IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No.12296 of 2016 and W.M.P. No.10638 of 2016

Krishna Constructions
represented by its Proprietor Sri. S. Mani
No.5-A, Varghese Avenue
Ashok Nagar
Chennai 600 083 ... Petitioner

Vs.

Central Bank of India
represented by its Authorised Officer/Chief Manager
Chennai Main Branch
No.11, Second Line Beach
Chennai 600 001 ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari, under Article 226 of the Constitution of India, calling for the records relating to the notice dated 04.01.2016 in BO:RECV:2015-16:94 issued under Sec.13(2) of the SARFAESI Act, basing on the declaration of the asset of the petitioner as NPA as on 30.10.2015, even before the start of repayable date as per the modified terms of sanction issued under reference CBI/CHENNAI/2015-16 dated 18.05.2015 and the consequential proceedings dated 15.03.2016 issued under Section 13(4) of the SARFAESI Act by the respondent and quash the same as arbitrary, without jurisdiction and illegal.

For petitioner Mr. K. Jayachandran

ORDER
(delivered by SATISH K. AGNIHOTRI, J.)

This writ petition is filed, calling in question the legality and validity of the demand notice dated 04 January 2016 issued by the respondent bank under Section 13(2) of the Securtisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the SARFAESI Act”) and also the possession notice dated 15 March 2016 issued under Section 13(4), ibid.

2 The petitioner firm availed working capital term loan and cash credit (hypothecation) limit to the tune of Rs.3.50 crores from the respondent bank. On the ground that the petitioner firm committed default in repayment of the same, its account was classified by the respondent bank as a Non Performing Asset. Following such classification, demand notice and possession notice, as aforestated, came to be issued by the respondent bank, questioning the legality and validity of which, the instant writ petition is filed.

3 The issue that emerges for consideration of this Court in this writ petition is as to whether this writ petition is maintainable against demand notice issued under Section 13(2) of the SARFAESI Act and possession notice issued under Section 13(4), ibid. This issue is no longer res integra.

4 The Supreme Court in United Bank of India Vs. Satyawati Tondon and others[1], referring to various judicial pronouncements made in Modern Industries Vs. Sail [2], Raj Kumar Shivhare Vs. Directorate of Enforcement [3], Industrial Investment Bank of India Ltd. Vs. Biswanath Jhunjhunwala[4], City and Industrial Development Corpn. Vs. Dosu Aardeshir Bhiwandiwala[5], CCT Vs. Indian Explosives Ltd.[6], Mardia Chemicals Ltd. Vs. Union of India[7], Harbanslal Sahnia Vs. Indian Oil Corpn. Ltd.[8], Punjab National Bank Vs. O.C.Krishnan[9], Whirlpool Corpn. Vs. Registrar of Trade Marks[10], SBI Vs. Indexport Registered[11], CCE Vs. Dunlop India Ltd.[12], Titaghur Paper Mills Co. Ltd. Vs. State of Orissa[13], Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad[14], Bank of Bihar Ltd. Vs. Dr.Damodar Prasad[15], Thansingh Nathmal Vs. Supdt. of Taxes[16], Secy. Of State Vs. Mask & Co.[17], Attorney-General of Trinidad and Tobago Vs. Gordon Grant & Co. Ltd.[18] and

1 (2010) 8 SCC 110
2 (2010) 5 SCC 44
3 (2010) 4 SCC 772
4 (2009) 9 SCC 478
5 (2009) 1 SCC 168
6 (2008) 3 SCC 688
7 (2004) 4 SCC 311
8 (2003) 2 SCC 107.
9 (2001) 6 SCC 569
10 (1998) 8 SCC 1
11 (1992) 3 SCC 159
12 (1985) 1 SCC 260.
13 (1983) 2 SCC 433
14 AIR 1969 SC 556
15 AIR 1969 SC 297
16 AIR 1964 SC 1419
17 (1939-40) 67 IA 222.
18 1935 AC 532 (PC)

Neville Vs. London Express Newspapers Ltd.[19], observed as under :

> "12. Section 13 of the SARFAESI Act contains detailed mechanism for enforcement of security interest. Sub-section (1) thereof lays down that notwithstanding anything contained in Sections 69 or 69-A of the Transfer of Property Act, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act. Sub-section (2) of Section 13 enumerates first of many steps needed to be taken by the secured creditor for enforcement of security interest. This sub-section provides that if a borrower, who is under a liability to a secured creditor, makes any default in repayment of secured debt and his account in respect of such debt is classified as non-performing asset, then the secured creditor may require the borrower by notice in writing to discharge his liabilities within sixty days from the date of the notice with an indication that if he fails to do so, the secured creditor shall be entitled to exercise all or any of its rights in terms of Section 13(4).
>
> 13. Sub-section (3) of Section 13 lays down that notice issued under Section 13(2) shall contain details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the bank or financial institution. Sub-section (3-A) of Section 13 lays down that the borrower may make a representation in response to the notice issued under Section 13 (2) and challenge the classification of his account as non-performing asset as also the quantum of amount specified in the notice. If the bank or financial institution comes to the conclusion that the representation/objection of the borrower is not acceptable, then reasons for non-acceptance are required to be communicated within one week."

5 Consequently, taking a strong view of the adjudication of matters under the SARFAESI Act by High Courts, the Supreme Court, in Satyawati Tondon (supra), observed as under:

> "55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of

19 1919 AC 368 ; (1918-19) All ER Rep 61 (HL)

statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

6 Subsequently, in sync with the aforestated observation, in Kanaiyalal Lalchand Sachdev and others Vs. State of Maharashtra and others[20], the Supreme Court held as under :

> "25. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate, etc. are involved, an efficacious statutory remedy of appeal under Section 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution."

7 In view of the foregoing, we are of the considered view that this writ petition is not maintainable, at this stage, after issuance of possession notice, since, thereagainst, the only remedy available to the petitioner firm, is to take recourse to the jurisdictional Debts Recovery Tribunal under the provisions of the SARFAESI Act.

Accordingly, this writ petition stands dismissed with the above observation. No costs. Consequently, connected W.M.P. is closed.
cad

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

20 (2011) 2 SCC 782

To

The Authorised Officer/Chief Manager
Central Bank of India
Chennai Main Branch
No.11, Second Line Beach
Chennai 600 001

+ 1 cc to Mr.K.Jayachandran, Advocate SR 20471

kgk(co)
prk20/4

W.P. No.12296 of 2016