In the High Court of Judicature at Madras

Dated: 23.02.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.4285 of 2016 and
W.M.P. No.3634 of 2016

A.Ramalingam ..Petitioner

Vs.

1. The Authorised Officer,
Indian Bank,
Chinnaimpalayam Branch,
Coimbatore

2. M/s K.N.R.Packaging India (P) Ltd.,
3/257/A, Muthu Gounden Pudur,
Sulur Taluk, Coimbatore - 641 402

3. K.P.Narayanasamy

4. S.Amirthamani

5. K.N.Sakthivel ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the sale notice issued by the first respondent on 15.12.2015 to quash the same.

For Petitioner : Mrs.C.Deivasigamani

For Respondents : Mr.F.B.Benjamin George for R1
No appearance for R2 to R5

O R D E R

[Judgment of the Court was Delivered By
M.VENUGOPAL, J.]

The Petitioner has focused the present Writ Petition praying for passing of an Order by this Court to call for the records pertaining to the Sale Notice dated 15.12.2015 issued by the 1st Respondent / Authorised Officer, Indian Bank, Chinnaimpalayam Branch, Coimbatore and to quash the same.

2.According to the Learned Counsel for the Petitioner, the 2nd Respondent/ M/s K.N.R. Packaging India (P) Ltd., has borrowed a sum of Rs.60,00,000/- (Rupees Sixty Lakhs only) as OCC Limit and term loan to the limit of Rs.16,80,000/- and that the term loan was paid.

3. The Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner for the OCC Limit of Rs.60,00,000/- availed by the 2nd Respondent, stood as a guarantor and mortgaged his lands viz., agricultural lands with the 1st Respondent/ Bank and further that as against the said agricultural lands a 'Security Interest' cannot be created in terms of Section 31 of the SARFAESI Act, 2002. The real grievance of the Petitioner is that the lands in question are agricultural lands and that they cannot be sold in Auction to recover money lent by the Bank. As such, there cannot be any confirmation of sale of the properties auctioned by the Bank on 22.01.2016.

4. Lastly it is the contention of the Learned Counsel for the Petitioner that the lands are agricultural lands and therefore a 'Security Interest' cannot be created in Law.

5. In the instant case, the 2nd Respondent / M/s K.N.R. Packaging India (P) Ltd., Coimbatore availed credit facilities from the 1st Respondent/Bank and the repayment of the amount was secured by mortgage of the properties. It appears that the 2nd Respondent had failed to pay the outstanding amount to the 1st Respondent/Bank. Accordingly, the 1st Respondent/Bank issued a Demand Notice dated 31.12.2014 under Section 13(2) of the SARFAESI Act, 2002, calling upon the 2nd Respondent and others to pay the due amount of Rs.62,10,437.42 paise as on 30.12.2014 with interest, cost etc.,

6. It is to be borne in mind that the 2nd Respondent and others had failed to make payment despite the issuance of Demand Notice dated 31.12.2014 under Section 13(2) of the SARFAESI Act and that the Authorised Officer of the 1st Respondent/Bank took possession of the concerned properties under the Act on 26.03.2015 by complying with all legal formalities.

7. Indeed, under Section 13(2) of the SARFAESI Act, 2002, it is incumbent upon a secured creditor to serve 60 days notice before proceeding to take any of the measures as contemplated under Section 13(4) of the Act. After service, if a borrower places facts or raises any objection for consideration of the secured creditor, such reply to the notice ought to be

considered with due application of mind. In fact, the reasons for refusing to accept the objections raised, howsoever, brief they may be, must be communicated to the borrower. The reasons so communicated shall only be for the purpose of information / knowledge of a borrower without giving rise or any right to approach Debts Recovery Tribunal under Section 17 of the Act at that stage as per decision of Hon'ble Supreme Court Mardia Chemicals Limited V. Union of India reported in ('Judgment Today' 2004(4) Supreme Court at Page 245).

8. Apart from that once Notice is issued to a borrower under Section 13(2) of the Act and he fails to comply with the notice within the stipulated period, in view of Sub-clause (a) of Sub-Section 4 of Section 13, the secured creditor is entitled to take possession of the secured assets of the borrower as per decision in Bhuvanandram.T. V. L.I.C. Housing Finance Limited reported in AIR 2010 Kerala Page 15. Just because a person was issued with notice, one cannot presume that such person is biased. In reality, it is for the secured creditor to take its own administrative decision as to whether person who is issuing notice should also be the officer dealing with reply as per decision Jupiter Jewel Tech V. Authorised Officer, Indian Overseas Bank reported in (2010(1) D.R.T.C. at Page 714 at Special Page 719, 720 (Mad.))

9. In this connection, it is not out of place for this Court to make a pertinent mention that as per ingredients of Section 13 (4) of the SARFAESI Act, 2002, the Secured creditor is entitled to effect the sale of the assets taken possession of and realize the proceeds in respect of the outstanding balance. In the present case on hand, the Respondents 2 to 5 and the Writ Petitioner were issued with the Notice of intended sale under Rule 3(2) and 8(6) of the Security Interest (Enforcement) Rules 2002 under The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in respect of loan account in the name of 2nd Respondent with the 1st Respondent/Bank, Chinniampalayam Branch, Coimbatore. In the said notice a sum of Rs.73,87,331/- was mentioned as due amount as on 14.12.2015 with further interest, costs, other charges and expenses thereon. The date of sale was fixed on 22.01.2016, which would be by E-Auction mode.

10. Be that as it may, on a careful consideration of the contentions advanced on behalf of the Petitioner, this Court is of the considered view that the Writ Petitioner (Guarantor / Mortgagor), if he is aggrieved by any of the measures referred to any Sub Section 4 of Section 13 of SARFAESI Act, initiated by the Secured Creditor or his Authorised officer, is entitled to agitate over the same by filing an Application with such fee as may be prescribed before the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which

such measures had been taken, as per Section 17 of the SARFAESI Act, 2002. Viewed in that perspective, without availing an effective, efficacious and viable alternative remedy of approaching the competent Debt Recovery Tribunal in terms of Section 17 of the SARFAESI Act, 2002, the Petitioner has filed the present Writ Petition before this Court, which is per se not maintainable in Law. Consequently, the Writ Petition fails.

11. In fine the Writ Petition is dismissed leaving the parties to bear their own costs. It is made clear that the dismissal of the Writ Petition will not preclude the Writ Petitioner to approach the competent Debts Recovery Tribunal and to seek redressal of his grievance in the manner known to law and in accordance with Law. Liberty is also granted to the Petitioner to raise all factual and legal pleas before the Tribunal. Resultantly the connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssd
To

1. The Authorised Officer,
   Indian Bank,
   Chinnaimpalayam Branch,
   Coimbatore

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