IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.35364 of 2016

Phoenix ARC Pvt. Ltd.,
Acting as Trustee,
on behalf of Phoenix Trust FY 09-7,
rep., by its Authorised Officer,
Ms.Pallavi Chavan .... Petitioner

vs.

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

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to pass appropriate orders, in the petitioner's application, dated 20.03.2014, 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.Om Prakash,
for M/s.Ramaligam Associates

For Respondents : Mr.K.V.Dhanapalan,
Special Government Pleader

ORDER
(delivered by S.MANIKUMAR, J)

Material on record discloses that M/s.Salem Textiles Ltd., has borrowed money from M/s.IDBI Bank, Chennai and M/s.Kotak Mahindra Bank, Chennai. For non-payment, loan amount has been classified as NPA. Phoenix Trust FY 09-7, is the assignee of M/s.IDBI Bank. A demand notice, dated 03.06.2010, under Section 13(2) of the SARFAESI Act, 2002, has been issued, calling upon the borrower to pay the outstanding dues of Rs.13,36,48,133.64, as on 31.05.2010, together with further interest and other charges thereon, at the contractual rates, till the actual date of realization. Responding to the same, the borrower sent a reply, dated 25.06.2010, under Section 13(3A) of the abovesaid Act. The said reply was duly considered and rejected by the petitioner and that the decision of the same, was duly communicated to the borrower, by a rejoinder letter, dated 30.06.2010.

2. M/s.Kotak Mahindra Bank, other secured creditor, has also issued a demand notice, dated 25.02.2011, under Section 13 (2) of the SARFAESI Act, calling upon the borrower to pay the outstanding dues of Rs.3,44,49,75,511/-, as on 17.02.2011, together with further interest and other charges thereon, at the contractual rates, till the actual date of realization. Aggrieved by the action taken by the assignee of M/s.IDBI Bank, the writ petitioner herein and M/s.Kotak Mahindra Bank, another secured creditor, the borrower has filed W.P.No.26905 of 2011, challenging the possession notice, issued under Section 13(4) of the SARFAESI Act.

3. During the course of hearing of the above said writ petition, a question of law has been framed, as to whether, action initiated in terms of Section 13(4) of the SARFAESI Act, by the secured creditors, would result in automatic abatement of the proceedings before BIFR, in view of the third proviso to Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, inserted by way of an amendment under Act 54 of 2002. A Hon'ble Full Bench of this Court, by judgment, dated 22.04.2013, answered the issue that no sooner, an action under the SARFAESI Act, is taken, proceedings initiated/pending under the Sick Industrial Companies (Special Provisions) Act, 1985, would automatically abate.

4. Being aggrieved by the same, the borrower has filed SLP (Civil) No.18100 of 2013, before the Hon'ble Apex Court, wherein, an interim order of status-quo has been granted. Thereafter, the Hon'ble Division Bench of this Court allowed W.P.No.26905 of 2011, setting aside the possession notice, on the ground that joint measure had to be taken by the secured creditors. Challenging the same, the petitioner has filed SLP (Civil) No.147 of 2014, before the Hon'ble Apex Court and the same is pending.

5. It is the further case of the petitioner that without prejudice to the rights in SLP (Civil) No.147 of 2014, a joint possession notice, dated 25.02.2014, under Section 13(4) of the SARFAESI Act was issued. The said possession notice was delivered, affixed, served and published, as required under the SARFAESI Act and the Security (Enforcement) Rules.

6. Thereafter, the petitioner has filed an application, under Section 14 of the SARFAESI Act, on 20.03.2014, to the District Collector, Salem, respondent herein. On the prayer sought for, the respondent herein, vide communication, dated 28.10.2014, has directed the Revenue Divisional Officer, Attur, to conduct a detailed enquiry and submit a report. A copy of the communication was also sent to the petitioner. In the mean while, the Hon'ble Supreme Court dismissed SLP(C)No.18100 of 2013, by the borrower filed against the decision, relating to abatement of BIFR proceedings, subject matter in W.P.No.26905 of 2011.

7. It is the further submission of the petitioner that though the District Collector is mandated to render necessary assistance, to the secured creditor of the assignee, to take physical possession of the secured assets, no orders have been passed by him and therefore, the assignee of the M/s.IDBI Bank, was constrained to file the instant writ petition, for a Mandamus, directing the respondent to pass appropriate orders, in his application, dated 20.03.2014 and render necessary assistance to them, in terms of Section 14 of the SARFAESI Act, to take vacant physical possession of the secured assets.

8. On the above facts and considering the limited relief, sought for, on 05.10.2016, we permitted the learned counsel for the petitioner to serve the entire papers, to the learned Government Counsel. After few adjournments, on instructions, Mr.K.V.Dhanapalan, learned Special Government Pleader, appearing for the respondent submitted that the Revenue Divisional Officer, Attur, has inspected the property and submitted a report to the District Collector, Salem, stating that the Company is under lock and key.

9. Inviting the attention of this Court to the application, dated 20.03.2014, filed by the petitioner, under Section 14 of the SARFAESI Act, 2002, learned Special Government Pleader further submitted that when this Court has held that possession, under Section 13(4) of the act, should be jointly done, application, under Section 14 of the Act, which is an aid of taking possession, under Section 13(4) of the Act, cannot be permitted to be made, by one of the secured creditors alone.

Heard the learned counsel appearing for the parties and perused the materials available on record.

10. The issue, as to whether, possession notice, under Section 13(4) of the Act, should be issued jointly or not, is sub-judice before the Hon'ble Supreme Court. Notwithstanding the above and without prejudice to the rights of the parties, it is

now stated that the assignee of M/s.IDBI Bank, petitioner herein and M/s.Kotak Mahindra Bank, secured creditors, have jointly issued the possession notice, under Section 13(4) of the Act. The only impediment for the District Collector, Salem, according to the learned Special Government Pleader, is that the application under Section 14 should have been jointly filed.

11. To avoid any procedural defect, we are of the view that, if the other secured creditor, viz., M/s.Kotak Mahindra Bank, files an affidavit, petition to implead them as a party in the application, dated 20.03.2014, filed under Section 14 of the SARFAESI Act, then, there would not be any impediment for the District Collector, Salem, respondent herein, on the joint action, and to pass appropriate orders on the application filed under Section 14 of the Act, taking note of the parameters, under Section 14 of the said Act. Upon filing the joint affidavit/petition, we direct the District Collector, Salem, respondent herein, to pass orders, on the application, dated 20.03.2014, within a period of four weeks, from the date of receipt of a copy of this order.

12. Accordingly, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To
The District Collector,
(District Magistrate),
Salem District, Salem.

+2cc to Mr.Ramalingam, Advocate, S.R.No.63824
+1cc to the Government Pleader, S.R.No.64365

ss(CO)
md(05/12/2016)

W.P.No.35364 of 2016