IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-01-2015

CORAM:

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

W.P.No.33868 of 2014
and M.P.Nos.1 and 2 of 2014

S.Lalitha
W/o.K.Vijaya Raghavan No.57 Gnanapragasam Street Karaikal-609 602. Petitioner

Vs

1 District Collector
Cum District Magistrate Karaikal District
Karaikal.

2 ICICI Home Finance Company
Ltd. Lakshmi Arade 2nd Floor A-10 11th Cross Thillai Nagar Main Road Trichy-620 018 Rep. by its Authorised Signatory

3 M/s.Asset Reconstruction
Company (India) Ltd. No.715C 7th Floor
Spencer Plaza Phase II No.769 Anna Salai
Chennai-2 Rep. by its Authorised Officer. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records pertaining to the order dated 27.10.2014 made in No.4513/CK/ A3/2014 in C.M.P.No.02 of 2014 on the file of the District Collector cum District Magistrate Karaikal District Karaikal the first respondent herein and quash the same.

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For appellants Mr. R. Sugumaran
For respondents Mr. P.S. Shivashanmugha Sundaram, SplG.P. For R1
Mr. V. Jayachandran for R3

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

Challenge in this petition is to the order dated 27-10-2014 passed by the District Collector cum District Magistrate in exercise

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of his power under provisions of Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act 2002").

2. The facts as projected by the petitioner are that the petitioner has obtained the housing loan with the Trichy Branch of the ICICI Home Finance Company Limited on 08-07-2003 to the extent of Rs.6,85,000/-(Rupees Six Lakhs Eighty five thousand only) payable in 204 months in equal instalments. The petitioner paid a total sum of Rs.2,31,072/-(Rupees Two lakhs thirty one thousand seventy two only) till 2007. The petitioner was served with a notice under Section 13 (2) of the Act 2002, calling upon her to deposit the balance amount of Rs.12,04,964.85/-(Rupees Twelve lakhs four thousand nine hundred sixty four and eighty five paise only)with interest. It appears that no balance amount was deposited and as a sequel, the petitioner was served with a possession notice.

3. The petitioner was offered with an opportunity for one time settlement vide communication dated 28-04-2011. But the same was not complied with and as such, the petitioner was served with a sale notice on 20-12-2012, informing her that the secured asset shall be put into auction after a period of 30 days from the date of the notice, under provisions of Rule 8 Sub-rule 6 of the Security Interest (Enforcement) Rules.

4. The petitioner has not taken any steps to make good the default on her part, to make payment of the balance amount. Consequently, on the application made by the secured creditor, the impugned order was passed by the District Collector-cum-District Magistrate directing the Deputy Collector (Revenue), Karaikal as Nodal Officer to take possession of the property and to handover the same to the Officer of the Bank.

5. The petitioner questions the legality of the said order on the ground that the District Magistrate delegated the powers to the Deputy Collector to take over possession which is contrary to the provisions of law. Secondly, the District Magistrate ought to have exercised a greater restraint in deciding the matter. In fact, the petitioner has not made any substantial point indicating any violation of provisions of law.

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6. However, the Division Bench, on 23-12-2014, considering the offer of the petitioner, granted one more opportunity to deposit a sum of Rs.5,00,000/-(Rupees five lakhs only) with the third respondent within a period of two weeks from 23-12-2014. The petitioner had failed to do the needful.

7. We have considered the pleadings and entire facts of the case. In the case on hand, the petitioner was given opportunity right from the day she received the notice under Section 13(2) of the

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Act 2002, for making the payment. The petitioner was thereafter, further granted an opportunity for settlement of the loan by communication dated 28-04-2011, and the petitioner had full information with regard to the auction of the property and also about taking cognizance of the matter by the District Magistrate on an application made by the secured creditor. The petitioner has not taken any steps even to satisfy by depositing at least a part of the payment. The contention that the direction to the Deputy Collector to take over possession of the property in question is contrary to the provisions of law, is necessarily to be rejected as the process of securing possession of the property in question, has to be done either by an authority or Advocate Commissioner and as such, there is no illegality. In respect of the second contention, i.e., the District Magistrate exercising greater restraint, there is no material to prove that the District Magistrate has exceeded his jurisdiction.

8. At this stage, no case has been made out to show that there is any infringement of any statutory provisions of law and as such, we do not find any merit in the writ petition. Accordingly, the writ petition is dismissed. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar
Dated:21.1.15

True Copy

Sub Assistant Registrar

To

1 District Collector
Cum District Magistrate Karaikal District
Karaikal.

+1 cc to Mr.A.V.Arun, Advocate,SR.1024.

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krd 28/1

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