IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.40445 of 2016 &

W.M.P.No.34513 of 2016

M/s.M.R.Motor Company,
Rep.by its Managing Partner,
N.Rajagopal,
No.19, D.D.Road,
Salem - 637 001. ... Petitioner

-vs-

1.The Federal Bank Ltd.,
Rep. by its Branch Manager,
Salem Branch,
No.20, Ramakrishna Road,
Salem - 636 007.

2.The Authorized Officer,
The Federal Bank Ltd.,
Salem Branch,
No.20, Ramakrishnan Road,
Salem - 636 007.

3.The District Collector / District Magistrate,
Namakkal District,
District Collectorate,
Tiruchengode Road,
Namakkal.

4.Revenue Divisional Officer,
Namakkal.

5.Superintendent of Police,
Namakkal District,
Namakkal.

6.Deputy Superintendent of Police,
Namakkal.

7.Tahsildar,
Namakkal. ... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Roc.8205/2016-M4 dated 01.11.2016 on the file of the third respondent and quash the same, consequently, forbearing the respondents and their subordinates or any other officials tracing power under them or on their behalf from taking physical possession of the agricultural property mentioned in Item No.1 of the Petition dated 15.03.2016 filed by the second respondent before the third respondent, in connection with the summon in N.K.8205/2015-M4 dated 05.08.2016 on the file of the third respondent and from bringing the same for auction sale permanently.

For Petitioner : Mr.R.Neelakandan

O R D E R

[Order of the Court was made by N.AUTHINATHAN, J.]

The petitioner has come up with the present Writ Petition for a Writ of Certiorarified Mandamus, to call for the records of the order passed by the third respondent / District Collector and District Magistrate, Namakkal, in Roc.8205/2016-M4, dated 01.11.2016 and to quash the same and consequently, forbearing the respondents and their subordinates or any other officials tracing power under them or on their behalf from taking physical possession of the agricultural property shown as Item No.1 in the schedule to the petition dated 15.03.2016 filed by the second respondent before the third respondent, in connection with the summon in N.K.8205/2015-M4 dated 05.08.2016 on the file of the third respondent and from bringing the same for auction sale permanently.

2.The petitioner is a registered firm. It obtained a loan of Rs.5,50,00,000/- from the Federal Bank. They have committed default in repayment. The loan account became “non-performing asset” [NPA]. The Bank issued notice dated 03.01.2015 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “SARFAESI Act”) calling upon the petitioner to pay a sum of Rs.5,65,91,624/-. Thereafter, a notice dated 06.05.2015 was issued by the Bank for taking symbolic possession of the secured asset.

3.Aggrieved by the possession notice, the petitioner approached Debts Recovery Tribunal, by way of SARFAESI Application in S.A.No.210 of 2015 before the Debts Recovery Tribunal, Madurai, challenging the validity of the possession notice dated 06.05.2015.

4.Pending disposal of the SARFAESI Application, the Bank approached the third respondent / District Collector and District Magistrate, Namakkal, seeking assistance in taking possession of the mortgaged properties / secured assets.

5.The District Collector/District Magistrate / third respondent issued summons to the petitioner firm and its partners. The petitioner filed objections dated 01.09.2016 to the application under Section 14 of SARFAESI Act before the third respondent. They have pleaded for the dismissal of the petition.

6.The petitioner approached this Court by way of Writ Petition in W.P.No.34203 of 2016 praying for the issuance of the writ of mandamus, forbearing the respondents and their subordinates or any other officials tracing power under them or on their behalf from taking physical possession of the agricultural property mentioned in Item No.1 of the petition dated 15.03.2016 filed by the second respondent before the third respondent, in connection with the summon in N.K.8205/2015-M4 dated 05.08.2016 on the file of the third respondent and from bringing the same for auction sale permanently. The Writ petition was disposed of on 28.09.2016, observing thus: "when the matter is pending before the District Collector, to pass appropriate orders under Section 14 of the Act, prayer sought for in this writ petition, cannot be granted. It is for the District Collector, to consider the parameters contained in Section 14 of the Act, and to pass appropriate orders, within four weeks from the date of receipt of a copy of this order."

7.They made representations dated 29.09.2016 to the third respondent. Thereafter, the third respondent passed the impugned order dated 01.11.2016 directing the fourth respondent, Revenue Divisional Officer, Namakkal to take possession of the properties and hand over the same to the authorised officer of the Federal Bank.

