IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.18434 of 2016
and
WMP.Nos.16140 and 16141 of 2016

1. M/s.Fashion Campus
   Rep. B y its Proprietor
   Mr.Suresh Menon K.
   No.12-A, Gurumurthy Garden Street
   Perambur, Chennai-600 011

2. S.Sreeja ... Petitioners

Vs.

1. The Chief Metropolitan Magistrate
   Egmore at Allikulam
   Chennai-600 003

2. M/s.Bank of India
   Anna Nagar Branch
   Rep. By its Assistant General Manager
   and Authorised Officer Mr.B.K.Singh
   W-124, New No.41,
   III Avenue, Anna Nagar, Chennai-600 040 ... Respondents

Writ Petition filed praying to issue a Writ of Certiorari calling upon the records pertaining to the impugned order dated 06.05.2016 passed by the 1st respondent in Crl.M.P.No.4052 of 2016.

For Petitioners : Mr.J.Arunprasad

For Respondents : Mr.R.Umasuthan for R2
R1- court.

ORDER

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Heard the learned counsel for the petitioner and the learned counsel appearing for the 2nd respondent.

2. It appears that on January 2012, the 1st petitioner availed loan facility from the 2nd respondent Bank. Due to default in payment of dues to the 2nd respondent Bank, the 1st petitioner approached the 2nd respondent Bank and sought regularization of the Account. Subsequently, the 2nd respondent issued Demand Notice stating that the 1st respondent is classified as NPA (Non-Performing Asset) only on 30.09.2015, for which, the 1st petitioner issued reply on 05.11.2015. Thereafter, on 11.02.2016, the 2nd respondent issued Possession Notice claiming to have taken symbolic possession and on 01.03.2016, issued Sale Notice claiming to have brought the properties for sale on 11.04.2016. Further, on 30.03.2016, the 2nd respondent filed petition under Section 14 of the SARFAESI Act before the 1st respondent seeking appointment of Advocate Commissioner for taking forcible possession of the properties from the petitioners and on such petition, the 1st respondent passed the impugned order on 06.05.2016 appointing Advocate Commissioner for taking possession of properties from the 1st petitioner, which are situate outside the Metropolitan Area. It is seen that the 1st Petitioner is the borrower and the 2nd Petitioner is the guarantor.

3. The learned counsel for the petitioners submitted that the respondent-Bank has classified the 1st Petitioner's Account as NPA in flagrant violation of RBI guidelines/Directions and caused notices under Section 13(2) & 13(4) of the SARFAESI Act. He further relied on the decision of a Division Bench of this Court reported in 2015 (2) CTC 302 [T.C.Ramadoss Vs. The Chief Manager & Authorised Officer, State Bank of India, Stressed Assets Management Branch and others], in support of his contention that the impugned order is passed without jurisdiction.

4. We have gone through the impugned order passed by the Chief Metropolitan Magistrate, Egmore, and perused the averments made in the typed set of papers filed along with the Writ Petition and the judgment relied on by the learned counsel for the petitioners.

5. In the decision cited supra [2015 (2) CTC 302], in paragraph 12, it is held as follows:-

"12. The legislators have made it clear that in any area other than a Metropolitan area, the District Magistrate of the concerned area will have jurisdiction to exercise power under Section 14 of the SARFAESI Act, 2002, but in Metropolitan area, it is only the Chief Metropolitan Magistrate, who has the jurisdiction to exercise power under Section 14 of the Act, 2002. "

6. In the case on hand, the secured asset/immovable property, is stated to be situated at Thiruvallur District, however, the order has been passed by the Chief Metropolitan Magistrate, Egmore, appointing Advocate Commissioner to take possession of the schedule mentioned Property, which, in our considered view, is without jurisdiction. Hence, the impugned order dated 06.05.2016 passed by the Chief Metropolitan Magistrate, Egmore, is set aside on the ground that the order passed by the Authority is without jurisdiction and void. Accordingly, the Writ Petition is allowed. It is for the respondent-Bank to take recourse to the appropriate jurisdictional forum under the provisions of law. No costs. Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Chief Metropolitan Magistrate
Egmore at Allikulam,
Chennai-600 003.

+1cc to Mr.R.Umasuthan, Advocate, S.R.No.34152

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SKV(CO)
CA(13/07/2016)