



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.07.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.P.(MD).No.16074 of 2014
and
M.P.(MD).No.1 of 2014

M/s.WIN FAB,
Represented by its Partner
Mr.K.A.Dhandayuthapani
No.2/349-2, First Cross,
Sree Jayam Nagar
(Prem Nagar East),
Kathaparai, Karur-639 006.

.. Petitioner

versus

1.The Authorised Officer,
Axis Bank Ltd.,
Southern Recovery Cell,
No.192, 2nd Floor,
Karumuthu Nilayam,
Anna Salai, Chennai-600 002.

2.The Branch Manager,
Axis Bank Ltd.,
Karur Branch
V.P.Towers, Kovai Raod,
Karur.

3.The District Magistrate and District Collector,
Collectorate,
Karur,
Karur District.

4.The Revenue Divisional Officer,
Karur,
Karur District.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the proceedings of the 3rd respondent in reference No.Rc.D2/5279/2014, Dated 04.09.2014 and quash the same.

For Petitioner

:Mr.V.Veerapandian for
M/s.Vast Law Associates

:Mr.R.Pandivel for R1 and R2
Mr.N.Manoharan for R3
Special Government Pleader



ORDER

(Order of the Court was made by S.MANIKUMAR ,J.)

Impugned order of the District Magistrate/District Collector, Karur District, passed under Section 14 of the SARFAESI Act, reads as follows:-

"The Authorized officer of Axis Bank, Karur Branch has submitted a petition u/s 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 praying for suitable orders/directions to the Superintendent of Police, Karur and to render assistance to the petitioner/Axis Bank, Karur Branch to take possession of the following secured assets and mortgaged properties as per the provisions of the Sec.14 of the said Act 2002, in order to realize the loan Rs.1,69,14,041.82/- (Rupees One Crore sixty nine Lakhs fourteen thousand and forty one and paise eighty two only) amount due from the borrower namely M/s.Win Fab represented by its partners Mr.K.A.Dhandayuthapani, Mr.K.A.Saravanan, Mrs.S.PriyaSaravanan, Mr.K.A.Anghamuthu and the Guarantor Mr.V.Shanmugam of Karur District.

2. Hence I hereby authorize the Sub-Divisional Magistrate and Revenue Divisional Officer, Karur to take possession of the properties as mentioned in the affidavit enclosed with reference to powers mentioned under Section 14 of SARFAESI Act and hand over the assets to the Authorised Officer, Axis Bank, Karur under proper acknowledgment.

Encl:Affidavit of Authorized Officer.

Sd/-S.Jayandhi,
District Collector and
District Magistrate, Karur.

2. Though Mr.V.Veerapandian, learned counsel appearing for the petitioner/borrower, placing reliance on the decision of the Hon'ble Apex Court in Harshad Govardhan Sondagar V. International Assets Reconstruction Co., Ltd. reported in (2014) 6 SCC, submitted that the District Magistrate/District Collector, Karur, ought to have given notice to the petitioner/borrower before taking possession, we are not inclined to accept the said contention for the reason that decision relied on by the petitioner relates to a case of a tenant, where a lease created prior to mortgage which created the secured assets. Prior notice is not contemplated under Section 14 of the Securitization and Reconstruction of the Financial assets and Enforcement of Security



3. Section 14 reads as follows:-

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset

(1) Where the possession of any secured assets is

required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

4. Only under Section 13(4) notice is contemplated to the borrower. The abovesaid judgment is not applicable to the facts and circumstances of the present case. The only ground urged by the petitioner clearly fails and the impugned order is sustained. The writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/
ASSISTANT REGISTRAR (T&P)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

jikr

To

1.The District Magistrate and District Collector,
Collectorate,
Karur, Karur District.

2.The Revenue Divisional Officer,
Karur, Karur District.

+ 1 CC to R. Pandivel, ADV SR.No.36674
+ 1 CC to Vasi Law Associates SR.No.36953
+ 1 CC to Spl. Govt.Pleader SR.No.37103

W.P. (MD) .No.16074 of 2014
07.07.2015