IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8/8/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and
The Honourable Ms.JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No.20930 of 2017

P. Jeyakumar ... Petitioner

Vs

1. The Regional Director
Reserve Bank of India
Fort Glacis, No.16
Rajaji Salai
Chennai 600 001.

2. The Banking Ombudsman
O/o. The Banking Ombudsman
Reserve Bank of India Building
Floor II, No.16 Rajaji Salai
Chennai 600 001.

3. The National Housing Bank
Representative Office - Chennai
M.T.B.Building (North Wing)
Ground Floor
485 Anna Salai
Nandanam
Chennai 600 035.

4. Housing Development Finance Corporation Ltd
rep. by its Authorised Officer
Having Office at ITC Centre
2nd Floor, 760 Anna Salai
Chennai 600 002. ... Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of certiorarified mandamus to call for the records pertaining to the impugned order passed by the third respondent herein, dated 18/5/2017 and quash the same and consequently, directing the respondents 1 and 3 herein, to conduct proper enquiry into the petitioner's complaint dated

24/11/2016 and take necessary action against the fourth respondent herein.

For Petitioner ... Mr.G.Karthikeyan

O R D E R

(Order of the Court was made by S.Manikumar,J)

Borrower, who has availed loan of Rs.5,25,000/-, from Housing Development Finance Corporation Ltd., Chennai, has agreed to pay interest, at the rate of 7.5% p.a., on a monthly instalment of Rs.4,310/-, to be paid for 240 months, from 21/9/2004 to 4/6/2007. The petitioner/borrower, has to pay a sum of Rs.2,06,080/-, in 48 equal monthly instalments. According to him, due to the sudden demise of his parents, he could not repay the loan.

2. On 29/8/2011, Housing Development Finance Corporation Limited, Chennai/fourth respondent herein filed Crl.M.P.No.1167 of 2011, under Section 14 of the SARFAESI Act, on the file of the learned Chief Judicial Magistrate, Tiruvallur, praying to appoint an Advocate Commissioner or Court Receiver, to take physical possession of the property, mortgaged with the Bank.

3. On 4/6/2013, an order, under Section 14 of the SARFAESI Act, 2002 was passed by the learned Chief Judicial Magistrate, Thiruvallur, and pursuant to the same, the Advocate Commissioner, took possession of the mortgaged property, and filed a report, on 21/8/2013.

4. Subsequent to taking of possession, the fourth respondent, issued a sale notice, by way of paper publication. Thereafter, a sum of Rs.2,00,000/- was paid. Writ petitioner has sought for time. As the Bank did not heed to the request, the writ petitioner was constrained to file S.A.No.359 of 2013, for stay of sale notice.

5. By order, dated 24/12/2013, the Debts Recovery Tribunal, Chennai, passed a conditional order, directing the petitioner, to deposit a sum of Rs.3,12,000/-, which was paid. The petitioner made a further payment of Rs.2,75,340/- and Rs.4,80,000/-, on 22/3/2014 and 30/10/2014, respectively. According to the petitioner, proceedings were closed, and possession of the property was handed over to him.

6. By communication, dated 5/5/2015, the petitioner was informed by the Reserve Bank of India that the fourth respondent herein was not registered, under Section 3 of the SARFAESI Act, 2002, with Reserve Bank of India, to commence the business of Securitisation/Asset Reconstruction. Reserve Bank of India, in its reply, dated 5/5/2015, stated that HDFC Ltd., is not

registered, under Section 3 of the SARFAESI Act, 2002. Thereafter, the petitioner made a representation, dated 20/8/2016, to the Reserve Bank of India, Mumbai and Reserve Bank of India, Chennai, to initiate action against the fourth respondent, for taking possession of the mortgaged property and thus, causing hardship to the writ petitioner.

7. Material on record discloses that vide reply, dated 5/10/2016, office of the Banking Ombudsman, has sent a letter, to the writ petitioner, stating that the complaint raised by the writ petitioner does not fall under clause 3 (5) of Banking Ombudsman Scheme, 2006 (Scheme) and hence, Banking Ombudsman was unable to interfere in the matter. However, the Ombudsman has forwarded a complaint to the National Housing Bank (NHB), for necessary action. Thereafter, the petitioner has sent a registered letter, dated 24/11/2016, to the National Housing Bank, Nandanam, asking for the details of the status of the complaint made against HDFC Bank.

8. Responding to the above, National Housing Bank, Chennai has sent a reply, dated 7/10/2016, stating that the Company has been notified, under Section 2 (1) (m) (iv) of the Act, on 10/11/2003 and that measures had been taken under Section 13 (4) of the SARFAESI Act.

