BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD) No.16561 of 2016
& W.M.P(MD)Nos.12072 & 12073 of 2016

M/s.State Bank of India,
Stressed Assets Management Branch,
Raja Plaz a, First Floor,
No.1112, Avinashi Road,
Coimbatore-641 037,
Rep.by its Chief Manager. ... Petitioner

Vs.

1.The District Collector,
(District Magistrate)
Thanjavur District,
Thanjavur.

2.The Revenue Divisional Officer,
Thanjavur District.
Thanjavur. ...Respondents

Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent culminating in the observations being made in the last two lines in the Proceedings of the first respondent in R.C.No.34810/2015/C1 dated 19.08.2016 and quash the said observations made against the bank officials and consequently direct the first respondent to comply with Section 14(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by taking or causing to be taken such steps and use, or cause to be used, such force as may be necessary in rendering necessary assistance to the petitioner to take vacant physical possession of the secured assets as set out therein.

For Petitioner : Mr.V.Veera Pandian
for M/s. Ramalingam & Associates

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader.

ORDER

(Order of the Court was made by **NOOTY.RAMAMOHANA RAO,J**)

The Parliament, with a view to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith and incidental thereto, enacted the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth, for brevity referred to as 'the SARFAESI Act').

2. Since the legal principle holding the field in no uncertain terms declares that no person, howsoever a wonderful right he has, can take possession of immovable property on his own by dispossessing any other person, without recourse to law. Any such dispossession can only take place in accordance with law. Therefore, Banks and Financial Institutions have been finding the process of securing possession of the secured assets very difficult and cumbersome. More than anything else, enormous time is consumed by the legal process. To shorten this process and thus, avoid hardship to the banks and financial institutions, Section 14 of the SARFAESI Act, has conferred power on the Chief Metropolitan Magistrate or District Magistrate within whose jurisdiction, any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, upon a request made to do so by the secured creditor. The exercise to be carried out by the Chief Metropolitan Magistrate or the District Collector under Section 14 of this Act, is virtually to render assistance to the secured creditor to enable him to take possession of the secured asset which can be dealt with by such secured creditor thereafter under sub-section (4) of Section 13 of the Act.

3. In addition to the safety mechanism incorporated under this Act, the Parliament has once again bestowed it's attention and introduced certain amendments in Section 14 of the Act, by way of Amendment Act 1 of 2013, which is brought into force on 15.01.2013. A proviso has been incorporated under sub-section 1 of Section 14 which required every application made under Section 14 of the Secured creditor, to be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor disclosing the entire information, which is detailed in Clause I to X incorporated therein. The vital information, which will help the District Collector or the Chief Metropolitan Magistrate to record his satisfaction are that:-

(a) the borrower created secured interest over the property in question;

(b) the Bank or the financial institutions are holding valid and subsisting interest in the security interest over the property;

(c) and that the bank or financial institutions are proceeding against the borrower within the prescribed period of limitation;

(d) the borrower committed default of repayment of financial assistance availed by him; and

(e) the demand notice raised under sub-section 2 of Section 13 has not been honoured and that the borrower has not made any payment thereafter.

4. Therefore, all the relevant factors in the form contained in the sworn in affidavit furnished by the authorised officer of the bank or financial institution is required to be placed before the Chief Metropolitan Magistrate or the Collector. When once sworn-in affidavit by the responsible officer has been furnished and it is made available to the Collector or the Chief Metropolitan Magistrate, the correctness or otherwise of the contents of the affidavits becomes the responsibility of the person affirming the affidavit and such a person apart from the bank or financial institution itself will have accountability for any lapses therein. The Chief Metropolitan Magistrate or the District Collector, as the case may be, is no way concerned with the correctness or otherwise of the contents of the affidavitor with the contents of the application or an affidavit filed under sub-section 1 of Section 14.

5. In these circumstances, the following sentence which has been added by the District Magistrate Collector(District Magistrate), Thanjavur, in the order passed by him on 19.08.2016, is unwarranted. The statement reads as under:-

> ".....*The Bank Officials are fully responsible for the consequences if any in the event of any untoward incident that may occur during the process of taking over possession of the above secured assets.*"

6. This statement/condition incorporated by the Collector can be understood, going by the content of it, as some kind of a caveat. But, however we feel that the same is not warranted. It is also the responsibility of the District Collector/Metropolitan Magistrate to prevent any untoward incident to take place and for that purpose, necessary assistance can always be provided by the Chief Metropolitan Magistrate/Collector. At any rate, if any untoward incident occurs, the general law will have to be pressed into service to take care of the offenders and to help the Bank or its authorised officer or any other individual, to whom the task of taking over the possession and handing over to the bank or the financial institution is entrusted cannot be held either responsible or accountable. Hence, we delete the sentence in the order passed by the District Collector on 19.08.2016 and the rest of the order remains as it is. We hope that the order will be given effect and acted upon at the earliest at any rate within a

period of next 30 days.

7. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous petitions are closed.

Sd/
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To
1.The District Collector,
(District Magistrate)
Thanjavur District,
Thanjavur.

2.The Revenue Divisional Officer,
Thanjavur District.
Thanjavur.

+1 cc to M/S RAMALINGAM ASSOCIATES, Advocate SR.No.50101

+1 cc to Special Government Pleader Sr.No.50169

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SMA/SKS-RR/08/09/2016 :4P/5C