BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **06.08.2013**

CORAM:

THE HONOURABLE MR.JUSTICE A.ARUMUGHASWAMY

CRL.R.C.(MD)Nos.261 of 2013 and 463 of 2012

In Crl.R.C.No.261 of 2013:

Union Bank of India,
NO.905, 17/18,Thai Complex,
Thenkasi Road,Rajapalayam,
Virudhunagar District,
rep. by its
Authorized Officer : Petitioner/Petitioner

Vs.

1. M/s Vishnu Fabrics Private Limited,
Rukmani Gardens,Madavar Vilagam,
Srivilliputhur,
Virudhunagar District-626 125 : Respondent/Respondent

2.N.Ramasubramanian
S/o K.S.Narayana Raja
rep. by is Power of Attorney
Mr.K.N.Venkateshwara Raja

3.K.N.Venkateshwara Raja :2nd and 3rd Respondents
(RR2 & R3 ARE impleaded as per the order of this Hon ble Court dated 06.08.2013 and made in MP(MD)No.1 of 2013 in Crl.Rc.261of 2013 and 463 of 2012.

In Crl.R.C.No.463 of 2012:

Union Bank of India,
NO.905, 17/18,Thai Complex,
Thenkasi Road,Rajapalayam,
Virudhunagar District,
rep. by its
Authorized Officer : Petitioner/Petitioner

Vs.

1. M/s Vishnu Fabrics Private Limited,
Rukmani Gardens,
Madavar Vilagam,
Srivilliputhur,
Virudhunagar District-626 125
represented by its Directors

1. P.D.Ramasubramania Raja
2. Mrs.Rukmani D.K.Raja @ Rukmani
3. Late P.D.Sundar Raja
(represented by his legal heirs)
a) Mrs.S.Nandhini

b) Minor S.Arjun Dharma Krishna Raja
(through his mother and natural
guardian S.Nandhini)

2. P.D.Ramasubramania Raja

3. Mrs.Rukmani D.K.Raja @ Rukmani

4. Late P.D.Sundar Raja
(represented by his legal heirs)

a) Mrs.S.Nandhini
b) Minor S.Arjun Dharma Krishna Raja
(through his mother and natural
guardian S.Nandhini) :Respondents/Respondents

5.N.Ramasubramanian
S/o K.S.Narayana Raja
rep. by is Power of Attorney
Mr.K.N.Venkateshwara Raja

6.K.N.Venkateshwara Raja :5th and 6th Respondents
Respondent 5 and 6 are impleaded as per order dt 06.08.2013 made in MP Nos.1 and 1 of 2013.

PRAYER in Crl.R.C.No.261/13: Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C., to set aside the order passed by the learned District Magistrate-cum-District Collector Virudhunagar District dated 31.05.2011 in K.Dis.E3/6431/11.

PRAYER in Crl.R.C.No.463 of 2012: Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C., to set aside the order passed by the learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur in Crl.M.P.No.1849 of 2011 dated 13.09.2012.

In Crl.R.C.No.463/12:
For Petitioner :Mr.N.Dililp Kumar
For R1 to R3 :Mr.A.Sivaji
For R4 :Mr.M.S.Balasubramaniya Iyar
For R5 and R6 :Mr.R.Gowrisankar

In Crl.R.C.No.261/13:
For Petitioner : Mr.N.Dililp Kumar
For R2 and R3 :Mr.R.Gowrisankar

C O M M O N O R D E R

The Criminal Revision Petition in Crl.R.C. No.463 of 2012 is preferred by the petitioner/Bank against the order passed by the learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur in Crl.M.P.No.1849 of 2011 dated 13.09.2011.The Criminal Revision Petition in Crl.R.C.No.261 of 2013 is preferred by the petitioner/Bank against the order passed by the by the learned District Magistrate - cum - District Collector, Virudhunagar District dated 31.05.2011 in K.Dis.E3/ 6431/11.

