



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2016

CORAM:

WEB COPY

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE S.MANIKUMAR

W.P. (MD).No.23441 of 2015
and
M.P.(MD).No.1 of 2015

M/s.The Charnockite Product,
Rep by its Proprietor,
No.269, Sankarankovil Road,
Rajapalayam, Virudhunagar District..... Petitioner
Vs.

1.The Deputy Regional Manager,
Bank of Baroda, Regional Office,
Madurai.

2.The Chief Manager, (DRM)
Authorized Officer,
Bank of Baroda, Rajapalayam Branch,
Tenkasi Road, Rajapalayam,
Virudhunagar District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records pertaining to the impugned possession notice dated 15.12.2015 issued by the second respondent under Section 13(4) of the SARFAESI Act, quash the same .

For petitioner	Mr.T.Bashyam
For respondents	Mr.Pala Ramasamy

ORDER

(delivered by SATISH K. AGNIHOTRI, J.)

This writ petition is filed by the borrower, assailing the
<https://hservices.ecourts.gov.in/hservices/judicial-officers> of the notice dated 15 December 2015 issued by the
second respondent bank under Section 13(4) of the Securitization



and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), wherein, it is stated that the respondent bank has taken symbolic possession of the secured assets.

2 The petitioner's main ground of attack is that before issuing the impugned notice under Section 13(4) of the SARFAESI Act, its representation made under Section 13(3-A), *ibid*, has not been considered and as such, notwithstanding the availability of appellate remedy, the petitioner is entitled to maintain the writ petition, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

3 The question as to whether a writ petition is maintainable against a possession notice issued under Section 13 (4) of the SARFAESI Act is no longer *res integra*.

4 The Supreme Court, in *United Bank of India Vs. Satyawati Tondon and others*¹, referring to with approval, various judicial pronouncements made in *Modern Industries Vs. Sail*², *Raj Kumar Shivhare Vs. Directorate of Enforcement*³, *Industrial Investment Bank of India Ltd. Vs. Biswanath Jhunjhunwala*⁴, *City and Industrial Development Corpn. Vs. Dosu Aardeshir Bhiwandiwalla*⁵, *CCT Vs. Indian Explosives Ltd.*⁶, *Mardia Chemicals Ltd. Vs. Union of India*⁷, *Harbanslal Sahnia Vs. Indian Oil Corpn. Ltd.*⁸, *Punjab National Bank Vs. O.C. Krishnan*⁹, *Whirlpool Corpn. Vs. Registrar of Trade Marks*¹⁰, *SBI Vs. Indexport Registered*¹¹, *CCE Vs. Dunlop India Ltd.*¹², *Titaghur Paper Mills Co. Ltd. Vs. State of Orissa*¹³, *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad*¹⁴, *Bank of Bihar Ltd. Vs. Dr. Damodar Prasad*¹⁵, *Thansingh Nathmal Vs. Supdt. of Taxes*¹⁶, *Secy. Of State Vs. Mask & Co.*¹⁷, *Attorney-General of Trinidad and Tobago Vs. Gordon Grant & Co. Ltd.*¹⁸ and *Neville Vs. London Express Newspapers Ltd.*¹⁹, observed as under :

1 (2010) 8 SCC 110

2 (2010) 5 SCC 44

3 (2010) 4 SCC 772

4 (2009) 9 SCC 478

5 (2009) 1 SCC 168

6 (2008) 3 SCC 688

7 (2004) 4 SCC 311

8 (2003) 2 SCC 107.

9 (2001) 6 SCC 569

10 (1998) 8 SCC 1

11 (1992) 3 SCC 159

12 (1985) 1 SCC 260.

13 (1983) 2 SCC 433

14 AIR 1969 SC 556

15 AIR 1969 SC 297

16 AIR 1964 SC 1419

<https://hcservices.ecourts.gov.in/hcservices/>

17 (1939-40) 67 IA 222.

18 1935 AC 532 (PC)

19 1919 AC 368 ; (1918-19) All ER Rep 61 (HL)



future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

6 In view of the foregoing, we are not inclined to entertain this writ petition. However, we reserve liberty to the petitioner to raise all grounds, including, non-consideration of its representation under Section 13(3-A) of the SARFAESI Act and all other legally permissible grounds, before the Debts Recovery Tribunal, if so advised.

7. Resultantly, the writ petition stands dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

1.The Deputy Regional Manager,
Bank of Baroda, Regional Office,
Madurai.

2.The Chief Manager,
Authorized Officer,
Bank of Baroda, Rajapalayam Branch,
Tenkasi Road, Rajapalayam,
Virudhunagar District.

+One cc to M/s.Pala Ramasamy, Advocate, SR.No.7215

nb/gb

RL/4C/AAL/MPA/16/2/2016

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