BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.09.2016
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS. JUSTICE V.M.VELUMANI

W.P.(MD)No.17222 of 2016
and
WMP(MD)Nos.12503 & 12504 of 2016

M/s.Gajaarajaa Auto Zone Pvt.Limited
represented by its Director,
S.Jeyaraman ... Petitioner

Vs.

1.Vijaya Bank,
Salem Main Branch,
represented by its Branch Manager,
Sri Rajaram Complex,
No.3, Manivannan Road,
Salem - 636 004.

2.Vijaya Bank,
Regional Office,
represented by its Deputy General Manager,
Raja Plaza, 1112, 3rd Floor, Avinasi Road,
Near Lakshmi Mills, Coimbatore - 641 037.

3.The Authorised Officer,
Vijaya Bank,
Vijaya Bank,
Salem Main Branch,
represented by its Branch Manager,
Sri Rajaram Complex,
No.3, Manivannan Road,
Salem - 636 004 ... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records from the 3rd respondent relating to the notice, dated 14.01.2016 under Section 13(2) of SARFAESI Act leading to taking over of possession of the secured assets under Section 13(4) of SARFAESI Rules read with Rule 9 of the SARFAESI Act and quashing the same consequently directing the 1st respondent to consider renewal of the cash credit facilities for the petitioner company for the year 2016.

For Petitioner : Mr.S.K.Mani

ORDER

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

The Petitioner challenging the legality of the Notice issued under Section 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has filed this Writ Petition.

2. The learned counsel appearing for the petitioner would submit that the petitioner Company is engaged in sale and service of Mahendra and Mahendra Commercial Vehicles and due to circumstances beyond control, they were not able to repay the loan on time and therefore, their asset has been declared as Non-performing Asset (NPA). It is further contended by the learned counsel appearing for the petitioner that there is absolutely no justification or any legal basis to declare the asset of the Company as Non-Performing Asset and on account of the same, further action has been taken, under the provisions of the SARFAESI Act and on instruction would submit that if breathing time is granted, the company is willing to settle the entire dues.

3. This Court has considered the submissions and also perused the materials placed before it.

4. As per Section 13(2) of the SARFAESI Act, Notice has been issued stating that the petitioner Company is liable to pay a sum of Rs.2,12,80,467.14, as on 01.01.2016, and thereafter, possession notice was also issued under Section 13(4) of the said Act, on 16.06.2016, to recover the said amount. In the considered opinion of this Court, the petitioner is having an effective alternative remedy under Section 17 of the SARFAESI Act.

5. At this juncture, the learned counsel appearing for the Petitioner has drawn the attention of this Court to the Judgment of this Court in **Signal Apparels Pvt Ltd., v. Canara Bank** reported in **(2010 (5) CTC 337)** and would submit that a Division Bench of this Court has exhaustively dealt with the aspect of declaration of Non-Performing Asset and since the respondent Bank did not follow the same, such a declaration is bad and as a consequence, the proceedings initiated by them are also to be declared as null and void.

6. A careful scrutiny of the facts of the case relating to the said judgment disclose that the petitioner has given time to make payment and despite that they did not make the payment and therefore, action was taken and ultimately, recovery action initiated by the Bank was held to be justified. In the considered opinion of the Court, the points urged by the learned counsel appearing for the petitioner before this Court could be agitated before the Debt Recovery Tribunal by invoking Section 17 of the SARFAESI Act and also in the light of the Judgment of the Hon'ble Supreme Court in **United Bank of India v. Satyawati Tondon and Ors.** reported in **(2010 (8) SCC 110)**.

7. In the result, the Writ Petition is dismissed subject to the above observation. The petitioner is granted liberty to approach the jurisdictional Debt Recovery Tribunal for redressal of his grievance and as and when the application is presented, the Debt Recovery Tribunal may entertain the same, if the papers are otherwise in order and give a disposal, in accordance with law, as expeditiously as possible. No costs. Consequently, connected Writ Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar(CS II)
/True copy/

Sub Assistant Registrar

To
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+1cc to Mr.S.K.Mani, Advocate SR.No.51719

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