IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2015

CORAM:

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

W.P. No.12045 of 2015

T. Ashok Surana ... Petitioner

vs.

State Bank of Bikaner and Jaipur
represented by its Assistant General Manager
Branch at Corporate Bhavan
No.29, Rajaji Salai
Madras 600 001 ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of prohibition, prohibiting the respondent bank from proceeding in any manner in pursuing any recovery measures under SARFAESI Act pursuant to Section 13(4) possession notice issued on 29.01.2010 or under the RDDBFI Act as per Order in O.A. No.67 of 2010 dated 30.06.2011 as primarily barred by limitation under both the Acts, illegal, non est, void and a nullity.

For petitioner : Mr. T. Ashok Surana
Petitioner-in-person

ORDER

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

The petitioner-in-person, being a guarantor. was served with a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the SARFAESI Act”) on 23.09.2009. Thereafter, possession notice under Section 13(4) of the Act was issued on 29.01.2010.

2. According to the petitioner-in-person, the respondent bank has not taken any measures or steps after issuance of the possession notice for the recovery of the amount to the tune of Rs.9,89,088.31 with interest, as mentioned in the notice issued under Section 13(2)

of the SARFAESI Act, for a long period. Thus, the respondent bank be restrained from taking any further action for recovery of money, as the claim being barred by limitation.

3. It is submitted by the petitioner-in-person that the respondent bank, giving up the proceedings under the SARFAESI Act, had taken recourse to the provisions of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the RDDBFI Act") by filing an Original Application being O.A. No.67 of 2010 on the file of the Debts Recovery Tribunal-II at Chennai, for a direction to recover a sum of Rs.11,38,038/-. Thus, an order be issued restraining the respondent bank from taking any action under the provisions of the RDDBFI Act, when he has given up the consequential steps/measures, after issuance of possession notice under Section 13(4) of the SARFAESI Act.

4. In support of his contention, the petitioner-in-person relies on Section 36 of the SARFAESI Act, wherein, it is prescribed that no secured creditor shall be entitled to take all or any of the measures under sub-section (4) of Section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963.

5. The provisions of Section 36 of the SARFAESI Act, prescribes for limitation for taking all or any of the measures under sub-section (4) of Section 13 of the SARFAESI Act after Section 13(2) notice, wherein, the period of limitation prescribed is 60 days. But, it does not disqualify a secured creditor from taking any other measure under other statutory provisions for recovery of the amount.

6. According to the petitioner-in-person, he is still enjoying the fruits of the secured asset and no steps were taken by the respondent bank for recovery of amount, till date. Thus, the limitation period is over and a writ of prohibition be issued, restraining the respondent bank from taking further recourse to any proceedings for recovery of amount.

7. We have heard the petitioner-in-person and we have also examined carefully all the facts of the case.

8. At present, there is no cause of action, whereunder, the petitioner has been asked to either hand over possession of the secured asset or to deposit the outstanding amount payable to the bank under any other proceedings. Thus, at this stage, this is a purely academic question, seeking permanent injunction against the bank from recovery of the outstanding amount.It is a trite law that

an academic question cannot be decided for want of factual foundation.

9. More so, a writ of prohibition is not maintainable in the case on hand. The petitioner-in-person is seeking a writ of prohibition against the respondent-bank, which is neither a subordinate Court nor Tribunal exercising a judicial function. A writ of prohibition is issued primarily to prevent an inferior Court or Tribunal from exceeding its jurisdiction in cases pending before it or acting contrary to the rules of natural justice. It is issued by a superior Court to inferior Courts from usurping a jurisdiction with which it was not legally vested, or to put it differently, to compel inferior Courts to keep within the limits of their jurisdiction. Thus, a writ of prohibition is issued in both cases where there is excess of jurisdiction and where there is absence of jurisdiction (See S. Govind Menon vs. Union of India[1]).

10. On other aspects of the matter about the power of the bank to recover the amount under other proceedings, we are not required to examine the same, at this stage and as such, we are not inclined to go into the filing of Original Application before the Debts Recovery Tribunal under other provisions. The petitioner-in-person is very well a party to the said proceedings and is at liberty to take necessary steps in the said proceedings.

11. Resultantly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cad

To
The Assistant General Manager
State Bank of Bikaner and Jaipur
Branch at Corporate Bhavan
No.29, Rajaji Salai
Madras 600 001

AD(CO)
CA(13/05/2015)

1 AIR 1967 SC 1274