

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2016

CORAM

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

Writ Petition No.25229 of 2016

M/s. India SME Asset Reconstruction
Company Ltd (ISARC)
rep. by its Associated Vice President
& Authorised officer ...Petitioner

Vs.

The District Collector,
(District Magistrate)
Tiruvallur District,
Tiruvallur. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondent to pass appropriate order in the petitioner's application dated 24.03.2014 submitted under Section 14 of the SARFAESI Act rendering necessary assistance to the petitioner in terms of Section 14 of the SARFAESI Act to take vacant physical possession of the secured assets as set out therein.

For Petitioner : Mr.E.Omprakash for
M/s.Ramalingam and Associates

For Respondent : Mrs.A.Srijayanthi, SGP

ORDER

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

Mrs.A.Sri Jayanthi, learned Special Government Pleader accepts notice on behalf of the respondent. With the consent of both the parties, the writ petition is taken up for final disposal at the stage of admission itself.

2. The prayer made in the writ petition is to issue a Writ of Mandamus, directing the respondent to pass appropriate order in the petitioner's application dated 24.03.2014 filed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act') in order to take vacant physical possession of the secured assets as set out therein.

3. The case of the petitioner, as averred in the affidavit filed in support of this writ petition, is as follows:

3.1 The petitioner is a company incorporated under the Companies Act and registered as a Securitization and Asset Reconstruction Company, pursuant to Section 3 of the SARFAESI Act. In the year 2006, one M/s.Tribune Textiles India Pvt. Ltd had approached M/s.City Union Bank Ltd, Nellore Branch, for financial assistance and the same had been sanctioned to the said Company. The Directors of the borrower company viz., G.Surendra Gupta and G.Sunitha stood as guarantors in their individual capacity and to secure the credit facilities available to them, they have also created mortgage over their respective immovable properties.

3.2 According to the petitioner, the borrower Company/guarantors had committed default in repayment of dues and hence, their loan accounts were classified as Non-performing Assets (NPA). Subsequently, M/s.City Union Bank Ltd had assigned the debt due with underlying securities in favour of the petitioner, by an Assignment Agreement dated 31.03.2011, which was duly registered with the Sub Registrar Office vide Document No.460/2012.

3.3 Pursuant to the said Assignment Agreement and also at the request of the borrower Company, the petitioner had re-structured the debt and had also sanctioned loan of Rs.89,41,000/-, for which, the borrower/guarantors had executed the necessary loan documents in favour of the petitioner and also extended the mortgage. However, the borrower/Guarantors had failed to comply with the terms and conditions of the restructured scheme and have also not come forward to repay the dues as agreed upon by them.

3.4 On account of their failure to clear the over dues to the petitioner, the accounts of the borrower with the petitioner were classified as Non-performing Assets on 29.09.2012 in the books of the petitioners. Despite various request and reminders sent by the petitioner, the borrower Company/guarantors have not

settled the dues to the petitioner, which compelled the petitioner to issue a demand notice dated 21.05.2013 under Section 13(2) of the SARFAESI Act, calling upon them to repay the outstanding sum of Rs.7,99,28,546.97 within the statutory period.

3.5 Finding no response from the borrower Company/guarantors, the petitioner had issued possession notice dated 26.02.2014 under Section 13(4) of the Act, which was delivered and affixed on their respective properties and also published in two leading newspapers. Even thereafter, the borrower/guarantors have not come forward to discharge their liability and redeem the mortgaged properties.

3.6 The petitioner, in order to take physical possession of the secured assets of the borrower Company/guarantors for auction sale, filed an application dated 24.03.2014 under Section 14 of the Act before the respondent herein. On receipt of the same, the respondent sent a letter dated 30.06.2014 to the Tahsildar, Gummidipoondi, Tiruvallur District, directing him to verify all the original records by summoning the parties and submit a detailed report. Subsequently, the officials of the petitioner went to the Tahsildar Office and submitted all the original documents. Even thereafter, no order has been passed by the respondent. Therefore, the petitioner has no other alternative except to approach this Court with the present writ petition for the above stated relief.

