IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2015

C O R A M

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

W.P. No.31080 of 2014
and
M.P. No.1 of 2014

1. M/s.Star Rollen,
   No.55, 3rd Floor,
   C.P.Ramasamy Road,
   Alwarpet, Chennai-600 018.

2. R.Ravichandran
3. R.Meena .. Petitioners

Vs

1. The Chief Metropolitan Magistrate,
   Egmore,
   Chennai.

2. The Authorised Officer,
   Federal Bank,
   Voltas International Centre,
   No.52,Armenian Street,
   George Town, Chennai-600 001.

3. M/s.Asset Reconstruction Company (India) Ltd.,
   Registered office at
   Ruby No.29,
   Senapati Babat Marg,
   Dadar (W), Mumbai-400 028.
   Branch office at
   No.715C, 7th Floor,
   Spencer Plaza Space II,
   No.769, Anna Salai,
   Chennai-600 002. .. Respondents

This Writ Petition filed under Article 226 of the Constitution of India seeking for the issuance of a writ of certiorari to call for the records in Crl.M.P.No.4463 of 2014 on the file of the Chief Metropolitan Magistrate, Chennai and quash the order dated 27.08.2014.

For petitioner : Mr.M.Balachandran

For Respondents: Mr.V.Jayachandran for R-3
R-2 served - no appearance

ORDER

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

The petitioners claiming to be the borrowers, are questioning the legality of the order dated 27th August, 2014 passed by the Chief Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.4463 of 2014, filed by the third respondent herein, i.e., Asset Reconstruction Company (India) Limited.

2 The contention of the petitioners is that the petitioners were granted financial facilities by the second respondent Federal Bank. The loan account of the petitioners has not been declared as non performing asset. The possession notice has been issued arbitrarily and it is against the Security Interest (Enforcement) Rules, 2002. The second respondent Federal Bank has assigned the debts to the third respondent Asset Reconstruction Company (India) Ltd., without any notice to the petitioners.

3 The third respondent has filed this instant criminal miscellaneous petition under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") to take possession of the secured assets, stating that the loan account has been classified as non performing asset and proper demand notice under Section 13(2) of the SARFAESI Act has been issued and symbolic possession of the secured asset has been taken. Despite that, the petitioners have not taken any steps to settle the dues. The Chief Metropolitan Magistrate, by order dated 27th August, 2014, allowed the petition.

4 Heard the learned counsel for the parties and perused the pleadings and documents appended thereto.

5 The issue as to whether a writ is maintainable against the order passed under Section 14 of the SARFAESI Act by the petitioners / borrowers is no longer res integra. The Supreme Court has clearly laid down that except in case of lessee or tenant, who is in lawful possession, the appeal under Section 17 of the SARFAESI Act is maintainable before the Debt Recovery Tribunal against the order passed under Section 14 of the SARFAESI Act. [See : United Bank of India Vs. Satyawati Tondon

and others[1], Kanaiyalal Lalchand Sachdev and others Vs. State of Maharashtra and others[2], and Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others[3]].

6. A Division Bench of this court in Deccan Chronical Holdings Limited Vs. Canara Bank [W.P.No.13451 of 2015 dated 12th June, 2015], while considering the issue of maintainability of the writ petition against the order passed under Section 14 of the SARFAESI Act at the instance of the borrower, after referring and relying on relevant decisions of the Supreme Court, held as under :

> "14.The ratio deducible from the case of Harshad Govardhan Sondagar (supra) is that no remedy of appeal under Section 17 of the SARFAESI Act is available to the lessee / tenant, who is in lawful possession, to the Debts Recovery Tribunal against the decision of the CMM or the District Magistrate for the reason that the Tribunal is not competent and has no power to restore the possession of the said property to any other person, including lessees, except borrower. However, an appeal at the instance of the borrower or guarantor against the order passed under Section 14 of the SARFAESI Act by the CMM or District Magistrate is maintainable under Section 17 of the SARFAESI Act x x x x x."

7 Accordingly, we are not inclined to entertain this petition in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India at this stage. However, liberty is reserved to the petitioners to take recourse to the appropriate statutory forum, if so advised, under the provisions of law.

8 The writ petition stands, accordingly, dismissed with afore-stated liberty. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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vvk
To

1. The Chief Metropolitan Magistrate,
   Egmore,
   Chennai.

2. The Authorised Officer,
   Federal Bank,
   Voltas International Centre,
   No.52,Armenian Street,
   George Town, Chennai-600 001.

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