IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.5075 of 2016
and
W.M.P.No.4415 of 2016

1.M/s.Hotel Milestonnez India Private Ltd.
rep by M.Rajamanickam,
No.34,Santhavelur,
Sunguvarchatram PO,
Sriperumbudur,
Kancheepuram District-602 106.

2.M.Rajamanickam

3.R.Manimegalai .. Petitioners

Vs.

1.State Bank of India,
Stressed Assets Management Branch,
by its Authorised Officer,
Office at "Red Cross Buildings",
No.32, Montieth Road,
Egmore, Chennai-600 008.

2.The Debt Recovery Tribunal-II,
No.770, Anna Salai, Spencer Tower,
Chennai.

3.The Registrar,
The Debt Recovery Tribunal-III,
No.770, Anna Salai, Spencer Tower,
Chennai. ..Respondents

The writ petition is preferred under Article 226 of the Constitution of India, praying for the issue of a writ of mandamus, seeking direction to the first respondent not to take any action against the petitioner's schedule property in the possession notice dated 7.9.2015, without adhering to the procedure contemplated in law.

For Petitioner : Mr.S.Ramajayam

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant writ petition is filed, seeking for a direction to the first respondent Bank not to take any action against the petitioner's scheduled property described in the possession notice dated 7th September, 2015, without adhering to the procedure contemplated in law.

2 The brief facts as projected by the petitioners are that in the course of their business, the petitioners obtained term loan of Rs.10 Crores and they were also sanctioned, thereafter, cash credit limit for Rs.1 Crore. Later on, corporate loan of Rs.5.46 Crores was also sanctioned by the Bank. Noticing default in making repayment, a demand notice dated 20th January, 2015 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act) was issued on the petitioners.

3 According to the petitioners, the petitioners have submitted their representation. Without considering the same, the petitioners' CC account has been blocked. As averred by the petitioners, the request to regularise the petitioners' CC account was not acceded to. A possession notice dated 7th September, 2015 under Section 13(4) of the SARFAESI Act read with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 was issued. It is stated in the said impugned possession notice that one more demand notice dated 20th May, 2015 was issued, calling upon the borrower as well as the guarantors to repay the amount to the tune of Rs.12,81,56,322.69. As the petitioners failed to make repayment, possession of the secured asset was taken under the said possession notice.

4 It is stated by the petitioners that one securitisation application being S.A.No.434 of 2015 under Section 17(1) of the SARFAESI Act was filed by the petitioners, questioning the legality and validity of the notice dated 14th September, 2015. However, the said notice is not a part of the application filed herewith. It appears that the notice dated 7th September, 2015 was received on 14th September 2015. During the pendency of the aforestated application before the Debts Recovery Tribunal, the instant petition is filed, seeking direction to the first respondent Bank not to take any action against the petitioners' property described in the possession notice dated 7th September, 2015 on the ground that procedure as contemplated under the provisions of law has not been followed. Thus, this petition.

5 On perusal of the pleadings, it appears that the Bank has also filed an application under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in O.A.No.760 of 2015, pending on the file of the Debts Recovery Tribunal-II, Chennai, whereunder a notice has been issued to the

petitioners and the petitioners have also caused appearance on 20th January, 2016. During the pendency of the aforestated proceedings, a sale notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 was issued to the petitioners, indicating that the secured assets shall be sold in public e-auction to be held on 10th February, 2016. Needless to state that there is no challenge to the said e-auction notice in the instant petition.

6 In view of the aforestated factual matrix, when the proceedings in respect of the various notices for recovery of money are pending consideration before the Debts Recovery Tribunal, this writ petition is not maintainable. The petitioners are at liberty to raise all issues available to them in the pending proceedings before the Tribunal, if so advised. Thus, this writ petition, being premature, sans merit and deserves to be dismissed.

7 Resultantly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vvk

To

1.The Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
Office at "Red Cross Buildings",
No.32, Montieth Road,
Egmore, Chennai-600 008.

2.The Debt Recovery Tribunal-II,
No.770, Anna Salai, Spencer Tower,
Chennai.

3.The Registrar,
The Debt Recovery Tribunal-III,
No.770, Anna Salai, Spencer Tower,
Chennai.

1 cc to Mr.Ramajayam, Advocate, Sr. 8992

W.P.No.5075 of 2016

MG (CO)
kk 10/3