4. When the matter came up for hearing, it is brought to the notice of this Court by the learned counsel for the petitioner that even the State Government vide Letter No.19498/Res.II/2014-1 dated 09.02.2014, had directed all the District Collectors, to take up the applications filed under Section 14 of the SARFAESI Act, for disposal expeditiously. Despite such a clear direction, which is in tune with the object of the SARFAESI Act, the respondent is failing in the discharge of his duties.

5. Learned Special Government Pleader appearing for the respondent submits that a direction may be issued to the respondent to dispose of the petitioner's Section 14 application.

6. Considering the submissions made on either side, without expressing any opinion with regard to the claim made by the petitioner, we direct the respondent herein to consider the petitioner's application dated 24.03.2014 filed under Section 14 of the SARFAESI Act and pass necessary orders, with regard to take physical possession of the secured assets as set out in the application by the petitioner, as expeditiously as possible. It is made clear that the respondent shall take a decision in the

petitioner's Section 14 application, in accordance with law, after giving due opportunity of personal hearing to the petitioner as well as to the borrower Company and guarantors.

7. The writ petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rk

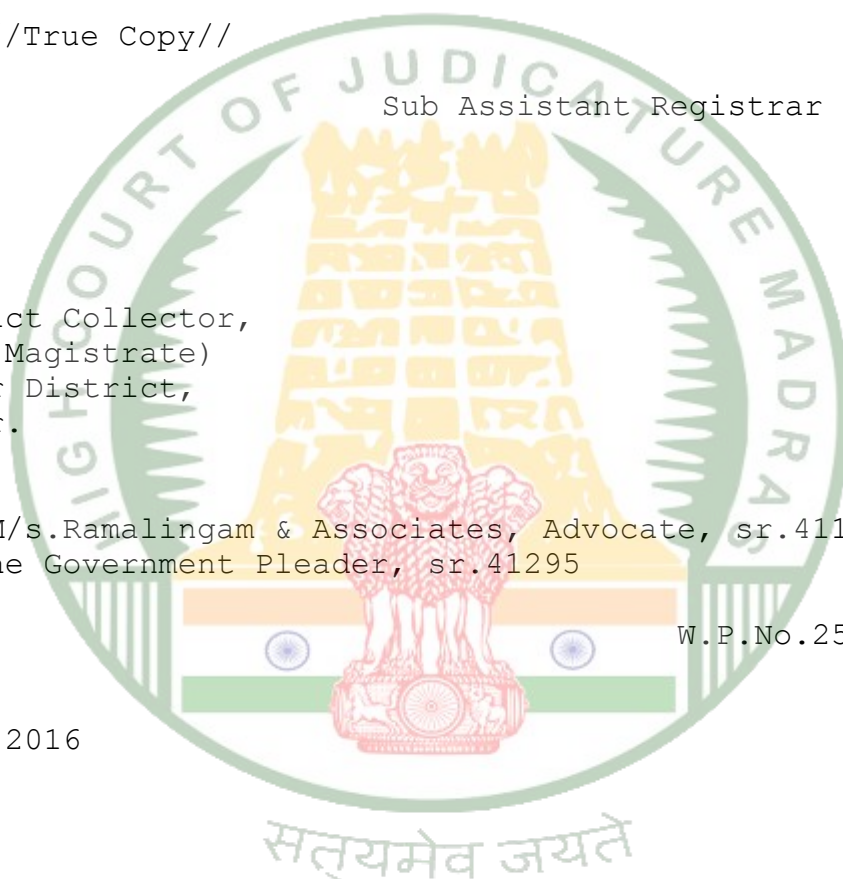
To

The District Collector,
(District Magistrate)
Tiruvallur District,
Tiruvallur.

2 ccs to M/s.Ramalingam & Associates, Advocate, sr.41188
1 cc to The Government Pleader, sr.41295

W.P.No.25229 of 2016

gj ii co
kra 09.08.2016



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