2. The brief facts of the case are as follows:

i) The debt amount is approximately Rs.3,63,95,875.43/-. On 26.10.2006 and 28.10.2006, demand notice has been issued under Section 13 (2) of the SARFAESI Act with acknowledge card. On 06.12.2008, one Sundar

Raja who is the fourth respondent in Crl.R.C.No.463 of 2012 died. On 15.07.2009, symbolic possession notice has been ordered and on the same day it is published in the newspaper. On 17.11.2009, the first auction sale notice has been issued. Thereafter second notice was issued on 27.02.2010. Auction purchaser has purchased the property on 27.04.2010 for a sum of Rs.90,10,000/.

ii) But the petitioner/bank is restrained from taking possession of the property since the borrowers were keeping the premise under lock and key. Further, the borrowers instituted a Original Suit in O.S.No.176 of 2009 and they prayed for an order of interim injunction and that was refused by the trial court. Borrowers also instituted SARAESI appeal before the Debt Recovery Tribunal in Appeal No.155 of 2010. The petitioner/bank filed an application before the District Collector. The District Collector passed an impugned order dated 31.05.2011 by stating that it can be represented after the finality of the pending partition suit. Challenging the order of the District Collector, petitioner/bank filed an application before the learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur under Section 14 of SARFAESI Act in Crl.M.P.No.1849 of 2011. That was dismissed by the learned Chief Judicial Magistrate by order dated 20.08.2011.

iii) Challenging the same, the petitioner/Bank filed Crl.R.C.(MD) No.950 of 2011 before this Court and this Court by order dated 25.06.2012 was pleased to remand the matter back to the trial court for fresh consideration. The learned Chief Judicial Magistrate by his order dated 13.09.2012 had once again dismissed the application. The Chief Judicial Magistrate observed that in view of the earlier dismissal order passed by the District Collector, the present application has been dismissed as not maintainable.

iv) The order of the Chief Judicial Magistrate in Crl.M.P.No.1849 of 2011 dated 13.09.2012 is challenged in Crl.R.C.463 of 2012.The earlier order of the learned District Collector, Virudhunagar District in K.Dis.E3/643/11 dated 31.05.2011 is challenged by the petitioner bank in Crl.R.C. No.261 of 2013.

3. This Court heard the said revisions together and passed the common order.

4. Heard Mr.N.Dililp Kumar, appearing for the petitioner/bank in both revisions. Mr.A.Sivaji, learned counsel appearing for the respondents 1 to 3 and Mr.M.S.Balasubramaniya Iyar, learned counsel appearing for the fourth respondent and Mr.R.Gowrisankar, learned counsel appearing for the impleading respondents 5 and 6 in Crl.R.C.(MD) NO. 463 of 12 and the respondents 2 and 3 in Crl.R.C(MD) No.261 of 2013. This Court has also perused the materials available on record.

5. The property in question is situated in old Survey No.24/1 admeasuring 40 cents bearing Door No.2/24/1 with land and residential building and other appurtenances.

6.The contention of Union Bank of India is that taking possession is absolutely necessary as per the right guaranteed under Section 14 of SARFAESI Act, 2002. The partition suit will not bind the present proceedings and hence,he prayed that the revision petition has to be allowed.

7. The learned counsel appearing for the judgment debtor/the fourth respondent contended on two aspects. One is that no notice has been issued to him under Section 13(2) of the Act after the death of Sundar Raja. Therefore, they are not in a position to know the affairs of the bank as

well as the debt amount due to the bank. The second contention raised by the fourth respondent is that they have filed a partition suit and the same is pending and therefore, their undecided right is certain and it has to be determined. Under such circumstances, the petitioner is not entitled to recover the possession and to get the property and they cannot hand over the property to auction purchaser. Further, he contended that even though the property has been pledged to the bank and raised a loan for a sum of Rs.3 crores but curiously enough the bank authorities have colludedly sold the property for only Rs.90 lakhs. It is sufficient to hold that they are hand in glove with the auction purchasers and hence, the revision has to be dismissed.

