

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-12-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE DR.JUSTICE P.DEVADOSS

WRIT PETITION No.40587 of 2015

and

M.P.Nos.1 and 2 of 2015

K.Srihari Balachander
Sole Proprietor of
Sri Lakshmi Narayana Enterprises
Flat No.A3, K.G.R. Mahadev Apartment
Vempuli Amman Koil Street
Virugambakkam, Chennai 600 092 .. Petitioner

vs

State Bank of Travancore
Represented by its Authorized Officer
Chennai Main Branch
United India Building
Esplanade, Chennai 600 108 .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the respondent comprised in their demand notice dated 15.6.2015, the consequential possession notice dated 7.9.2015 and the sale notice dated 24.11.2015 under Ref.No.DGM/CHE/C & 1/SLNE/472 and 473 and quashing the same.

For Petitioner : Mr.S.Ramesh

For Respondent : Mr.Om Prakash
for M/s.Ramalingam Associates

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner would state that he is engaged in the business of supply of medicines and pharmaceutical items and during November, 2013, he has approached the respondent for availing cash credit facility to the tune of Rs.3 crores and accordingly, the loan was availed after executing necessary security documents.

3.It is further stated by the petitioner that the respondent has issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) claiming a sum of Rs.3,40,75,858/- as on 30.8.2014, and further informed him that the asset of the petitioner has been classified as a Non-Performing Asset (NPA).

4.It is the case of the petitioner that the said statutory notice did not contain any material details as to when the account became substandard and Non-Performing Asset and the notice under Section 13(2) was followed by a possession notice dated 31.1.2015, and it was pointed out to the respondent that there was a serious error crept in in wrongly debiting a sum of Rs.19,41,687.54 and when the said mistake was realised, necessary corrections were also carried out in the respondent's books of account.

5.The petitioner would further state that to his shock and surprise, the respondent has issued a certificate dated 21.2.2015, declaring the asset as a Substandard Asset and after the receipt of the same, the petitioner issued a legal notice stating that the earlier proceedings deemed to have been lapsed and called upon the respondent not to resort to any unwanted phone calls threatening him, and the respondent once again, issued two notices dated 15.6.2015, under Section 13(2) of SARFAESI Act, stating that a sum of Rs.3,18,32,135/- is due and payable by the petitioner and he sent a detailed reply under Section 13(3)(A) of SARFAESI Act and it was rejected by the respondent vide reply dated 27.7.2015.

6.Now, the petitioner came forward to file this writ petition stating that the notices issued by the respondent under Sections 13(2) and 13(4) of SARFAESI Act, are per-se without jurisdiction and also against the provisions of SARFAESI Act.

7.The learned Counsel appearing for the petitioner, has drawn the attention of this Court to the affidavit filed in support of this writ petition, as well as the typed-set of documents and would submit that in the light of overwhelming materials, the impugned notices issued by the respondent, are per se unsustainable and prays for appropriate orders.

8.The Court heard Mr.Om Prakash, the learned Counsel, who accepted notice on behalf of the respondent, also.

9.This Court considered the rival submissions and also perused the materials placed before it.

10.In the considered opinion of the Court, in view of the effective alternate remedy available under Section 17(1) of the SARFAESI Act, the writ petition is not maintainable.

11.In the result, the writ petition is disposed of and the petitioner is at liberty to file an appeal under Section 17 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, within a period of two weeks from the date of receipt of a copy of this order and the Appellate Authority on receipt of the same, shall number it if the papers are otherwise in order, without putting the issue on limitation and dispose of the appeal in accordance with law, as expeditiously as possible, and not later than six weeks thereafter and communicate the decision taken, to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

nsv

To:

Authorised Officer,
State Bank of Travancore
Chennai Main Branch
United India Building

Esplanade, Chennai 600 108

+1 cc to M/S.S.Ramesh Advocate sr.69559

W.P.No.40587 of 2015

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