IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2015

CORAM:

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

W.P. No.16942 of 2015 and M.P. No.1 of 2015

1 A. Muthumalai

2 Mrs. Mahalakshmi

3 Dhanemjeyan

4 Bhoobalan

5 Sadananadan

6 Anandhamoorthy ... Petitioners

Vs.

1 The Authorised Officer
CitiFinancial Consumer Finance India Ltd.
No.3, Cathedral Garden Road
Nungambakkam
Chennai 600 034

2 The Authorised Officer
Kotak Mahindra Bank Ltd.
VIII Floor, TVH Agnito Park
Old Mahabalipuram Road
Kandanchavadi
Chennai 600 096 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records pertaining to the impugned order passed by the second respondent on 09.05.2015 under Rule 8(1) Appendix IV is illegal and quash the same and consequently, directing the respondents not imposing for further action taken over the possession from the petitioners and performing the security asset.

For petitioners Mr. G. Ranganathan

ORDER

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

Assailing the legality and the validity of the possession notice dated 09.05.2015 issued under Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002, (for short “the Rules, 2002”), the petitioners have come up with this writ petition.

2 According to the learned counsel for the petitioners, pursuant to the demand notice issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the SARFAESI Act”), the petitioners have preferred a representation under Section 13(3-A) of the SARFAESI Act, within a period of fifteen days. Without taking a decision on the said representation, the second respondent-bank has proceeded further by taking symbolic possession under Section 13(4) of the SARFAESI Act and thereafter, the instant notice under Rule 8 (1) of the Rules, 2002, has been issued. Thus, the said notice is vitiated and liable to be quashed.

3 We have examined the facts on the basis of submissions made by the learned counsel for the petitioners. Notice under Section 13 (4) of the SARFAESI Act is required to be issued for the purpose of taking symbolic possession. Thereafter, possession notice was issued under Rule 8(1) of the Rules, 2002, preventing the borrower from creating any encumbrance or third party right. It is also informed to the public at large not to deal with the property after the possession notice, under the aforestated provision, has been issued. As such, at this stage, no cause of action has arisen. If the property in question is brought for sale by way of auction or otherwise, the petitioners would be entitled to 30 days notice to place their representation by clearing the outstanding loan amount. That stage has not yet come. If the petitioners are aggrieved by any measure taken under Section 13(4) of the SARFAESI Act, leading to issuance of the possession notice (supra), they may take recourse to the Debt Recovery Tribunal under Section 17 of the SARFAESI Act. Thus, at this stage, we are not inclined to entertain this writ petition.

4 As a sequel, the writ petition is dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

cad

To

1 The Authorised Officer
CitiFinancial Consumer Finance India Ltd.
No.3, Cathedral Garden Road
Nungambakkam
Chennai 600 034

2 The Authorised Officer
Kotak Mahindra Bank Ltd., VIII Floor
TVH Agnito Park
Old Mahabalipuram Road
Kandanchavadi
Chennai 600 096.

1 cc to Mr.G. Ranganathan, Advocate Sr.No.29481

W.P. No.16942 of 2015

pmk.26.6.2015