

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM:

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

W.P. No.15577 of 2016 and W.M.P. Nos.13543 of 2016

1 Manam Fruits Products Pvt. Ltd.  
represented by its Managing Director  
R.P. Mohan, S/o Palanivel  
Thandarai Village  
Bennagur Post, Hosur  
Denkanikotta Taluk  
Krishnagiri District 635 107

2 Gunawathee 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, at the admission stage itself.

2 The first petitioner company is represented by its Managing Director, R.P. Mohan and the second petitioner is the wife of the said Mohan. 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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

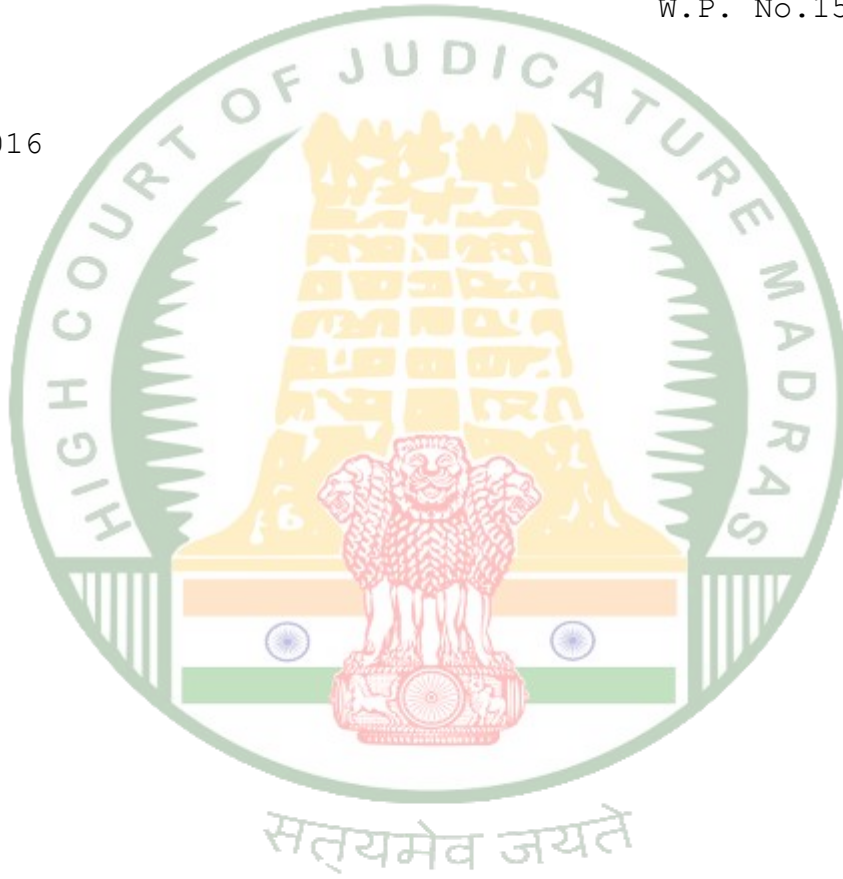
cad

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

+1 cc to M/s.V.Raghavachari Advocate sr.26173

W.P. No.15577 of 2016

ppa(co)  
aa09/05/2016



WEB COPY