9. Placing reliance on the reply given by the Reserve Bank of India, dated 5/5/2015, communication of Ombudsman, forwarding the complaint of the writ petitioner, and the reply of the National Housing Bank, dated 7/10/2016, instant writ petition has been filed, for issuance of a writ of certiorarified mandamus, to quash the order passed by the third respondent, dated 18/5/2017 and consequently, direct the respondents 1 and 3, to conduct proper enquiry into the petitioner's complaint, dated 24/11/2016.

10. On the aspect as to whether HDFC Company is a financial institution and whether Notification, under Section 2 (1) (m) (iv) of the SARFAESI Act, has been issued by the Central Government, perusal of the possession notice, dated 5/11/2014 and No Due Certificate, dated 5/11/2014, shows that the Registered Office of HDFC Ltd., is situated at Raman House, IIT Parek Marg, 169 Backhay Reclamation, Churchgate, Mumbai 20, we also deem it fit, to consider a Hon'ble Division Bench judgment of Gujarat High Court, in GSL (India) Ltd., through Authorised Representative Mr.Kuwar Dheerendra Vs. Union of India and another, dated 6/10/2015, wherein the petitioner therein had challenged the legality of the Notification, dated 10/11/2003, issued by the Ministry of Defence, Department of Economic Affairs (Banking Division), whereby Gruh Finance Limited/second respondent Company therein, was brought under purview of Section 2 (1) (m) (iv) of the SARFAESI Act, 2002, treating it as a

“financial institution”. Besides seeking for a prayer, to set aside the Notification, dated 10/11/2003, the petitioner therein also sought for directions, to set aside the notices issued, under Sections 13 (2) and 13 (4) of the SARFAESI Act and all consequential actions taken, in furtherance of said notices.

11. The second respondent financial institution therein filed a reply, stating that a Hon'ble Division Bench of Gujarat High Court, in Harkaish Vs. Union of India, the vires of Section 2 (1) (m) (iv) of SARFAESI Act, as well as Section 45 -I of the Reserve Bank of India Act, 1934, were challenged, the Notification, dated 10/11/2003, was also considered, and the action taken the second respondent therein was questioned. It was further submitted that similar questions of law raised by the writ petitioner, in GSL (India) Ltd., through Authorised Representative Mr.Kuwar Dheerendra Vs. Union of India and another, were already concluded, after referring to Section 45 - I (f) of the Reserve Bank of India Act.

12. Notification No.So.1282 (E), dated 10th November 2003, issued by the Department of Economic Affairs is extracted as hereunder:-

> In exercise of the powers conferred under sub-clause (iv) of clause (m) of sub-section (1) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby specifies the following housing finance companies registered under sub-section (5) of Section 29 A of the National Housing Bank Act, 1987 and with Tier I capital of Rs.10 crore (Rupees Ten Crore) or above as per their audited balance sheet for the year ended 31st March 2003, to be treated as 'financial institution' for the purpose of the said sub-clause:-

S.No.	NAME OF THE HOUSING COMPANY
1.	HDFC Limited, Mumbai
2.	LIC Housing Finance Limited, Mumbai
3.	ICICI Home Finance Limited, Mumbai
4.	Can Fin Homes Limited, Bangalore
5.	Birla Home Finance Limited, New Delhi

S.No.	NAME OF THE HOUSING COMPANY
6.	Dewan Housing Finance Corporation Limited, Mumbai
7.	GIC Housing Finance Limited, Mumbai
8.	PNB Housing Finance Limited, New Delhi
9.	Sundaram BNP Paribas Home Finance Ltd., Chennai
10.	BOB Housing Finance Limited, Jaipur.
11.	Gruh Finance Limited, Ahmedabad
12.	Tata Home Finance Limited, New Delhi
13.	Cent Bank Home Finance Limited, Bhopal
14.	Orissa Rural Housing & Development Corporation Ltd., Bhubaneshwar
15.	Vyasa Bank Housing Finance Limited, Bangalore
16.	Maharishi Housing Development Finance Corporation Ltd., New Delhi
17.	Corpbank Homes Limited, Bangalore
18.	Weizmann Homes Limited, Mumbai
19.	Vibank Housing Finance Limited, Bangalore
20.	National Trust Housing Finance Limited, Chennai
21	Manipal Housing Finance Syndicate Ltd.,Manipal
22.	REPCO Home Finance Limited, Chennai.

13. It is worthwhile to reproduce the definition of "financial institutions" occurring in clause (f) and Section 2 (d) of the National Housing Bank Act, 1987, as hereunder:-

> "5.4. The term "financial institution" occurring in clause (f) is defined in clause (c) of Section 45 - I. Financial Institution under Section 45 - I (C) means any banking institution carrying on its business with the nature of activities including the activity of financing, whether by way making loans or advances or otherwise.
>
> 5.5. Section 2 (d) of the National Housing Bank Act, 1987 defines "housing financial institution" to include every institution, whether incorporated or not,

which primarily transacts or has as on of its principal objects, the transacting of the business of providing finance for housing, whether directly or indirectly. Section 29 - A of the said Act provides that unless a housing finance institution obtains a certificate of registration by making an application to the National Housing Bank, shall not commence or carry on the business. Thus, the nature of business of a housing finance institution is lending for housing purposes.

