IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2015

DATE OF DECISION : 03.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.P.No.19176 of 2015

T.Ashok Surana ...Petitioner in Person

Vs

Small Industries Development Bank of India,
rep by its Authorised Officer,
Overseas Towers,
756-L, Anna Salai (Opp TVS)
Chennai-600 002. ...Respondent

The Writ Petition is preferred under Article 226 of the Constitution of India praying for a writ of declaration declaring that the action of the respondent bank in pursuing either simultaneously under SARFAESI and RDDB Act or singly under RDDB Act (Recovery of Debts Due to Banks) in OA SR No.5304 of 2014 by withdrawing action under SARFAESI Act, is illegal, void, a nullity and their rights stand extinguished from pursuing any further recover measure in any manner.

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

ORDER

SATISH K. AGNIHOTRI, J.

The petitioner is stated to be a Managing Director of the borrowing company, namely, M/s.Tetrahedron Limited and also the guarantor of the loan advanced by the respondent Bank.

2 Indisputably, the company fell in default and a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (For short "SARFAESI Act") was served on the company as well as on the petitioner, who is appearing in person, on 21.4.2011. According to the petitioner, no possession notice, as contemplated under Section 13(4) of the SARFAESI Act has been issued. In the meantime, the respondent Bank has informed that an original application, being OA SR No.5304/2014 under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (For short "RDDBFI Act") is filed on the file of the Debts Recovery Tribunal-2, Chennai.

3 Mr.Ashok Surana, the petitioner-in-person, submits that the bank has given up the proceedings under the SARFAESI Act and as such, the bank may be restrained from withdrawal of action. Mr.Ashok Surana further made a detailed submission that the action of the respondent Bank is violative of Article 14 of the Constitution of India. The provisions of Section 13(1) of the SARFAESI Act bars the secured creditor to seek intervention of the court or tribunal while enforcing the security interest in any manner. An unusual contention has been raised that since no sale of the secured asset has taken place, the respondent bank is not entitled to file the original application under the statutory provisions, as Section 13(10) of the SARFAESI Act provides for recovery of balance amount. Issuance of Section 13(2) notice is also violative of Section 10, Order 2 Rule II of the Code of Civil Procedure read with Section 52 of the Transfer of Property Act.

4 Relying on a decision of the Supreme Court in Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar[1], it is submitted that in the greater public interest, this court is required to entertain this petition to lay down the law, so that borrowers may not be harassed and troubled by the bank without taking recourse to proper provisions of law.

5 On perusal of the pleadings and documents appended thereto, we are unable to identify any cause of action, which is available for filing the instant writ petition. If the petitioner is aggrieved under the action of the respondent bank by filing an application under the provisions of RDDBFI Act without taking recourse to the provisions of the SARFAESI Act, the petitioner is fully competent to appear before the Tribunal and take all objections, as available under the provisions of law, objecting the maintainability of the application. The petitioner seeks adjudication by this court on an issue, which is neither available on facts as on date, and as such,

1 (2008) 9 SCC 54

we have no hesitation in dismissing the writ petition, as not maintainable.

6 Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vvk

To

The Authorised Officer,
Small Industries Development Bank of India,
Overseas Towers,
756-L, Anna Salai (Opp TVS)
Chennai-600 002.

W.P.No.19176 of 2015

MSM (CO)
PSI (09.07.2015)