IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE DR.JUSTICE P. DEVADASS

W.P. No.36107 of 2015 and M.P. No.1 of 2015

1 CMS Educational Trust
represented by its Chairman
C. Muthusamy
S/o Chinnsamy
CMS Nagar
Ernapuram, Namakkal 637 003
2 C. Muthusamy
3 M. Shanthi ... Petitioners

vs.

The Chief Manager/Authorised Officer
Bank of Baroda
Namakkal Branch
107, Paramathy Road
Namakkal 637 001 ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records and quash the possession notice dated 28.05.2015 issued under Section 13(4) of the SARFAESI Act, 2002 by the respondent bank.

For petitioners: Mr. S.V. Jayaraman, Sr. Counsel
for M/s. T. Dhanasekaran

ORDER
(delivered by SATISH K. AGNIHOTRI, J.)

This writ petition is filed by the borrower, assailing the justifiability of the notice dated 28 May 2015 issued by the respondent bank under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the SARFAESI Act”), wherein, it is stated that the respondent bank has taken symbolic possession of the secured assets.

2 The petitioner's main ground of attack is that before issuing the impugned notice under Section 13(4) of the SARFAESI Act, its representation made under Section 13(3-A), ibid, has not been considered and as such, notwithstanding the

availability of appellate remedy, the petitioner is entitled to maintain the writ petition, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

3 The question as to whether a writ petition is maintainable against a possession notice issued under Section 13 (4) of the SARFAESI Act is no longer res integra.

4 The Supreme Court, in United Bank of India Vs. Satyawati Tondon and others[1], referring to with approval, various judicial pronouncements made in Modern Industries Vs. Sail[2], Raj Kumar Shivhare Vs. Directorate of Enforcement[3], Industrial Investment Bank of India Ltd. Vs. Biswanath Jhunjhunwala[4], City and Industrial Development Corpn. Vs. Dosu Aardeshir Bhiwandiwala[5], CCT Vs. Indian Explosives Ltd.[6], Mardia Chemicals Ltd. Vs. Union of India[7], Harbanslal Sahnia Vs. Indian Oil Corpn. Ltd.[8], Punjab National Bank Vs. O.C.Krishnan[9], Whirlpool Corpn. Vs. Registrar of Trade Marks[10], SBI Vs. Indexport Registered[11], CCE Vs. Dunlop India Ltd.[12], Titaghur Paper Mills Co. Ltd. Vs. State of Orissa[13], Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad[14], Bank of Bihar Ltd. Vs. Dr.Damodar Prasad[15], Thansingh Nathmal Vs. Supdt. of Taxes[16], Secy. Of State Vs. Mask & Co.[17], Attorney-General of Trinidad and Tobago Vs. Gordon Grant & Co. Ltd.[18] and Neville Vs. London Express Newspapers Ltd.[19], observed as under :

> "12. Section 13 of the SARFAESI Act contains detailed mechanism for enforcement of security interest. Sub-section (1) thereof lays down that notwithstanding anything contained in Sections 69 or 69-A of the Transfer of Property Act, any

1 (2010) 8 SCC 110
2 (2010) 5 SCC 44
3 (2010) 4 SCC 772
4 (2009) 9 SCC 478
5 (2009) 1 SCC 168
6 (2008) 3 SCC 688
7 (2004) 4 SCC 311
8 (2003) 2 SCC 107.
9 (2001) 6 SCC 569
10 (1998) 8 SCC 1
11 (1992) 3 SCC 159
12 (1985) 1 SCC 260.
13 (1983) 2 SCC 433
14 AIR 1969 SC 556
15 AIR 1969 SC 297
16 AIR 1964 SC 1419
17 (1939-40) 67 IA 222.
18 1935 AC 532 (PC)
19 1919 AC 368 ; (1918-19) All ER Rep 61 (HL)

security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act. Sub-section (2) of Section 13 enumerates first of many steps needed to be taken by the secured creditor for enforcement of security interest. This sub-section provides that if a borrower, who is under a liability to a secured creditor, makes any default in repayment of secured debt and his account in respect of such debt is classified as non-performing asset, then the secured creditor may require the borrower by notice in writing to discharge his liabilities within sixty days from the date of the notice with an indication that if he fails to do so, the secured creditor shall be entitled to exercise all or any of its rights in terms of Section 13(4).

13. Sub-section (3) of Section 13 lays down that notice issued under Section 13(2) shall contain details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the bank or financial institution. Sub-section (3-A) of Section 13 lays down that the borrower may make a representation in response to the notice issued under Section 13 (2) and challenge the classification of his account as non-performing asset as also the quantum of amount specified in the notice. If the bank or financial institution comes to the conclusion that the representation/objection of the borrower is not acceptable, then reasons for non-acceptance are required to be communicated within one week."

5 Consequently, taking a strong view of the adjudication by the High Court, the Supreme Court observed as under :

"55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

6 In view of the foregoing, we are not inclined to entertain this writ petition. However, we reserve liberty to the petitioner to raise all grounds, including, non-consideration of its representation under Section 13(3-A) of the SARFAESI Act and all other legally permissible grounds, before the Debts Recovery Tribunal, if so advised.

Resultantly, the writ petition stands dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cad

To

The Chief Manager/Authorised Officer
Bank of Baroda
Namakkal Branch
107, Paramathy Road
Namakkal 637 001

W.P. No.36107 of 2015

BVR(CO)
Eu 26.11.15