IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2016

CORAM:

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

W.P. No.16199 of 2016 and W.M.P. No.13978 of 2016

S. Muthukumar ... Petitioner

vs.

1 The Branch Manager,
Puducherry Main Branch,
U.C.O. Bank,
No.7, Rue Mahe de Labourdonnais Street,
Puducherry.

2 The Authorised Officer,
U.C.O. Bank,
No.7, Rue Mahe de Labourdonnais Street,
Puducherry. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of ceriorarified mandamus to call for the records of the second respondent with no. Nil dated 16.02.2016 and to quash the same and consequentially, to direct the respondents to permit the petitioner to repay the loan amount by way of monthly instalments as agreed upon.

For petitioner Mr. V. Ajayakumar

ORDER

(delivered by SATISH K.AGNIHOTRI, J.)

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 This writ petition is filed calling in question the legality and validity of the possession notice dated 16 February 2016 issued by the respondents/bank under Section 13(4) of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act) read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002.

3 According to the petitioner, he availed a housing term loan of Rs.9 lakhs from the first respondent bank by executing mortgage of the house property owned by him. Due to default on his part in repayment of the said loan, the respondent bank issued a demand notice dated 11 December 2015 under Section 13 (2) of the SARFAESI Act, followed by possession notice dated 16 February 2016 under Section 13(4), ibid. Challenging the said possession notice, the petitioner has come up with the instant writ petition.

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

5 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.

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

Supdt. of Taxes[16], Secy. Of State Vs. Mask & Co.[17], Attorney-General of Trinidad and Tobago Vs. Gordon Grant & Co. Ltd.[18] and 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."

16 AIR 1964 SC 1419
17 (1939-40) 67 IA 222.
18 1935 AC 532 (PC)
19 1919 AC 368 ; (1918-19) All ER Rep 61 (HL)

6 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 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."

7 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."

8 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, is to take recourse to the jurisdictional Debts Recovery Tribunal under the provisions of the SARFAESI Act.

9 Accordingly, if the petitioner prefers an application before the jurisdictional Debts Recovery Tribunal within a period of one week, the same shall be taken up immediately to consider the petitioner's request for interim relief, if any.

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20 (2011) 2 SCC 782

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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+1cc to Mr.V.Ajayakumar, Advocate Sr.27815

W.P. No.16199 of 2016

Gj I (CO)
srg(27/05/2016)