IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.34338 of 2016

T.Ashok Surana .. Petitioner

versus

The Authorised Officer,
Small Industries Development
Bank of India,
Overseas Towers,
756 L, Anna Salai (Opp. TVS),
Chennai 600 002. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the respondent-Bank to submit a statement of accounts duly certified by an auditor of the bank or the Authorised Officer, as to its veracity for the six loan accounts for which, the petitioner stood guarantee with the penal interest not being capitalized and to inform the balance amount payable as on 10.12.2011 on the crystallized debt, amount payable, as per Section 31(j) of the SARFAESI Act, on the date, with interest thereon, till 10.12.2011.

For Petitioner : Mr.T.Ashok Surana (Party-in-Person)

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

Mr.T.Ashok Surana, Party-in-Person, has sought for a Writ of Mandamus, directing the respondent-Bank to submit a statement of accounts, duly certified by an auditor of the bank or the Authorised Officer, as to its veracity for the six loan accounts, for which, he stood as guarantor, with the penal interest, not being capitalized and to inform the balance amount payable, as on 10.12.2011 on the crystallized debt, amount payable, as per Section 31(j) of the SARFAESI Act, on the date, with interest thereon, till 10.12.2011.

2. It is the case of the petitioner that for the loan availed by M/s.Tetrahedron Ltd., from the respondent-bank, he stood as a guarantor. He was also the Managing Director of the Company and a shareholder. According to him, on 03.05.2011, the respondent-Bank has issued a demand notice to him, under Section 13(2) of the SARFAESI Act, for a sum of Rs.85,34,172.18. It is also his contention that a sum of Rs.119.25 Lakhs was paid to the Bank, from 03.10.2011 to 09.12.2011 and the respondent-Bank has claimed to have adjusted Rs.45,73,250/- towards the dues of M/s.Tetrahedron Beverages Pvt. Ltd., and the balance of Rs.73,51,750/- towards the dues of M/s.Tetrahedron Ltd. Payment of Rs.2.50 Lakhs was made in the year 2012, totalling Rs.76,01,750/-.

3. The petitioner has submitted that the balance amount payable towards the outstanding dues by M/s.Tetrahedron Ltd., is Rs.9,33,422.18. According to him, the Bank has not furnished, any statement of accounts of loan, for which, he stood as guarantor. No steps have been taken under Section 13(4) of the said Act.

4. As reference to W.P.No.27777 of 2014, has been made in the supporting affidavit to the instant writ petition, the entire cause papers in W.P.No.27777 of 2014, were called for. Prayer made in W.P.No.27777 of 2014, reads as follows:

> "Writ Petition filed under Article 226 of the Constitution of India, seeking a writ of prohibition prohibiting the respondent bank from pursuing any further recovery measure pursuant to Section 13(2) demand notice dated 21.04.2011 issued against the assets mentioned therein."

While holding that W.P.No.27777 of 2014, as not maintainable, this Court, at Paragraphs 3 and 4, has ordered as follows:

> "3 The petitioner is seeking a writ of prohibition forbidding the Bank from taking any measure under Section 13(4) of the SARFAESI Act. The well defined meaning of writ of prohibition is to forbid or stop the lower court or Tribunal to perform an act outside its jurisdiction in a pending particular case, where it has no legal jurisdiction of the trial. In the case on hand, the petitioner has not come up for a direction by way of writ of prohibition against any lower court or Tribunal, wherein the case is pending without having legal jurisdiction. Thus, it is misconceived and deserves to be rejected.
>
> 4. As on date, no measure has been taken by the respondent bank under Section 13(4) of the SARFAESI Act. The petitioner's apprehension is mis-placed. The petitioner seeks a writ of prohibition forbearing the respondent bank from taking any measure under Section

13(4) of the SARFAESI Act, in future, which is not contemplated by the respondent bank, at this stage. If, in the event, the respondent bank proceeds to take any measure under Section 13(4) of the SARFAESI Act on the basis of the aforestated demand notice, the petitioner is at liberty to question the same by way of a proper petition. Thus, at this stage, we have no hesitation in holding that this writ petition is pre-mature."

5. At one stage, the petitioner has sought for a Writ of Prohibition, as stated supra, and in the supporting affidavit to the present writ petition, the petitioner has contended that no measures under Section 13(4) of the SARFAESI Act, have been taken. When the petitioner wants a statement from the respondent-Bank and nothing prevented the petitioner from approaching the Bank. Also, if any proceedings are initiated by the Bank, before the forum, it is always open to the petitioner to seek for appropriate relief. Mandamus is an extraordinary remedy and cannot be used to thwart any proceedings, for which, there is an alternative remedy and forum. The petitioner has approached this Court, for a Mandamus, directing the respondent-Bank to furnish him, the statement of accounts, duly certified by the Auditor of the Bank and in such manner, as he had desired. For the abovesaid reasons, relief sought for, in this writ petition, cannot be granted.

6. In the result, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

skm
To
The Authorised Officer,
Small Industries Development
Bank of India,
Overseas Towers,
756 L, Anna Salai (Opp. TVS),
Chennai 600 002.

W.P.No.34338 of 2016

PVS(CO)
EU 21.11.16