IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No.6864 of 2016
and
W.M.P. No.6105 of 2016

P. Kanchana ... Petitioner

Vs.

1. The Branch Manager
Indian Bank
Dharmapuri Branch
Pennagaram Main Road
Dharmapuri 636 701

2. The Authorised Officer/AGM
Indian Bank
Dharmapuri Branch
Pennagaram Main Road
Dharmapuri 636 701 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the respondents from taking any further action in pursuance of the notice issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dated 21.12.2015 which was published in daily news papers on 31.12.2015 in respect of the house property namely, the building constructed at New Door No.33/51M and the land to the extent of 1001.4375 sq. ft. (93.04 square metre) in Survey No.55/1 (now subdivided as 55/1B), Door Nos.33,35,37,39/1 and 39/2, Gandhi Nagar, IV Cross, situated at Virupatchipuram Village, Dharmapuri Taluk.

For petitioner : Mr. C. Munusamy

ORDER

(delivered by SATISH K. AGNIHOTRI, J.)

Notice to the respondents is dispensed with at this stage, inasmuch as no adverse order is passed against them in this writ petition.

2. This writ petition is filed seeking a writ of mandamus forbearing the respondents from taking any further action in pursuance of the notice dated 21 December 2015 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"),which was published in daily newspapers on 31 December 2015 in respect of the house property in question.

3. The primordial contention urged by the petitioner in this writ petition is that she is the purchaser of the property in question from one P.Manikandan on 09 April 2014 by a registered sale deed under Document No.1503/2014 on the file of the Sub-Registrar,Dharmapuri(West).The said P.Manikandan had purchased the property from one D.N. Mathaiya Krishnan to an extent of 2,784 sq. ft. by way of a registered sale deed. A demand notice was issued to the occupant of the secured asset and also to one Jeya Sudha and estate of late P.Manikandan. The petitioner was not aware of any such mortgage or notice. Thus, further proceedings be stayed.

4. Be that as it may, seemingly, before the sale of the property, one P. Manikandan had offered the property in question as security for the loans availed by Ohm Kwality Electronic and New Kwality Electronic. The facts are in dispute. The petitioner submits that on having come to know about the aforestated notice, she made a representation on 14 January 2016 and no consideration has been made thereon. It is not pointed out in the pleadings as to whether any further consequential measure has been taken under other provisions of the SARFAESI Act. Thus, on the facts as averred by the petitioner, no interference is warranted at this stage.

5. Furthermore, the petitioner has not impleaded the borrower and the guarantor as party respondents in this writ petition. That apart, the petitioner has not pointed out any extraordinary circumstance warranting interference under writ jurisdiction, when an effective and alternative statutory remedy

is available. In such view of the matter also, we are not inclined to interfere in the matter at the stage of notice under Section 13(2), ibid. However, if subsequent measure is taken under Section 13(4), ibid, or thereafter, it is open to the petitioner to challenge the same in an appropriate proceedings, perhaps, under Section 17(1), ibid, before the Debts Recovery Tribunal, wherein, even a third party is entitled to question any measure taken by the secured creditor under Section 13(4), ibid.

6. In this context, it is apt to refer to the judgment of the Supreme Court in United Bank of India Vs. Satyawati Tondon and others[1], wherein it was held as follows :

> "55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

7. In Kanaiyalal Lalchand Sachdev and others vs. State of Maharashtra and Others[2], the Supreme Court had observed that the borrower or any person aggrieved by an action under Section 13 (4), ibid, shall file an appeal before the Debts Recovery Tribunal. The relevant paragraph of the said judgment reads thus:

> "22.We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself 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 DRT".

1 (2010) 8 SCC 110
2 (2011) 2 SCC 782

8. In the upshot, the writ petition is dismissed as not maintainable, reserving liberty to the petitioner to work out her remedy in the manner known to law. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Branch Manager
Indian Bank
Dharmapuri Branch
Pennagaram Main Road
Dharmapuri 636 701

2. The Authorised Officer/AGM
Indian Bank
Dharmapuri Branch
Pennagaram Main Road
Dharmapuri 636 701

+1cc to Mr.C.Munusamy, Advocate, S.R.No.11724

W.P. No.6864 of 2016

KK(CO)
CA(09/03/2016)