IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.12.2016
CORAM:
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.29638 of 2016
and WMP No.25668 of 2016

W.Kirubakaran .. Petitioner

versus

1. Chief Manager,
   Head Quarter,
   State Bank of India,
   Chennai - 1.

2. The Branch Manager,
   State Bank of India,
   Eggur Nagar, Arokkonam,
   (Tamil Nadu Steels),
   Arokkonam - 4. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents, their men, agents, subordinates and other officials from in any way from taking physical possession of the mortgaged property of the Petitioner under Section 14 of the SARFAESI Act and consequently direct 2nd respondent to return Original Document No.2392/74 to petitioner.

For Petitioner : Mr.I.Arockia Selvaraj
For Respondents : Ms.S.P.Sumathy (for R2)
Respondents : No Appearance

ORDER
(Order of the Court was made by S.MANIKUMAR, J.)

Material on record discloses that for non payment of loan, a notice under Section 13(2) of the SARFAESI Act, 2002 dated 26.11.2015, has been issued to Mr.W.Kriubarakan, borrower and Smt.Leadiyammal, guarantor. Details of the properties offered as security have been included. Bank has issued a letter dated 16.07.2016, instructing the petitioner to pay an outstanding amount of Rs.3,21,684/- with future interest of Rs.15,769/- and the same is extracted hereunder.

Dear Sir/Madam,
SARFAESI 7 DAYS NOTICE FINAL REMINDER
YOUR OVERDUE / IRREGULAR LOAN ACCOUNT : Home Loan:11384933776

With reference to above, we have to advise that your following Loan Account is running irregular / overdue and the account has become NPA on 29.09.2015, after our SARFAESI 13/2 Notice on 26.11.2015 and SARFAESI 13/4 notice on 12.02.2016. You have not repaying the dues properly and despite our repeated reminders by phone / notice. You are, therefore, requested to regularize the position within 7 days from the date of this notice, failing which we will be constrained to proceed legally to recover our dues. The details of your account are as under.

Account No.	Outstandings (Rs.)	Irregular (Rs.)	Date of NPA
11384933776	Rs.3,21,684.00 with future interest	15769.00	29.09.2015

REMARKS
a) There is no repayment / no repayment after 11.03.2016
We would like to inform you that, SARFAESI action will be taken for sale of your house property if you failed regularise the account within 7 days receipt of this notice."

2. Responding to the above, petitioner is stated to have sent a letter dated 28.07.2016 to the Chief Manager, Head Office, State Bank of India and Branch Manager, State Bank of India, Arakonam, stating that he had already paid a sum of Rs.3,04,899/- and sought for closure of the home loan. He has also requested the above officials to return the property documents along with No Objection Certificate, for closure of loan.

3. With the above facts, the petitioner has filed the instant writ petition for a writ of mandamus, forbearing the respondents, their men, agents, subordinates and other officials from in any way taking physical possession of the mortgaged property under Section 14 of the SARFAESI Act 2002 and consequently, prayed for a direction to the Branch Manager, State Bank of India, Arokkonam, the 2nd respondent to return the original document.

4. It is well settled that notice under Section 13 (2) of the SARFAESI Act 2002 is only a demand notice issued to the borrowers/guarantors to pay the outstanding loan amount and that borrower / guarantor has a legal right to send a reply under Section 13(A) of Act.

5. Under Section 14 of the SARFAESI Act, 2002, where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

6. If taking over possession of any secured asset is objected, then as per Section 14 of the Act, bank is empowered to seek the assistance from the Chief Metropolitan Magistrate or the District Magistrate, as the case may be. Court cannot issue any directions restraining the respondent from taking recourse invoking statutory provisions. If any action is taken by the Bank, it is always open to the borrower, to respond to the same in the manner known to law.

7. For the abovesaid reasons, mandamus cannot be issued. Writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.Chief Manager,
Head Quarter,
State Bank of India,
Chennai - 1.

2. The Branch Manager,
State Bank of India,
Eggur Nagar, Arokkonam,
(Tamil Nadu Steels),
Arokkonam - 4.

+1cc to Mr.Sivakumar, Advocate, S.R.No.72520

rsr(CO)
rs(10/01/2017)

W.P.No.29638 of 2016
and WMP No.25668 of 2016