IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2016

CORAM:

THE HON'BLE Mr. JUSTICE SATISH K.AGNIHOTRI
and
THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P. No.1134 of 2016
and
W.M.P.No.868 of 2016

M/s.Inma International Ltd.,
rep. by its Chairman cum Managing
Director G.Rathinavelu .. Petitioner

vs.

1.Indian Overseas Bank
rep. by its Managing Director
having its registered office at
763, Anna Salai,
Chennai - 2.

2.The Chief Regional Manager,
Indian Overseas Bank,
763, Anna Salai, Chennai - 2.

3.The Assistant General Manager,
Indian Overseas Bank,
Cathedral Branch,
762, Anna Salai, Chennai - 2.

4.The Authorized Officer,
Indian Overseas Bank,
Cathedral Branch,
762, Anna Salai, Chennai - 2. .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the notice of sale of immovable secured assets dated 19.12.2015 on the file of the respondent Bank and quash the same.

For Petitioner .. Mr.P.S.Raman, Sr. Counsel for Mr.Velayutham Pichaiya

For Respondents .. Mr.S.Sethuraman

ORDER

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

Mr.S.Sethuraman, learned counsel accepts notice on behalf of the respondents. With the consent of the learned senior counsel appearing for the petitioner and the learned counsel appearing for the respondents, the writ petition is taken up for final disposal at the admission stage itself.

2.Questioning the correctness of the Notice of sale of immovable secured assets issued under Rules 8(5) and 9(1) of the Security Interest (Enforcement) Rules, 2002 dated 19 December 2015, the petitioner is before us.

3.Before issuance of the notice, the petitioner was served with a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') on 27 January 2015, calling upon him to pay the outstanding due to the tune of Rs.16,51,98,135.20/-. Thereafter, a notice securing possession was issued under the provisions of Section 13(4) of the SARFAESI Act. Subsequently, the notice of sale of immovable secured assets was issued under the provisions of Rules 8(5) and 9(1) of the Security Interest (Enforcement) Rules, 2002, which is under assail in this writ petition.

4.The identical issue as to whether a writ petition is maintainable against such notice issued under Rules 8(5) and 9(1) of the Security Interest (Enforcement) Rules, 2002 came up for consideration before this Court in a catena of decisions. A Division Bench of this Court, wherein one of us (Satish K. Agnihotri, J.) was a Member, in M/s.Jumma Blue Metals Vs. The Branch Manager, Lakshmi Vilas Bank Ltd., Kanchipuram[1], examined the scheme as contemplated under the SARFAESI Act and came to the conclusion that no petition is maintainable at this stage. In para 7 of the said order, it was held as under:

1 W.P.No.32677 of 2014

"7.The SARFAESI Act was enacted with a view to regulate securitisation and reconstruction of financial assets and enforcement of security interest and other connected incidental matters and came into force by publication on 18.12.2002. Section 13 of the SARFAESI Act prescribes for enforcement of security interest, which is defined under Section 2(zf), ibid. Sub-section (2) of Section 13 provides for affording an opportunity to the borrower to discharge in full the liability to the secured creditor within 60 days from the notice. In default, sub section (4) of Section 13 comes into effect. Sub section (4) stipulates that if the borrower failed to discharge his liability in full within the period specified in sub-section (2), the secured creditor is competent to take recourse to one or more of the measures prescribed therein. Clause (a) of sub-section (4) provides for taking over possession of the secured asset of the borrower, including the right to transfer by way of lease, assignment or sale for realising the secured asset. One of the measures prescribed under sub section (4) is the sale of the secured asset for recovery of money for the purpose of enforcement of provisions of the Act. The Central Government is competent to frame rules under Section 38 of the SARFAESI Act. The Central Government in exercise of its power conferred by sub section (1) and clause (b) of sub-section (2) of section 38 read with sub-sections (4), (10) and (12) of section 13, ibid, framed the Security Interest (Enforcement) Rules, 2002..."

5.The remedy available to the petitioner is a statutory appeal under the provisions of Section 17 of the SARFAESI Act. In that view of the matter, we are not inclined to interfere with the said notice. Accordingly, the writ petition shall stand dismissed. However, we make it clear that if an application or appeal is made under the provisions of Section 17 of the SARFAESI Act before the competent forum, the competent forum is obliged to examine all the objections raised by the petitioner and take a conscious decision expeditiously. No costs. consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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+1 cc to Mr.Velayutham Pichaiya Advocate sr.2127

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