the proposal of sale by auction with all reasonableness. It was also contended that the petitioners were not given sufficient opportunity to raise funds by way of sale or otherwise to settle the outstanding loan amount. Thus, the impugned order directing the respondent bank to take over physical possession of the secured asset is bad in law and deserves to be set aside.

4. We have heard Mr. R. Nagasundaram, learned counsel for the petitioners and Mr. M. Santhanaramam, learned counsel for the first respondent bank.

5. The scheme for enforcement of security interest is contemplated under provisions of Section 14 of Act 2002. Sub-section (2) of Section 13 of the Act 2002, provides for affording an opportunity to the borrower to make good the default, by making repayment of secured debt within 60 days from the date of notice, failing which the secured creditor is justified to take action under sub-section (4) of Section 13. Section 13(3-A) of the Act 2002 further provides an opportunity to the borrower to make a

representation raising any objection pursuant to the notice under sub-section (2) to put forward its case for settlement of dues to the secured creditor. If the borrower fails to take steps under provisions of Section 13(3-A), the secured creditor is fully authorised to take action under sub-section (4) of Section 13 of the Act 2002. Under sub-section 4, several measures are followed to recover the secured debt:

> "4. In case of the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-
>
> (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
>
> (b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
>
> Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:
>
> Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.
>
> (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
>
> (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt."

Thereafter, while exercising power to recover the secured debt by taking possession of the secured assets of the borrower, including the right to transfer by way of lease or sale for realising the secured asset, the secured creditor is entitled to make an application to the learned Chief Metropolitan Magistrate or District Magistrate, as the case may be, to seek assistance for taking possession of the secured asset. In the case on hand, it appears that the petitioners have failed to satisfy the requirements and the application under Section 14 was made after a step was taken by the secured creditor under Section 13(4)(a).

6. The question that arises for consideration before us is as to whether, at this stage, the petitioners can question the order passed by the learned Chief Metropolitan Magistrate in exercise of

power under Section 14 of the Act 2002. Any measure taken under Section 13(4) of the Act 2002, is appealable to the Debt Recovery Tribunal under Section 17 of the Act 2002. It appears that the petitioners have not taken any steps to question the measure taken by the secured creditor under Section 13(4) of the Act 2002, which led to the filing of application under Section 14 of the Act 2002, before the learned Chief Metropolitan Magistrate. The learned Chief Metropolitan Magistrate, having considered all the aspects of the matter, directed taking over of possession with the assistance of a learned Advocate Commissioner which is sought to be impugned in this case.

7. Having considered all the aspects of the matter, we are afraid that we cannot interfere at this stage, as no substantial points have been raised questioning the decision taken by the learned Chief Metropolitan Magistrate. The learned Chief Metropolitan Magistrate, in fact, does not adjudicate any dispute, but renders assistance to ensure that the power of the secured creditor to take over possession as one of the measures to recover the debt under Section 13(4) of the Act, 2002. Thus, we do not find any error in the order passed by the learned Chief Metropolitan Magistrate. However, we make it clear that any measure taken by the secured creditor under Section 13(4) which led to filing of the application under Section 14 of the Act, 2002 is subject to the statutory appeal under Section 17 of the Act, 2002. The petitioners are at liberty to take recourse to statutory appeal under Section 17 against any measure, as referred to under sub-section (4) of Section 13 taken by the secured creditor.

8. Resultantly, we decline to interfere with the impugned order. However, we make it clear that if an appeal is preferred, the same may be considered in accordance with law and on its merits, without being influenced by any observation made hereinabove.

9. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

glp

To

1. The Registrar
   Debt Recovery Tribunal II,
   4th Floor, Spencer Towers
   770 A, Anna Salai
   Chennai - 600 002

2. The Chief Metropolitan Magistrate
   Egmore, Chennai - 600 008

3. The Authorised Officer/Assistant
   General Manager
   Bank of Baroda
   International Business Branch
   45, Moore Street, 4th Floor
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+ 1 cc to Mr.M. Santhanaraman, Advocate SR.809
+ 1 cc to Mr. R. Nagasundaram, Advocate sR.643

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SSI(CO)
Eu 20.1.15