a IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2016

CORAM

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

W.P. No.21049 of 2015
and
M.P.No.1 of 2015

K.Gunaseelan .. Petitioner

Vs.

1.The Reserve Bank of India,
Rajaji Salai, Chennai-1.

2.The Authorised Officer,
Sundaram BNP Paribas Home Finance Ltd.,
Sundaram Towers,
No.46, Whites Road,
Chennai-14.

3.The District Collector,
Karur District, Karur. .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of mandamus, forbearing the respondents 2 and 3 from proceeding further against the petitioner by invoking the provisions of SARFAESI Act in pursuant to possession notice dated 20.01.2014 issued by the second respondent.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.K.J.Parthasarathy for R-2
Mr.P.S.Sivashanmugasundaram, Spl.G.P. for R-3
No appearance for R-1 (Notice served)

ORDER

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

Calling in question the legality and validity of the possession notice dated 20th January, 2015 issued under Section 13(4) of the Securitisation and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") read with Rule 8 of the Security Interest (Enforcement) Rules, 2002, the instant petition is filed.

2 The prime contention of the learned counsel for the petitioner is that the second respondent financial institution is not notified as securitisation company or reconstruction company, as it has not obtained the Certificate of Registration as required under the provisions of Section 3 of the SARFAESI Act. It is further contended that under the provisions of sub-section (6) of Section 3 of the SARFAESI Act, prior approval of the Reserve Bank / first respondent, for any substantial change in its management or change of location of its registered office or change in its name, is required, which has not been obtained in the instant case. Thus, the second respondent is not competent to take recourse to the provisions of the SARFAESI Act for enforcement of the security interest.

3 Learned counsel for the second respondent, per contra, would contend that the second respondent is a notified institution under the provisions of the SARFAESI Act as the Certificate of Registration has been notified by the National Housing Bank on 10th January, 2008. The change of nomenclature has also been duly notified by the Ministry of Finance (Department of Financial Services), in exercise of the powers conferred under sub-clause (iv) of clause (m) of sub-section (1) of Section 2 of the SARFAESI Act, published in the Gazette of India on 24th March, 2008, wherein the second respondent was notified as a financial institution. Thus, the contention of the petitioner that the second respondent has not obtained prior approval is misplaced and deserves to be rejected.

4 Heard the learned counsels appearing for the petitioner and the second respondent and also perused the pleadings and documents appended thereto.

5 Clause (m) of Section 2(1) of the SARFAESI Act defines "financial institution", including under sub clause (ii), any institution as specified by the Central Government under sub-clause (ii) of clause (h) of section 2 of the Recovery of Debts De to Banks and Financial Institutions Act, 1993.

6 The Central Government, vide notification dated 10th November 2003, exercising its power under sub-clause (iv) of clause (m) of Sub-section (1) of Section 2 of the SARFAESI Act, notified the Sundaram Home Finance Limited, Chennai as the financial institution under the name of the Housing Company. Thereafter, the nomenclature of the said company was changed under the Certificate of Registration issued by the National Housing Bank, dated 10th January, 2008, which was duly notified, as aforestated by the Government of India, Ministry of Finance

(Department of Financial Services) and published in the Gazette of India on 24th March, 2008. It appears that necessary amendment could not be carried out, which was clarified subsequently by the Central Registry of Securitisation Asset Reconstruction and Security Interest of India, in response to the letter of the second respondent dated 12th February, 2016 that the name of the institution has been amended long back.

7 With regard to the question as to whether prior approval is necessary or not and whether prior approval is obtained before the change of nomenclature, no material is placed before us. The impugned notice under Section 13(4) of the SARFAESI Act was issued on 20th January, 2014 after the change of nomenclature of the earlier financial institution, i.e., Sundaram Home Finance Ltd. into Sundaram BNP Paribas Home Finance Ltd., has been duly approved and proper notification has been made in the official Gazette. The second respondent is the duly registered financial institution and is competent to take recourse to the provisions of the SARFAESI Act for enforcement of the security interest.

8 Resultantly, there is no merit in the writ petition. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To

1.The Chairman,
The Reserve Bank of India,
Rajaji Salai, Chennai-1.

2.The District Collector,
Karur District, Karur.

3.The Authorised Officer,
Sundaram BNP Paribas Home,
Finance Ltd.,
Sundaram Towers,
No.46, Whites Road, Chennai-14.

+1cc to M/S.K.J.Parthasarathy, Advocate Sr.16376
+1cc to Mr.C.Prakasam, Advocate sr.16725

W.P.No.21049 of 2015

sai(CO)
srg(28/03/2016)