

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.36160 of 2016

W.M.P.Nos.31112, 31113 and 33374 of 2016

M/s.Vedagiri Paper and Board (P) Ltd.,
Rep., by its Managing Director,
V.Ramanathan .. Petitioner

versus

1. The District Magistrate-cum-District Collector,
Erode District, Erode.
2. The Chief Manager,
Indian Overseas Bank,
Namakkal, Namakkal District.
3. The Authorized Officer/
General Manager,
Indian Overseas Bank,
D.Nos.56 & 57,
Theppakulam Street,
Tiruchengode, Namakkal District.
4. The Tahsildar,
Perundurai Taluk Office,
Perundurai, Erode District.
5. I.Vargese Augustin,
S/o. Irudhayasamy,
Director,
M/s.Vedagiri Paper and Board (P) Ltd.,
D.No.5, Melapponnakaram, 8th Street,
Madurai-16. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in his proceedings Ref.No.12215/2016/D2, dated 02.09.2016, quash the same and directing the respondents 1 to 4 to remove the seal put up by the 4th respondent on the petitioner's M/s.Vedagiri Paper and Board (P) Ltd., Factory premises in an extent of 17202 Sq.Ft., out of 6 Acre 24 Cents, in S.No.17/5, Agricultural Punja land punjai Acre 3.16.5 and in S.No.18/2, Punjai land punjai Acre 3.08 totally to an extent of 6.24 Punjai land at Chinnavihamali Village, Perundurai Taluk, Erode District and consequently, the petitioner to sell their principal mortgage properties and to settle bank dues under the OTS Scheme, within the stipulated time.

For Petitioner : Mr.G.Jeremiah
For Respondents 1 and 4 : Mr.K.V.Dhanapalan,
Special Government Pleader
For 3rd Respondent : Mrs.Ananda Gomathy

ORDER

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

Record of proceedings shows that on 07.11.2016, we passed the following orders,

"Challenge in this writ petition is to an order passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act 54 of 2002), contending interalia that, possession notice under Section 13(4) of the Act, has not been issued to the borrowers before invoking Section 14 of the SARFAESI Act, 2002. Mr.G.Jeremiah, learned counsel for the petitioner also contended that Section 13(4) Notice has been issued only to the guarantor, and not the borrower.

2. When the matter came up for hearing, Ms.Ananda Gomathy, learned counsel for the bank/respondents 2 and 3, submitted that notice under Section 13(4) has been served on both the borrower/guarantor. She has also made submission that on receipt of notice under Section 14 of the Act, the writ petitioner,

represented by the Managing Director, appeared before District Collector.

3. In order to ascertain the same, we directed Mr.K.V.Dhanapalan, learned Special Government Pleader, to secure the records pertaining to the proceedings of the 1st respondent in No.12215/2016/D2 dated 02.09.2016.

4. Going through the files, Mr.G.Jeremiah, learned counsel for the petitioner, submitted that the file contains proof of service of notice under Section 13 (4) and Section 14 of the Act, on the borrower/guarantor, respectively. He further submitted that the writ petitioner has not furnished true facts on the above, and therefore, seeks permission of this court, to withdraw his appearance.

5. Placing on record the above submission, and while granting permission to withdraw his appearance on behalf of the writ petitioner, we instruct him, to intimate the writ petitioner to make suitable arrangements for his appearance, in person or through pleader on 21.11.2016.

Registry is directed to print the name of the writ petitioner on 21.11.2016."

2. Mr.V.Ramanathan, Managing Director, M/s.Vedagiri Paper and Board (P) Ltd., Tiruchengode, party-in-person, appeared and submitted that he has not received any notice, under Section 13 (4) of the SARFAESI Act. He further submitted that he received notice from the District Magistrate-cum-District Collector, Erode District, Erode, 1st respondent herein and made a representation.

