IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2015

C O R A M

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

W.P. No.12106 of 2013
and
M.P. No.1 of 2013

P.V.Rajan ... Petitioner

Vs

1. Housing and Urban Development Corporation Limited,
   represented by its Authorised Officer,
   CMDA Tower II, 5th Floor,
   Gandhi Irwin Road, Egmore,
   Chennai-600 008.

2. Pondicherry Housing Board,
   represented by its Secretary,
   Anna Nagar,
   Puducherry.

3. The District Collector-cum-District Magistrate,
   Puducherry.

4. Kiliyanur Primary Agricultural Co-operative Bank,
   Kiliyanur-604 102,
   Vanur Taluk.
   (R-4 impleded vide order dated 23.9.2013
   in M.P.No.2 of 2013) ... Respondents

This Writ Petition filed under Article 226 of the Constitution of India seeking for the issuance of a writ of certiorari to call for the records on the file of the third respondent, dated 10.04.2013 bearing Ref.No.9036/DRDM/C.3/SARFAESI/2011 and of the first respondent dated 8.10.2010 bearing Ref.No.HUDCO/CHRO/RFU/HL-000330/2010-469 and quash the same.

For petitioner : Mr.D.Bharathachakravarthy
for M/s.Sai Bharath and Ilan

For Respondents : Mr.S.Mohan for R-1
Mr.T.P.Manoharan for R-2
Mrs.N.Mala, AGP(Puducherry) for R-3
Mr.R.Dhanasekar for R-4

ORDER

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

Indisputably, the petitioner is the borrower of the loan from the first respondent. The first respondent, following due process as required under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act"), issued demand notice under Section 13(2) of the SARFAESI Act and thereafter possession notice under Section 13(4) ibid read with Rule 9 of the Security Interest (Enforcement) Rules, 2002. Consequent thereupon, the first respondent approached the District Collector-cum-District Magistrate, Puducherrry under the provisions of Section 14 of the SARFAESI Act, for taking over possession of the secured asset, i.e., the property in question.

2. The Collector-cum-District Magistrate, by the impugned order dated 10th April, 2013, directed the Deputy Collector (Revenue)-cum-Sub Divisional Magistrate (North), Puducherry to take possession of the schedule mentioned property and hand over the same to the Authorised Officer, HUDCO, Puducherry.

3. Feeling aggrieved, the petitioner is before us, questioning the order on several grounds that the property in question was taken from the second respondent. A suit filed by the first respondent was dismissed for default. After substantial amount has been paid, no possession order could have been passed.

4. Heard the learned counsel appearing for the parties and perused the pleadings and documents appended thereto.

5. We are not inclined to go into the dispute on merit. The issue as to whether a writ is maintainable against the order passed under Section 14 of the SARFAESI Act by the petitioner / borrower is no longer res integra. The Supreme Court has clearly laid down that except in case of lessee or tenant, who is in lawful possession, the appeal under Section 17 of the SARFAESI Act is maintainable before the Debt Recovery Tribunal against the order passed under Section 14 of the SARFAESI Act. [See : United Bank of India Vs. Satyawati Tondon

and others[1], Kanaiyalal Lalchand Sachdev and others Vs. State of Maharashtra and others[2], and Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others[3]].

6. A Division Bench of this court in Deccan Chronical Holdings Limited Vs. Canara Bank [W.P.No.13451 of 2015 dated 12th June, 2015], while considering the issue of maintainability of the writ petition against the order passed under Section 14 of the SARFAESI Act at the instance of the borrower, after referring and relying on relevant decisions of the Supreme Court, held as under :

> "14.The ratio deducible from the case of Harshad Govardhan Sondagar (supra) is that no remedy of appeal under Section 17 of the SARFAESI Act is available to the lessee / tenant, who is in lawful possession, to the Debts Recovery Tribunal against the decision of the CMM or the District Magistrate for the reason that the Tribunal is not competent and has no power to restore the possession of the said property to any other person, including lessees, except borrower. However, an appeal at the instance of the borrower or guarantor against the order passed under Section 14 of the SARFAESI Act by the CMM or District Magistrate is maintainable under Section 17 of the SARFAESI Act x x x x x."

7. Accordingly, we are not inclined to entertain this petition in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India at this stage. However, liberty is reserved to the petitioner to take recourse to the appropriate statutory forum, if so advised, under the provisions of law.

8. The writ petition stands, accordingly, dismissed with afore-stated liberty. No costs. Consequently, connected miscellaneous petition is also dismissed.

-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Authorised Officer,
Housing and Urban Development Corporation Limited,
CMDA Tower II, 5th Floor,
Gandhi Irwin Road, Egmore,
Chennai-600 008.

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1 (2010) 8 SCC 110
2 (2011) 2 SCC 782
3 (2014) 6 SCC 1.

2. The Secretary,
   Pondicherry Housing Board,
   Anna Nagar,
   Puducherry.

3. The District Collector-cum-District Magistrate,
   Puducherry.

4. Kiliyanur Primary Agricultural Co-operative Bank,
   Kiliyanur-604 102,
   Vanur Taluk.

+1 cc to M/s.Sai Bharath & glar,Advocate (37192)

+1 cc to Sr.Government pleader cum senior publice prosecuter for puducherry, High court bldgs, mds(37000)
+1cc to Mr. T.P. Manoharam, Advocate (36751)
+1cc to Mr.S.Pandurangan, Advocate (36760)

svi(CO)
cp 03.08.15

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