BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 31.03.2016
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE C.T.SELVAM

W.P.(MD)No.6357 of 2016
and
W.M.P.(MD)Nos.5566 & 5567 of 2016

S.Senathipathy .. Petitioner

Vs.

1.The Chief Manager/Authorised Officer,
State Bank of India,
Karvazhi Branch, Karur.

2.The Branch Manager,
State Bank of India,
Karvazhi Branch,
Karvazhi. .. Respondents

PRAYER: Writ Petition is 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 of the first respondents dated 04.03.2016 quash the same issued under Rule 8(1) of the Security interest (Enforcement Rules) Rules 2002 framed under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for non compliance of the mandatory provision of Section 13(3-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to introduce by Act 30 of 2004 with effect from 11.11.2004.

For Petitioner : Mr.N.Shanmugaselvam

O R D E R

(The order of the Court was made by S.MANIKUMAR, J.)

Proceedings, dated 04.03.2016, of the first respondent issued under Rule 8(1) of the Security interest (Enforcement Rules) Rules, 2002, is sought to be quashed on the grounds of non compliance of the mandatory Provision of Section 13(3-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.



2.Section 13(3-A) of the Act, reads as hereunder:-

"If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

PROVIDED that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A."

3.Contentions of the petitioner made in this writ petition, can always be urged before the appellate authority under Section 17 of the said Act, which reads as hereunder:-

"**17. Right to appeal**

(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

PROVIDED that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

*Explanation* : For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.



(3) If, the Debts Recovery Tribunal, after examining

the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

PROVIDED that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder."

5.The Hon'ble 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 Bhiwandiwala*[5], *CCT Vs. Indian Explosives Ltd.*[6], *Mardia Chemicals. 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 :

"12. Section 13 of the SARFAESI Act contains detailed mechanism for enforcement of security interest. Sub-section (1) thereof lays down that notwithstanding anything contained in Sections 69 or 69-A of the Transfer of Property Act, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act. Sub-section (2) of Section 13 enumerates first of many steps needed to be taken by the secured creditor for enforcement of

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
17 (1939-40) 67 IA 222.
18 1935 AC 532 (PC)
19 1919 AC 368 ; (1918-19) All ER Rep 61 (HL)

security interest. This sub-section provides that if a borrower, who is under a liability to a secured creditor, makes any default in repayment of secured debt and his account in respect of such debt is classified as non-performing asset, then the secured creditor may require the borrower by notice in writing to discharge his liabilities within sixty days from the date of the notice with an indication that if he fails to do so, the secured creditor shall be entitled to exercise all or any of its rights in terms of Section 13(4).

> 13. Sub-section (3) of Section 13 lays down that notice issued under Section 13(2) shall contain details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the bank or financial institution. Sub-section (3-A) of Section 13 lays down that the borrower may make a representation in response to the notice issued under Section 13(2) and challenge the classification of his account as non-performing asset as also the quantum of amount specified in the notice. If the bank or financial institution comes to the conclusion that the representation/objection of the borrower is not acceptable, then reasons for non-acceptance are required to be communicated within one week."

6.Taking a strong view of adjudication by the High Court, the Hon'ble Supreme Court has observed as hereunder :

> "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 view of the foregoing, the petitioner can take recourse to the alternative remedy. Invoking jurisdiction under Article 226 of the Constitution of India can be made only in extra-ordinary circumstances. The petitioner has failed to establish any extra-ordinary circumstances to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Thus, we are not inclined to entertain this petition.

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

9.Mr.N.Shanmugaselvam, learned counsel for the petitioner prayed for a direction to the Debts Recovery Tribunal to decide the issues raised in the writ petition, as a preliminary issue on the appeal.

10.It is always open to the petitioner to make a request before the Debts Recovery Tribunal, if so advised.

Sd/-
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

1.The Chief Manager/Authorised Officer,
State Bank of India, Karvazhi Branch, Karur.

2.The Branch Manager, State Bank of India,
Karvazhi Branch, Karvazhi.

+one cc to Mr.N.Shanmuga Selvam, Advocate in SR.NO.18408

rj2
CSL/SKS-RR/11.04.2016 : 6p/4c

Order made in
W.P.(MD)No.6357 of 2016
31.03.2016