

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2016

CORAM:

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

THE HON'BLE Mr. JUSTICE V. BHARATHIDASAN

W.P. No.14519 of 2016 and W.M.P. No.12678 of 2016

1 M/s. Manam Agro Concentrate
represented by its
Proprietor Gunawathee Mohan
Wife of R.P. Mohan,
Thandarai Village
Bennagur Post, Hosur
Denkanikotta Taluk
Krishnagiri District 635 107

2 R.P. Mohan

vs.

Petitioners

The Authorised Officer
Yes Bank
Ground Floor, Prestige Obelisk
Municipal No.3, Kasturba Road,
Bangalore 560 001

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, calling for the records on the file of the respondent bank bearing reference number nil issued under Section 13(2) of the SARFAESI Act, 2002, dated 26.02.2016 and quash the same as illegal, irregular and without jurisdiction and to further direct the respondent bank to abide by the guidelines laid out in G.O. Ms.No.436 issued by Revenue (D.M.II) Department dated 20.12.2015.

For petitioners :Mr. V. Raghavachari

ORDER

(delivered by SATISH K.AGNIHOTRI, J.)

Notice to the respondent is dispensed with at this stage, inasmuch as no order prejudicial to its interest, is passed in this writ petition. Thus, with the consent of the learned counsel for the petitioner, this writ petition is taken up for final disposal.

2 The first petitioner company is represented by its proprietor Gunawathe Mohan and the second petitioner is the husband of the said Gunawathe. The first petitioner company availed loan from the respondent bank. However, due to slump in business, the first petitioner company could not repay the loan to the respondent bank. Hence, the respondent bank issued a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act") on 26 February 2016. Challenging the said notice issued under Section 13(2), *ibid*, and further, seeking a direction to the respondent bank to abide by the guidelines laid down in G.O. Ms.No.436, Revenue (D.M.II) Department dated 20 December 2015, the instant writ petition is filed.

3 Concededly, even before replying to the impugned demand notice, the petitioner has rushed to this Court by way of the instant writ petition. As per Section 13(3-A) of the SARFAESI Act, on receipt of demand notice under Section 13(2), *ibid*, the borrower shall make a representation to the secured creditor, putting forth his defence and on receipt of such representation from the borrower, the secured creditor is under an obligation to consider the same before proceeding further.

4 In the case on hand, we are not inclined to interfere with the impugned notice, at this stage, as after issuance of the same under Section 13(2), *ibid*, there is sufficient provision, whereunder the noticee can make a representation to the respondent bank, pointing out the alleged deficiency in the notice. Accordingly, liberty is reserved to the first petitioner company to submit its representation, if so advised, under Section 13(3-A) of the SARFAESI Act, within a period of two weeks. On the representation being filed within such period, as aforesaid, the respondent bank is obligated to consider the same and pass an appropriate order before proceeding under the provisions of the SARFAESI Act.

The writ petition stands disposed of with the above observations. Costs made easy. Connected W.M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ra

To

The Authorised Officer
Yes Bank
Ground Floor, Prestige Obelisk
Municipal No.3, Kasturba Road
Bangalore 560 001.

+ 1 cc to Mr.V. Raghavachari, Advocate Sr.26720

W.P. No.14519 of 2016

GJ-II(CO)
EU 30.05.16



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