IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI

and

THE HON'BLE DR.JUSTICE P. DEVADASS

W.P.No.39117 of 2015 and M.P.No.1 of 2015

1. A. Anthuvan Duraisamy
2. A. Kolandai Theresa ..Petitioners

vs.

L.I.C. Housing Financing Limited
represented by its Authorised Officer
Thristar Towers II Floor
657 Avinashi Road
Coimbatore 641 037 ..Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records relating to the proceedings of the respondent, culminating in its demand notice dated 25.04.2015 reiterating the earlier demand notice dated 27.11.2014 in respect of the Loan Account No.19001310688 and quash the same

For petitioners : Mr. N. Rajan

ORDER

(delivered by SATISH K. AGNIHOTRI, J.)

Impugning the correctness of the notice dated 25 April 2015 issued by the respondent-financial institution 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 come up with the instant writ petition.

2. The petitioners are husband and wife respectively. According to them, their daughter by name Anthuvan Jasmine Priya availed a sum of Rs.70.50 lakhs in 2013 from the respondent-financial institution as housing loan repayable in 180 monthly instalments. However, she breathed last on 19 September 2014. As such, the first petitioner/father is her sole legal heir and the second petitioner/mother has applied for legal heirship certificate and is yet to get the same. While so, the impugned demand notice under

Section 13(2) of the SARFAESI Act has been issued by the respondent-financial institution, which is not maintainable, inasmuch as the respondent-financial institution ought to have waited till the second petitioner/mother receives legal heirship certificate.

3. Be that as it may, there is a complete effective mechanism under the provisions of the SARFAESI Act. In the event, the demand notice is served, the borrower/guarantor is expected to ensure payment of balance defaulted amount within a period of 60 days. If there is other objection, the borrower/guarantor is further given an opportunity to make a representation/objection.

4. It appears that in the case on hand, neither of the above has been done. It is a well settled principle of law that unless a case is made out alleging infringement of legal/statutory or any other right, the Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. Thus, we decline to interfere with the impugned demand notice. However, we reserve liberty to the petitioner to make a representation within a period of one week under the provisions of Section 13(3-A) of the SARFAESI Act, if so advised. In the event, a representation is made by the petitioner, the respondent-financial institution has to take a decision on such representation before proceeding further.

The writ petition stands disposed of with the above observations. No costs. Connected Miscellaneous Petition is closed.
Cad

Sd/-
Assistant Registrar (IV)

/True Copy/

Sub-Assistant Registrar

To

The L.I.C.Housing Financing Limited,
Represented by its Authorised Officer,
Thristar Towers II Floor,
NO.657 Avinashi Road,
Coimbatore - 641 037

+1 C.C. To MR.N.Rajan, Advocate in SR.NO.66871

W.P. No.39117 of 2015

SV(CO)
sd : 23/12/2015