3. On the above aspect, files pertaining to the order of the District Magistrate-cum-District Collector, Erode District, Erode, 1st respondent herein, dated 02.09.2016, produced by Mr.K.V.Dhanapalan, learned Special Government Pleader, appearing for respondents 1 and 4, was perused. Pages 347 to 369, contains demand notices, dated 28.07.2015, under Section 13(2) of the SARFAESI Act, issued to,

- (i) M/s.Vedagiri Paper and Board Pvt. Ltd.,
S.No.17/5, 18/2, Chinnavilamalai,
Erukkattuvalasu, Mullampatty Post,
Nasiyanoor, Erode 638 107.

(ii) Mr.V.Ramanathan,
Managing Director,
M/s.Vedagiri Paper and Board (P) Ltd.,
4/230, Chinnappalaikka Road,
Kadachanallur, Thokkavadi,
Tiruchengode.

(iii) Smt.R.Uma Maheshwari,
W/o.Shri V.Ramanathan,
4/230, Chinnappalaikka Road,
Kadachanallur, Thokkavadi,
Tiruchengode.

(iv) Mr.I.Vargese Augustin,
S/o. Irudhayasamy Rathinam,
D.No.5, Melapponnakaram, 8th Street,
Madurai-16.

4. Files further disclose that when the Assistant General Manager, Indian Overseas Bank, Tiruchengode, has made a complaint of non-receipt of Acknowledgement/proof of delivery of Registered letters with Acknowledgement with Transaction No.RT428758896IN, on 04.08.2015 of Tiruchengode H.O. 637 211, the Superintendent of Posts, Department of Posts, Namakkal Division, Namakkal 637 001, has sent a reply, dated 02.05.2016, stating that the letters were delivered on 07.08.2015.

5. Files further disclose that Section 13(2) Notice has been published in the English Daily, viz., The New Indian Express, on 15.08.2015, containing the name of Mr.V.Ramanathan, Managing Director, M/s.Vedagiri Paper and Board (P) Ltd., Tiruchengode, party-in-person. Possession notice, dated 19.12.2015, issued under Section 13(4) of SARFAESI Act, has been published in Tamil Newspaper, viz., Dinathanthi, on 22.12.2015.

6. Files at Pages 397 and 398, disclose postal acknowledgement. Registered letter has been sent by Indian Overseas Bank, No.56-58, Teppakulam Street, Sankari Road, Tiruchengode Branch, Namakkal District, Tamil Nadu 637 211, to the Managing Director, M/s.Vedagiri Paper and Board Pvt. Ltd., S.No.17/5, 18/2, Chinnavilamalai, Erukkattuvalasu, Mullampatty Post, Nasiyanoor, Erode 638 107. In the postal acknowledgement, a signature is seen against the space provided for, "signature of addressee", with the seal of M/s.Vedagiri Paper and Board Pvt. Ltd., S.No.17/5, 18/2, Chinnavilamalai, Erukkattuvalasu, Mullampatty Post, Nasiyanoor, Erode 638 107 and said to have been acknowledged on 23.12.2015. Party-in-person disputes the

signature. Prima facie, there are some materials, indicating service of notices issued under Section 13(2) of SARFAESI Act, to the borrower, viz., M/s.Vedagiri Paper and Board Pvt. Ltd., S.No.17/5, 18/2, Chinnavilamalai, Erukkattuvalasu, Mullampatty Post, Nasiyanoor, Erode 638 107.

7. Files further disclose that photographs of the premises with the notice affixed, stating that possession has been taken by the Bank. Contents of the notice affixed, are extracted hereunder:

INDIAN OVERSEAS BANK
THIRUCHENGODE BRANCH

THIS PROPERTY HAS BEEN TAKEN POSSESSION
BY INDIAN OVERSEAS BANK UNDER THE
SECURITISATION AND RECONSTRUCTION OF
FINANCIAL ASSETS AND ENFORCEMENT OF
SECURITY INTEREST ACT, 2002

19.12.2015
Authorised Officer

8. Files further disclose that the Office of the District Collector, Erode, has issued registered notices, dated 05.08.2016, to the following addressees, viz.,

