IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.08.2017**

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.8862 of 2017
and W.M.P.No.9732 of 2017

M/s.S.M.K.Construction,
rep. By its Partner,
S.Mohan Kumar. ... Petitioner

vs.

1. The Authorised Officer,
Bank of Baroda, Erode Branch,
No.60, Thiruvengadasamy Street,
Erode – 638 001.

2. The District Magistrate and District Collector,
Tiruppur District,
Tiruppur. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of declaration, declaring that the measures takes by the respondents under the SARFAESI Act, against the petitioner as illegal, contrary to Section 31(i) of SARFAESI Act and void ab initio.

For Petitioner : Mrs.C.Uma
For Respondents : Mr.V.Bhiman, Senior Counsel (for R1)
for M/s.Sampath Kumar & Asso.
No appearance (for R2)

ORDER

(Order of the Court was delivered by **S.MANIKUMAR,** *J)*

Petitioner has availed Over Draft loan facility of Rs.90 Lakhs from Bank of Baroda, Erode on 23.01.2010 for business purpose. Bank Guarantee to the tune of Rs.10 Lakhs was also sanctioned, but not utilised. Loan was secured by mortgaging lands in SF No.119/2A, Old Survey No.26, 22 F, 25/B and 25/C and 102 A, Thottipalayam, 17-Oodayum Village, Muthur Town Panchayat, Vella Koil Sub Registrar Office, Kangeyam Taluk, Tirupur District measuring an extent of 5.05 acres.

2. According to the petitioner, land is an agricultural property classified as 'punja' with 600 coconut trees, 3500 Eucalyptus trees, 2000 Casuarina trees and other trees including rubber and bamboo trees. Petitioner has further stated that corn was also planted in and around 1.50 acres. There was also a cattle farm.

3. Petitioner has further contended that electricity service connection in S.C.No.167 was obtained from TANGEDCO, exclusively for agricultural activity. There is a blue metal crush unit in the portion of the land. Farmers in and around the said land objected to

the crush unit, pursuant to which the Tamilnadu Pollution Control Board, passed an order dated 16.12.2016. Writ petitioner has further contended that subject property has also been partitioned by way of execution of partition deed dated 07.08.1991.

4. According to the petitioner though payments were made regularly, recession in the market, caused hindrance and on 31.03.2016, account has been classified as NPA. On 04.04.2016, demand notice under Section 13(2) of the SARFAESI Act, 2002, has been issued. Payment of Rs.6,00,000/- has been made on various dates via., a sum of Rs.3,00,000/- on 08.06.2016, a sum of Rs.2,00,000/- on 07.10.2016 and Rs.1,00,000/- on 27.10.2016.

5. When the matter stood thus, petitioner was shocked to receive an order dated 16.02.2017 of the District Magistrate-cum-District Collector, Tiruppur District, passed under Section 14 of the SARFAESI Act, 2002, by which, the District Magistrate-cum-District Collector, Tiruppur District, has authorised the Assistant Collector, Dharapuram to take possession of the property, and hand over the assets to the Authorized Officer, M/s.Bank of Baroda, Erode Main Branch, Erode, under proper acknowledgment.

6. Thereafter, on 30.03.2017, possession notice dated 24.03.2017, was served. Petitioner has contended that no opportunity was given by the District Magistrate-cum-District Collector, Tiruppur District, before passing an order under Section 14 of the SARFAESI Act, 2002.

7. Contending inter alia that subject property mortgaged is an agricultural property and inviting the attention of this Court to Section 31(i) of the SARFAESI Act, 2002, that the provisions of the Act shall not apply to any security interest created in agricultural land, instant writ petition has been filed for a declaration, declaring that the measures takes by the respondents under the SARFAESI Act, against the petitioner as illegal, contrary to Section 31(i) of SARFAESI Act and void ab initio.

8. Supporting the prayer sought for, attention of this Court was invited to Patta No.435 for S.No.102/1A & 102/1B, Patta No.437 for S.No.119/2A & 123/1B, Chitta for S.Nos.102/1A, 102/1B, 119/1A and 119/2A.

9. Record of proceedings shows that on 12.04.2017, a Hon'ble Division Bench of this Court has ordered notice. On 26.04.2017 interim stay has been granted on condition that the petitioner should pay a sum of Rs.10,00,000/-. For brevity, order dated 26.04.2017, is reproduced.

