BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.11.2016
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.13170 of 2015 and M.P(MD)Nos.1 to 3 of 2015
&
W.P(MD)No.13171 of 2015 and M.P(MD)Nos.1 and 2 of 2015

M.S.Saravanan ... Petitioner in WP(MD)No.13170/2015

M.Jeyalakshmi ... Petitioner in WP(MD)No.13171/2015

Vs.

1. The Revenue Divisional Officer,
   Tenkasi,
   Tirunelveli District.

2. The Authorised Officer,
   Sundaram BNP Paribas Home Finance Ltd.,
   No.144/2, Shanmugapriya Complex,
   Tirvandrum Main Road,
   Palayamkottai,
   Tirunelveli - 2. ... Respondents in both WPs.

COMMON PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned proceedings issued by the first respondent in Na.Ka.No.A2/5383/2015, dated 10.07.2015 and posted on 22.07.2015, and quash the same.

For Petitioner : Mr.N.Shankar Ganesh

For Respondents : Mr.D.Muruganantham
Additional Government Pleader for R.1
Mr.T.Antony Arul Raj for R.2

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COMMON ORDER

(Order of the Court was made by M.SATHYANARAYANAN,J.)

By consent, these writ petitions are taken up for final disposal as the subject matter of challenge is one and the same.

2. The facts leading to the filing of these writ petitions would read, among other things, that the petitioners herein who are the husband and wife, have jointly availed the personal loan from the second respondent on 01.11.2011 for a sum of Rs.14,35,000/- (Rupees Fourteen Lakhs and Thirty Five Thousand only) with interest at the rate of 11% per annum and agreed to pay the same in an Equated Monthly Installment of Rs.24,995/- (Rupees Twenty Four Thousand Nine Hundred and Ninety Five only) per month in the Loan Account No.42900154.

3. According to the petitioners, they paid the Equated Monthly Installment till 31.01.2015 to the tune of Rs.12,00,000/- (Rupees Twelve Lakhs only) and the loan was availed for the purpose of expanding the medical shop business of the petitioner in W.P(MD) No.13170 of 2015 and the petitioner in W.P(MD)No.13171 of 2015 is working as Overseer in the Panchayat Union at Shenkottai and in view of the default committed in paying the installments, the second respondent initiated legal action under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') by issuing a notice under Section 13(2) of the SARFAESI Act on 01.06.2014 and followed by a notice under Section 13(4) of the SARFAESI Act and despite receipt and acknowledgement of the same, the petitioners did not pay the same and therefore, approached the first respondent by invoking Section 14 of the SARFAESI Act and the said official has passed the impugned order for taking possession and also communicated the same on 10.07.2015 stating that the mortgaged properties should be taken possession in the presence of Revenue and Police Officials on 28.07.2015. The petitioners challenging the legality of the same, had filed these writ petitions.

4. This Court, while entertaining the writ petitions, has directed the petitioner in W.P(MD)No.13170 of 2015 to deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) for the purpose of proving his bona fide, however, it is represented that on account of financial difficulty, the said order has not been complied with.

5. The learned Counsel for the petitioners would submit that admittedly, before passing the order under Section 14 of the SARFAESI Act, the petitioners have not been put on notice and even the copy of the order passed on the application submitted, by the second respondent, has not been furnished to them and only on receipt of the impugned notice, dated 10.07.2015, they became aware of the steps taken by the second respondent to take possession of the secured assets.

6. The learned Counsel for the petitioners would further add that since it is a residential premises, some sympathy and

leniency may be shown by granting some time and they may be in a position to pay the amounts due and payable to the second respondent.

7. Per contra, the learned Counsel for the second respondent has drawn the attention of this Court to the counter affidavit and would submit that despite very many opportunities given, the petitioners did not choose to regularise their loan account and therefore, the assets were declared as Secured Assets and thereafter, a demand notice under Section 13(2) of the SARFAESI Act was issued on 01.06.2014 and despite receipt and acknowledgement of the same, no reply was given by the petitioners and it was also followed by a possession notice and subsequently, it was also published in the Dailies on 24.09.2014 and since their attempts to take possession of the properties ended in futile, Section 14 of the SARFAESI Act was invoked and the first respondent, after satisfying the compliance of procedural formalities, has ordered in favour of the second respondent and in compliance of that order only, the possession of the assets is attempted to be taken and at that juncture, the petitioners had approached this Court by filing these writ petitions. He would further add that this Court had shown indulgence by directing the principal borrower to deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only), it has not been complied with and since this matter is pending for very many years, he prays for the dismissal of the writ petitions.

8. This Court paid it's best attention to the rival submissions and also perused the materials available on record.

9. The scope of Section 14 of the SARFAESI Act came up for consideration before the Honourable Supreme Court in ***Standard Chartered Bank v. V.Noble Kumar*** reported in ***2013 (6) CTC 683*** and the Honourable Supreme Court has taken note of the amendment in the form of proviso to Section 14(1) of the SARFAESI Act and sub-section (1-A) by Act 1 of 2013 and held that the borrower is always entitled to prefer an 'appeal' under Section 17 after the possession of the Secured Asset is handed over to the Secured Creditor, as it is a measure against which the remedy under Section 17 is available.

10. In the light of the effective alternative remedy, this Court is of the view that the present writ petitions are not maintainable.

11. At this juncture, the learned Counsel for the petitioners would submit that liberty may be given to them to approach the Tribunal by filing the appeals and the delay in preferring the appeals may be condoned, for the reason that the petitioners were

diligently prosecuting these writ petitions and therefore, he prays for appropriate orders.

12. However, the said plea is strongly opposed by the learned Counsel for the second respondent, who would submit that the petitioners while filing the application for condoning the delay, are bound to explain such a delay and therefore, the discretion may be left to the Tribunal to take a decision in that regard.

13. In the result, both the writ petitions are dismissed and the petitioners, if they are so advised, are at liberty to invoke Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, Madurai, along with the petitions for condoning the delay in filing the appeals and as and when the petitions as well as the appeals are filed and if the papers are otherwise in order, the Tribunal may entertain the same and pass orders on merits and in accordance with law. No costs. Consequently, the connected writ miscellaneous petitions are dismissed.

Sd/
Assistant Registrar(A.E.,)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Revenue Divisional Officer,
   Tenkasi,
   Tirunelveli District.

2. The Debts Recovery Tribunal,
   Madurai.

+1cc to M/s.T.Antony Arul Raj, Advocate, in SR No.69074.

+2cc to M/s.N.Shankar Ganesh, Advocate, in SR No.69017.

+1cc to Special Government Pleader in SR.No.68855.

W.P(MD)No.13170 of 2015
and M.P(MD)Nos.1 to 3 of 2015
& W.P(MD)No.13171 of 2015
and M.P(MD)Nos.1 and 2 of 2015
14.11.2016

rsb
msm/mpa/sar3/23.11.16/p4/7c(IT)