5.6. On a conjoint reading of clause (f) read with clause (c) of section 45 - I of the RBI Act and considering the same having regard to the nature of business and activity with which the housing finance companies are engaged, that is, to lend finance for housing scheme and like purposes, the housing finance companies are the entities which could be said to be clearly falling within the meaning of non-banking financial company under Section 45 - I (f) of the RBI Act. There is no conceptual incongruity. As sub-clause (iv) of clause (m) of sub-section (1) of Section 2 of the SARFAESI Act provides, any other institution or non-banking financial company as defined under Section 45 - I (f) or the RBI Act may be specified by the Central Government as financial institution, and the same is so specified as per the impugned Notification.

14. Applying the doctrine of "legislation by reference" and "legislation by incorporation" and decisions of the Hon'ble Supreme Court, on the above principles, in Karnataka State Transport Corporation Vs. B.A.Jayaram {1984 Supp SCC 244} and Nagpur Improvement Trust Vs. Vasantrao {(2002) 7 SCC 555}, Girnar Traders Vs. State of Maharashtra and Ors {(2011) 3 SCC 1}, and the earlier Division Bench judgment, in Harkaish Vs. Union of India, being Special Civil Application No.14600 of 2011, delivered on 11/10/2012, the Hon'ble Division Bench of Gujarat High Court held that

"GRUH Finance Limited, Ahmedabad/second respondent therein would fall within the ambit of Section 2 (1) (m) (iv) of the SARFAESI Act, to be treated as "financial institution" under the said law, clothing it with the necessary powers to take action under the SARFAESI Act, for recovery of its debt. Respondent No.2 which is a non-banking Company under Section 45 – I (f) of the RBI Act could be properly and validly included within the definition of sub-clause (iv) of clause (m) of sub-section (1) of Section 2 of the SARFAESI Act. The contention that the Notification violates other laws including the National Housing Bank Act, 1987, is thoroughly misconceived and falls flat, once the exercise of powers was valid. So also the contention that the Notification violative of Article 14 is stated to be rejected."

15. Ultimately, the Hon'ble Gujarat High Court, dismissed the petition and held as follows:-

> "The second respondent having become "financial institution", within the meaning of Section 2 (1) (m) (iv) of the SARFAESI Act, could validly exercise the powers under SARFAESI Act for recovery of its debt against the petitioner. The notices issued by the first respondent under Sections 13 (2) and 13 (4) and all subsequent and consequential actions and measures taken in accordance with the provisions of SARFAESI Act were competent in the eye of law."

16. Perusal of the possession receipt, dated 5/11/2014, shows that the Registered Office of the Housing Development Finance Corporation Ltd., is at Ramon House, H T Parekh Marg, 169 Backbay Reclamation, Churchgate, Mumbai 400 020 and that the said Company has an office at ITC Centre, II Floor, 760 Anna Salai, Chennai 600 002. Applying the abovesaid judgment to the facts of this case, Housing Development Finance Corporation Limited, Chennai, is one of the financial institutions, registered under Sub-Section 5 of Section 29 A of the National Housing Bank Act, 1987 and that the Company has been notified by the Central Government under Section 2 (1) (m) of the SARFAESI Act, 2002. As observed earlier, despite the reply, dated 7th October 2016, intimating the petitioner that Company has been notified under Section 2 (1) (m), of the Act, 2002 and that without ascertaining the same, the writ petitioner has chosen to file the writ petition, contending inter alia that action taken by the fourth respondent is beyond the jurisdiction conferred on them and consequently, sought for a direction against the respondents 1 and 3, to conduct an enquiry, into the complaint, dated 24/11/2016 and to take necessary action against the

fourth respondent. Writ petition has been filed without ascertaining the legal and factual position and the same is misconceived.

17. In the result, the writ petition is dismissed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

mvs.

To

1. The Regional Director
Reserve Bank of India
Fort Glacis, No.16, Rajaji Salai
Chennai 600 001.

2. The Banking Ombudsman
O/o. The Banking Ombudsman
Reserve Bank of India Building
Floor II, No.16 Rajaji Salai
Chennai 600 001.

3. The National Housing Bank
Representative Office - Chennai
M.T.B.Building (North Wing)
Ground Floor, 485 Anna Salai
Nandanam, Chennai 600 035.

4. The Authorised Officer
Housing Development Finance Corporation Ltd
Having Office at ITC Centre
2nd Floor, 760 Anna Salai
Chennai 600 002.

+1cc to Mr.G.Karthikeyan, Advocate in sr.no.57276

Writ Petition No.20930 of 2017

NR 08/09/2017