> *"List the matter on 12.06.2017. In the meantime, the petitioner is directed to pay a sum of Rs.10,00,000/- (Rupees ten lakhs). If the petitioner complies with this order, by paying the amount of Rs.10,00,000/-, there shall be an order of interim stay."*

10. Subsequently, on 12.06.2017, this Court passed the following order.

> *"List the matter on 20.06.2017. In the meantime, the petitioner /borrower is directed to pay another sum of Rs.10,00,000/- (Rupees ten lakhs only)."*

11. Thus, it could be seen that Rs.20 Lakhs has been directed to be paid. However, on 20.06.2017, when the matter came up for further hearing, writ petitioner has contended that at the instance of the bank, electricity has been disconnected and that due to

demonetization and other financial crises, petitioner could not comply with the interim orders and thus, sought for four weeks time to make payment of Rs.10,00,000/- as ordered by this Court.

12. Placing on record the abovesaid submission, a Hon'ble Division Bench of this Court vide order dated 20.06.2017, granted four weeks time. The Court also directed the bank to extent their cooperation for restoration of electricity connection, so as to enable the petitioner to enjoy the minimum facilities, forthwith.

13. On 21.07.2017, when the matter came up for hearing, learned senior counsel appearing for the petitioner submitted that electricity room has been closed by the bank and that is why petitioner could not get restoration of electricity connection. Responding to the above, Mr.V.Bhiman, learned counsel for the bank submitted that the electricity room would be opened, forthwith. Recording the same, we directed the Registry to post the writ petition on 25.07.2017, for compliance.

14. On 25.07.2017, Mr.V.Bhiman, learned counsel for the bank submitted that electricity service connection has been disconnected at

the instant of Tamilnadu Pollution Control Board. A sum of Rs.5,00,000/- has been paid on 12.06.2017 and upto 25.07.2017, a sum of Rs.11,50,000/- is stated to have been paid. Taking note of the earlier orders, we granted a further time of four weeks. But at the same time, fixed the amount as Rs.15,00,000/-. We directed the writ petitioner to pay a sum of Rs.15,00,000/- within four weeks from the date of receipt of a copy of the order dated 25.07.2017. We also directed the Registry to post the matter on 23.08.2017 and thus, it is listed today.

15. Today, Mrs.C.Uma, learned counsel for the petitioner submitted that electricity service connection has not been restored. She wants further time of two weeks to comply with the orders of this Court.

16. From the averments, it is made clear that a demand notice dated 04.04.2016, under Section 13 (2) of the SARFAESI Act, 2002, has been issued. Averments made in the supporting affidavit do not disclose that the writ petitioner has sent any reply or representation under Section 13 (3A) of the SARFAESI Act, 2002. Loan of Rs.90 Lakhs has been availed in 2010. What has been stated in the supporting

affidavit is that payments to the tune of Rs.6,00,000/- has been made. Petitioner is also aware of the order of the District Magistrate cum District Collector, Tiruppur District, dated 16.02.2017, authorising Assistant Collector, Dharapuram, to take possession of the mortgaged property. Writ petitioner has not chosen to challenge the said order in the manner known to law. Possession notice dated 24.03.2017, under Section 13(4) of the SARFAESI Act, 2002, has also been served on the writ petitioner on 30.03.2017. Though the petitioner has an effective and alternative remedy, by way of filing an application under Section 17 (1) of the SARFAESI Act, 2002, against the said notice, no action has been taken.

17. Thus, without taking recourse to the remedy available under the provisions of the SARFAESI, Act, 2002, the petitioner has directly filed a writ petition under Article 226 of the Constitution of India, seeking for declaration that the measures taken by the respondents under the SARFAESI Act, 2002, are contrary to Section 31(i) of the SARFAESI Act, 2002.

18. Object of the Act, is to regulate securitasation and reconstruction of financial assets and enforcement of security interest

and to provide for a central database of secured interest created on properties and for matters connected therewith or incidental thereto.

19. According to the petitioner, a sum of Rs.90 Lakhs has been availed as loan by mortgaging properties stated supra. Purpose of mortgage is business and not agricultural activity. From the pleadings it could be deduced that the petitioner has a blue metal crush unit in a portion of land and that there was objection to the same and that Tamilnadu Pollution Control Board, has passed an order dated 16.12.2016, to close down the unit with effect from December 2016.

20. Averments further disclose that though a sum of Rs.90 Lakhs has been availed as loan, as early as on 23.01.2010, a sum of Rs.6 Lakhs alone has been paid as on 27.10.2016. Contention that provisions of Section 31(i) of the SARFAESI Act, cannot be invoked, as against a secured asset created in agricultural land, can always be raised before the concerned forum constituted under the SARFAESI Act, 2002, with supporting materials. Here again, the question that remains to be considered is the purpose, for which the loan is availed.