- (i) The Authorised Officer/Chief Manager,
Indian Overseas Bank,
D.Nos.56 & 57,
Theppakulam Street,
Tiruchengode, Namakkal District.
- (ii) M/s.Vedagiri Paper and Board Pvt. Ltd.,
S.No.17/5, 18/2, Chinnavilamalai,
Erukkattuvalasu, Mullampatty Post,
Nasiyanoor, Erode 638 107.
- (iii) Mr.V.Ramanathan,
Managing Director,
M/s.Vedagiri Paper and Board (P) Ltd.,
4/230, Chinnappalaikka Road,
Kadachanallur, Thokkavadi,
Tiruchengode.
- (iv) Mr.I.Vargese Augustin,
S/o. Irudhayasamy Rathinam,
D.No.5, Melapponnakaram, 8th Street,
Madurai-16.

- (v) Smt.R.Uma Maheshwari,
W/o.Shri V.Ramanathan,
4/230, Chinnappalaikka Road,
Kadachanallur, Thokkavadi,
Tiruchengode.

The above persons have been directed to appear on 19.08.2016, at 4.00 P.M., with documents, failing which, based on the available documents, orders would be passed, on the petition, filed by the Bank, under Section 14 of the SARFAESI Act. Except Mr.I.Vargese Augustin, all of them have been served and there are postal acknowledgements. Notice sent to Mr.I.Vargese Augustin, Director of the abovesaid Company, has been returned with an endorsement, "Left".

9. Files further disclose that in response to the notice, dated 05.08.2016, Mr.V.Ramanathan, Managing Director, M/s.Vedagiri Paper and Board (P) Ltd., No.4/230, Chinnappalaikka Road, Kadachanallur, Thokkavadi, Tiruchengode, has sent a representation, dated 19.08.2016, to the District Collector, Erode, which has been acknowledged on the same day. The Assistant General Manager, Indian Overseas Bank, Tiruchengode, has also addressed a letter, dated 19.08.2016, to the District Collector, Erode, to help them to take physical position of the properties. The Village Administrative Officer, No.16, Kandampalayam Group, Perunthurai Taluk and the Revenue Inspector, Kanchikovil, have submitted their reports, stating that the factory premises of M/s.Vedagiri Paper and Board (P) Ltd., have been locked.

10. Thereafter, the District Magistrate-cum-District Collector, has passed orders on 02.09.2016, on the petition filed by the Indian Overseas Bank, dated 19.05.2016, filed under Section 14 of the SARFAESI Act. The Revenue Tahsildar, Perunthurai, in his proceedings, dated 05.10.2016, has addressed a letter, to the District Collector, Erode, stating that on 04.10.2016, physical possession has been handed over to the authorised officer of the Bank. In the Panchnama, drawn before the Tahsildar, Perundurai, one Mr.A.Shanmuga Sundaram, approved valuer and Ms.D.Sudha, Village Administrative Officer, have signed. However, the party-in-person, still insists that the notice, under Section 13(4) has not been served on him, whereas, the bank has contended otherwise.

11. In the light of the details culled out, from the files, pertaining to the proceedings, dated 02.09.2016 of the District Magistrate-cum-District Collector, Erode District, Erode, 1st

respondent herein and when facts are disputed, this Court is not inclined to grant the relief sought for. It is open to the petitioner to take recourse under the SARFAESI Act, if so advised.

12. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1. The District Magistrate-cum-District Collector,
Erode District, Erode.
2. The Chief Manager,
Indian Overseas Bank,
Namakkal, Namakkal District.
3. The Authorized Officer/
General Manager,
Indian Overseas Bank,
D.Nos.56 & 57,
Theppakulam Street,
Tiruchengode, Namakkal District.
4. The Tahsildar,
Perundurai Taluk Office,
Perundurai, Erode District.

+1cc to Mr.G.Jeremiah, Advocate SR.No.68171

SDR 28.12.2016

W.P.No.36160 of 2016

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