8.The contention of the auction purchasers is that after taking possession of the property, the auction purchasers will not alienate or demolish the superstructure of the property till the disposal of the Debt Recovery Tribunal Appeal No. 155 of 2010 which was pending and hence, the revision has to be allowed.

9. From the perusal it is seen that there is no dispute regarding the fact that the property in question belongs to the company and in which the second,third and fourth respondents are Directors and the fourth respondent died and the legal heirs have filed the suit for partition and the same is pending before the Principal District Judge, Srivilliputhur. Further it is not in dispute that debt of the bank has been mentioned as Rs.3,63,95,875.43/- whereas the property has been purchased by the auction purchaser for the simple amount of Rs.90,10,000/-.

10. Now the point for consideration is that whether the bank is entitled to take possession as per Section 14 of the Act.

11. There is no doubt that the petitioner is entitled to file an application either before the Chief Judicial Magistrate or before the District Collector to take possession of the property in this case. He has filed a petition before both the authorities concerned. After that, he has approached this Court by filing Crl.R.C. No.950 of 2011. This Court has set aside the order passed by the Chief Judicial Magistrate and remitted back the matter to the Chief Judicial Magistrate on 25.06.2012 in Crl.R.C. No.950 of 2011. Later on, he has filed an application before the Chief Judicial Magistrate. The learned Chief Judicial Magistrate by his order dated 13.09.2012 had once again dismissed the application. The Chief Judicial Magistrate observed that in view of the earlier dismissal order passed by the District Collector, the present application is not maintainable. The order of the Chief Judicial Magistrate in Crl.M.P.No.1849 of 2011 dated 13.09.2012 was challenged in Crl.R.C.463 of 2012 before this Court. While that is pending before this Court, the petitioner bank filed another revision in Crl.R.C.No.261 of 2013 challenging the earlier order passed by the learned District Collector, Virudhunagar District dated 31.05.2011 in K.Dis.E3/643/11. Therefore, I am of the view that the petitions filed by the petitioner are in order and argument advanced by the respondents, by saying that the revision petitioner has resorted to invoke both forums simultaneously, is not correct.

12. It is relevant to extract Section 14 of the Act which runs as follows:

'Where the possession of any secured asset 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 relating thereto; and

2) For the purpose of securing compliance with the provisions of sub-section(1), the Chief Metropolitan Magistrate of the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may in his opinion, be necessary.

3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in any court or before any authority'.

13. The next contention urged by the respondent counsel that, Section 13(2) of the Act notice has not been issued to him before filing this application is concerned, it appears that the legal heirs of the fourth respondent has filed a suit for partition in O.S.No.176 of 2009 and the same is pending before the Principal District Judge, Srivilliputhur. SARAESI appeal, regarding auction conducted by the Recovery Officer, in Appeal No.155 of 2010 filed by the borrowers before the Debt Recovery Tribunal is also pending.

14. Under such circumstances, this Court is not expressing any opinion as to whether 13(2) notice has been issued or not. At the same time, it is pertinent to mention that Section 13(2) notice is a mandatory one. It is also equally notable that filing of partition suit by the legal heir of Sundar Raja will not be a bar to proceed with the matter. But this aspect has to be considered only by the appropriate forum. Since the matter is pending before the Debt Recovery Tribunal, I am of the view that the order passed by both the authorities are set aside and the Chief Judicial Magistrate is directed to pass orders by sticking on the provision of Section 14 of the Act within a period of four weeks from the date of receipt of copy of this order.

15.With the above observation, the revisions are disposed of.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
1.The Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.
2.The District Magistrate cum District Collector, Virudhunagar.
+1cc to Mr.N.Dilip Kumar Advocate SR.No. 39818.
+1cc to Mr.A.Sivaji Advocate SR.No.3977.

TS/26.08.2013/5p-5c

CRL.R.C.(MD)Nos.463 of 2012 and 261 of 2013
06.08.2013