8.Aggrieved by the order dated 01.11.2016 passed by the third respondent, the petitioner approached this Court, praying to issue a writ of certiorarified mandamus, calling in respect of the property shown as item one in the schedule to the application under Section 14 of the SARFAESI Act.

9.The learned counsel for the petitioner would submit that the property in question measuring an extent of 0.67 acres comprised in Survey No.42/6B of Reddipatty Village, Sendamangalam Taluk and District and another property measuring an extent of 1.26 acres comprised in Survey No.42/5 of Reddipatty Village, Sendamangalam Taluk and District, totalling to 1.93 acres of land standing in the name of the Managing Partner are agricultural lands and they are exempted from the provisions of the SARFAESI Act and therefore, the impugned order in so far as it relates to first item is liable to the quashed. He has produced the copies of the revenue records (adangals) wherein the land in question has been classified as 'punja lands'.

10.In this connection, the learned counsel for the petitioner relied on the judgment of this Court in A.AKTHAR HUSSAIN vs. K.PAPPIREDDIYAR & OTHERS [AIR 2016 MADRAS 114]. In the said case, it has been held: "38.Having held hereinabove that security interest created was in agricultural land, we have no hesitation to hold that all the proceedings initiated under the SARFAESI Act are nullity, as the security interest in agricultural land cannot be enforced inasmuch as the same is exempted under the provisions of Section 31(i)."

11.In KANAIYALAL LALCHAND SACHDEV vs. STATE OF MAHARASHTRA [(2011) 2 SCC 782], the Supreme Court has held that an action under Section 14 of SARFAESI Act constitutes an action after the stage of 13(4) and therefore, the same would fall within the ambit of Section 17(1) of SARFAESI Act. It has also been held that SARFAESI Act contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the Debt Recovery Tribunal. Its a case arising under Section 14 of SARFAESI Act.

12.In the light of the said decision, it can be safely held that the impugned order would fall within the ambit of Section 17(1) of the SARFAESI Act. Any person including borrower aggrieved by any measure taken by the secured creditor (bank) can make an application under Section 17(1) of the SARFAESI Act against the action taken by the Bank under Section 13(4) of the SARFAESI Act to Debts Recovery Tribunal. Section 17(3) of the SARFAESI Act reads thus: "If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section(4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order:(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and (b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section(1), as the case may be; and (c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13." A careful reading of Section 17(3) of the SARFAESI Act would clearly reveal that the Debts Recovery Tribunal will have jurisdiction to consider the representation or objections raised by the aggrieved person. If it finds that the measures taken by the secured creditors are not correct, it can order restoration and pass suitable orders in relation to the action taken by the secured creditors in terms of Section 17(3) of the SARFAESI Act.

13.Admittedly, the petitioner has chosen to approach the Debts Recovery Tribunal to challenge the possession notice dated 06.05.2015 by way of S.A.No.210 of 2015. However, as far as the impugned order is concerned, he has approached this Court without exhausting the efficacious and alternative remedy provided under the SARFAESI Act. The issue raised by the petitioner has to be agitated before the Debts Recovery Tribunal, in the light of the dictum laid down by the Supreme Court in KANAIYALAL LALCHAND SACHDEV vs. STATE OF MAHARASHTRA [(2011) 2 SCC 782]. The petitioner cannot be permitted to bypass the statutory remedy available under the SARFAESI Act and take recourse to the proceedings under Article 226 of the Constitution of India. As the petitioner has the opportunity to work out its remedy before the Debts Recovery Tribunal, we are not inclined to entertain the Writ Petition.

14.For the foregoing reasons, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

15.After the disposal of the writ petition, Mr.R.Neelakandan, learned counsel for the writ petitioner, sought for a direction to the registry to return the order impugned.

16.Placing on record the above, Registry is directed to return the same after obtaining an attested copy from the learned counsel for the petitioner.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

1.The Branch Manager,,
Federal Bank Ltd.,
Salem Branch,
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Salem - 636 007.

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4.The Revenue Divisional Officer,
Namakkal.

5.The Superintendent of Police,
Namakkal District,
Namakkal.

6.The Deputy Superintendent of Police,
Namakkal.

7.The Tahsildar,
Namakkal.

+1cc to Mr.R. Neekkandey, Advocate, S.R.No.66870

rp(CO)
md(02/12/2016)

W.P.No.40445 of 2016