

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.03.2015

CORAM:

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

W.P. No. 5451 of 2015
and
M.P.Nos.1 and 2 of 2015

Shri Someshwara Spun Pvt. Ltd.,
rep. By its Managing Director
Mr. Mukesh Mehra,
Bogi Gounder Dasaripatti Village,
Kural Kuttai Road,
Udumelpet,
Tirupur District.

... Petitioner

Vs.

The Authorised Officer,
State Bank of India,
Sterling Centre Branch,
Dr. Annie Besant Road,
Worli Mumbai 400 018.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus calling for records of the respondent comprised in the Notice dated 12.02.2015 bearing Ref.No. SSSPL/2014-15/545, quash the same as arbitrary, illegal, unconstitutional and consequently forbear the respondent from taking possession of the petitioner's property comprised in Survey No.23/3A2, 23/3C, 23/3A and 23/3D in Bog Gounder Dasaripatti Village, Udumalpet, totally measuring 9.10 Acres together with the plant, machinery, stock and furniture without following the due process of law as set out under the SARFAESI Act.

For petitioners : Mr. AR.L.Sundaresan
Sr. Counsel
for
M/s. S. Ramesh

For respondents : Mr. N. Sivabalan
for
Mr. S. Sethuraman

ORDER

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

Aggrieved by the notice under Section 13(4) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), dated 12.2.2015, the petitioner has come up with the instant writ petition questioning the penultimate paragraph of the notice whereunder, it was directed to deliver possession of the secured assets.

2. Relying on the ratio laid down by the Supreme Court in ICICI Bank Ltd., - Vs. - Prakash Kaur and Others¹, the learned senior counsel appearing for the petitioner submits that there is a complete mechanism for taking over possession under the provisions of SARFAESI Act. Under Section 13 (4) of the Act, a symbolic possession can be taken and thereafter, under Section 14 of the SARFAESI Act, the secured creditor i.e. financial institution can approach the competent authority as prescribed under Section 14 of the SARFAESI Act to take the assistance for securing the possession of the secured assets.

3. Pursuant to the notice, the Bank has filed an affidavit indicating in paragraphs 4 and 5, as under:-

" (4) I submit as no amount was forthcoming from the petitioner, the bank issued a letter dated 12.2.2015 calling upon the petitioner, to hand over the possession of the secured assets, failing which, the Bank would entrust the matter to private agency who would take possession with the help of police (in other words by filing petition under Sec.14 of the SARFAESI Act before Executive Magistrate and seek police help). The petitioner mistook the same as if the Bank is going to take forcible possession and issued lawyer notice to the Bank stating that they can take possession only under Sec.14 of the SARFAESI Act and not otherwise. Before the Bank could reply the said notice and clarify the position,

¹ (2007)2 SCC 711)

the petitioner rushed to this Honourable Court challenging the letter dated 12.02.2015 on the ground that the bank has threatened to take possession forcibly.

(5) I submit that we are initiating action under Section 14 of the SARFAESI Act. As required by the petitioner and take possession by obtaining suitable orders from the executive Magistrate as the petitioner is not willing to hand over the possession in a peaceful manner."

4. Thus, in view of the foregoing, since the objectionable portion in the impugned notice under Section 13(4) of the SARFAESI Act stands withdrawn by the respondent-Bank, no further adjudication is required at this stage. However, it is made clear that the respondent-Bank is under obligation to adhere to the statutory mechanism, as provided under the provisions of SARFAESI Act. Accordingly, this writ petition stands disposed of. Consequently connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ra

To

The Authorised Officer,
State Bank of India,
Sterling Centre Branch,
Dr. Annie Besant Road,
Worli Mumbai 400 018.

+1cc to M/s.S.Ramesh, Advocate, S.R.No.13491

+2cc's to M/s.S.Sethuraman, Advocate, S.R.No.11495 & 13410

RSK (CO)
CA(19/03/2015)

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