21. Though the petitioner has been granted indulgence by this Court on various occasions to pay a part of the loan amount, same has not been complied with, for the reason that electricity service connection has not been restored. Earlier, when the petitioner contended that the bank was not cooperating for restoration of electricity service connection by closure of the electricity room, we directed the bank to forthwith open the said room, so as to enable the petitioner to seek restoration of supply of electricity and granted four weeks further time to pay a sum of Rs.15 Lakhs.

22. At this juncture, it is to be noted that on 26.04.2017, a Hon'ble Division Bench of this Court, directed payment of Rs.10 Lakhs for granting stay and again on 12.06.2017, directed the writ petitioner to pay a further sum of Rs.10 Lakhs.

23. Today, when the matter came up for further hearing, Mr.V.Bhiman, learned counsel for the bank submitted that so far the petitioner has not deposited the sum of Rs.15 Lakhs.

24. It appears that there is a dispute in getting electricity service connection. Till the petitioner obtains the service connection

from the competent authority, interim orders cannot be extended, without there being any compliance. Admittedly, interim orders have not been complied with.

25. On the aspect, as to whether, a borrower, who has obtained an interim order and failed to comply with the same, is entitled to be heard further, the Hon'ble Apex Court in **Prestige Lights Ltd., v. State Bank of India** reported in **(2007) 8 SCC 449**, at paragraph Nos.20, 22, 24 and 26, held as follows:

> "20. But, there is an additional factor also as to why we should not exercise discretionary and equitable jurisdiction in favour of the appellant. It is contended by the learned counsel for the respondent Bank that having obtained interim order and benefit thereunder from this Court, the appellant Company has not paid even a pie. The appellant is thus in contempt of the said order. The Company has never challenged the condition as to payment of amount as directed by this Court. Thus, on the one hand, did not comply with it and failed to pay instalments as directed. Neither it raised any grievance against the condition as to payment of instalments nor made any application to the Court for modification of the condition. It continued to enjoy the benefit of stay ignoring and defying the term as to payment of money. The Company is thus in contempt of the order of this

Court, has impeded the course of justice and has no right of hearing till it has purged itself of the contempt.

22. From the above order, it is clear that notice was issued to the other side and stay granted earlier was ordered to continue on the appellant's depositing a sum of Rs.20 lakhs per month in this Court. It was also made clear that first of such payment should be made by 6.6.2015 and subsequent payments by 6th of each succeeding month. A default clause was also introduced in the order that if such payment would not be made, the stay would stand vacated. It is an admitted fact that the order has not been complied with and no payment as per the order has been made by the appellant company to the respondent bank. The said fact has also been reflected in the order of this court passed on 25-7-2007, wherein it was stated:

"It is recorded that the stay is transgressed by reason of the admitted non-compliance with the order dated 6-5-2005."

24. An order passed by a competent court-interim or final- has to be obeyed without any reservation. If such order is disobeyed or not complied with, the court may refuse the party violating such order to hear him on merits. We are not unmindful of the situation that refusal to hear him on the proceeding on merits is a

"drastic step" and such a serious penalty should not be imposed on him except in grave and ectraordinary situations, but sometimes such an action is needed in the larger interest of justice when a party obtaining interim relief intentionally and deliberately flouts such order by not abiding by the terms and conditions on which a relief is granted by the court in his favour.

26. That, however, does not mean that in each and every case in which a party has violated an interim order has no right to be heard at all. Nor will the court refuse to hear him in all circumstances. The normal rule is that an application by a party will not be entertained until he has purged himself of the contempt. There are, however, certain exceptions to this rule. One of such exceptionsis that the party may appeal with a view to setting asie the order is alleged must be heard in support of the submission that having regard to the meaning and intendment of the order which he is said to have disobeyed, his actions did not constitute a breach of it."

26. In the light of the above discussion and decision of the Hon'ble Supreme Court in ***Prestige Light's case*** [cited supra], we are not inclined to extend further time. As against the admitted loan of Rs.90 Lakhs, availed in the year 2010, the petitioner has paid only a lesser amount.

27. For the reasons stated supra, interim order granted on 26.04.2017, is vacated. There is always an alternate and effective remedy to challenge the possession notice dated 24.03.2017 and order of the District Magistrate cum District Collector, Tiruppur District dated 16.02.2017. In these circumstances, declaratory relief also cannot be granted. Petitioner can approach the forum substantiating the grounds raised herein. Writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition, is closed.

(S.M.K., J.) (V.B.S., J.)

23.08.2017

Index: Yes/No.
Internet: Yes.
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