IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.12.2017**

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

W.P.No.31563 of 2017
and
WMP Nos.34684 & 34685 of 2017

K.N.Meenakshikutty ... Petitioner

vs.

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

2. The Vijaya Bank,
Rep. by its Authorized officer & Chief Manager,
Raja Plaza, 3rd Floor,
No.112, Avinashi Road,
Coimbatore - 641 037 ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of prohibition, to prohibit the 1st respondent from proceeding further in pursuant to impugned enquiry of the 1st respondent in Na.Ka.No.10376/2016/Vu.3 dated 20.10.2017.

For Petitioner : Mr.A.Edwin Prabakar

For Respondents : Mr.M.Elumalai (for R1)
Government Advocate

ORDER

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

Petitioner who stood as a guarantor for the loan borrowed from Vijaya Bank, Coimbatore, has sought for a writ of prohibition against the District Collector-cum-District Magistrate, Coimbatore, from proceeding further, pursuant to the enquiry notice issued in R.C.No.10376/2016/Vu.3 dated 20.10.2017.

2. Facts leading to the writ petition are that by virtue of sale deed bearing Document No.1200 of 1968 dated 30.06.1968, property stood in the name of Mr.K.P.Ramakrishna Pillai. Subsequently, on 30.04.1986, the said K.P.Ramakrishna Pillai has executed a Will in Document No.147/BK3/1986, by which his wife K.N.Meenakshikutty the writ petitioner can enjoy the property till her life time. Property, has been bequeathed to his daughter in law, P.K.Puniavathy and Ajith Kumar, grand son.

3. M/s.Dynagro Trading Inc., Coimbatore, has borrowed loan from Vijaya Bank, Coimbatore under the following head

(Rs. In Lakhs)

Nature of facility	*Amount*	*Interest & Charges*	*Terms of Repayment*
1. PCL (H) Interchangability 2. FDBP/FUDBP	200.00 150.00	ROI at Base Rate + 1.50 p.a (Floating) i.e., presently at 11.70% p.a	Facility is for one year from the date of sanction subject to annual review

Nature of facility	*Amount*	*Interest & Charges*	*Terms of Repayment*
Total	350.00	Processing charges and other charges as per HOC 12075 and HOC 12108	

Purpose of the loan : CCH Limit : To meet the working capital requirement of the firm

4. Sandeep Nagarajan and S.Ajith Kumar are the partners of M/s.Dynagro Trading Inc., Coimbatore. K.P.Punithavathi, is one of the security providers and mother of the 2nd partner / grandson of the testator. Mrs.K.N.Meekashikutty, is another security provider / grand mother of Mr.S.Ajith Kumar. Primary and collateral securities offered for availing the abovesaid loans, are as hereunder.

Securities As mentioned below:

a. PRIMARY SECURITIES

Nature of security	*Description*	*Margin proposed*	*Value of Security*
PCL	Exclusive First charge by way of hypothecation in favour of Vijaya Bank of entire chargeable current assets. Stock of inventories such as food grains, coconuts etc. against irrevocable export letters of credit opened by prime Banks or confirmed export orders from overseas buyers, backed by ECIB-WTPC cover of ECGCI Limited	Stock - 3.5%	Stocks are valued Rs.127.50 lakhs FY14
FDBP/FUDBP	Documentary export bills drawn on D/P & D/A basis backed by document of title to goods, shipment documents, bill of lading etc., accompanied by original	0% (5% of the each bill amount to be kept as	Receivables are valued Rs.380.00 lakhs for FY14

Nature of security	*Description*	*Margin proposed*	*Value of Security*
	invoices and other documents evidencing export of agri commodities (rice & coconuts) manufactured by the firm backed by ECIB-WTPS cover	a cut back deposit	
All other immovable properties	Exclusive first charge by way of hypothecation in favour of Vijaya Bank of the plant, machinery, equipment, tools, spares, accessories and all other immovable properties of any kind, both present as well as future	NA	Fixed Assets are valued Rs.11.63 lakhs for FY14

b. COLLATERAL SECURITIES

Nature of security	*Description*	*Charge created on*
Residential Land & building in the name of Mr.S.Ajith Kumar Mrs.K.P.Punithavathi and Mrs.K.N.Meenakshikutty	Equitable Mortgage of Self Occupied, Residential Land & Building standing in the name of Mr.S.Ajith Kumar Mrs.K.P.Punithavathi and Mrs.K.N.Meenakshikutty bearing Survey Nos.10/1669 & 1670/2 admeasuring 5737.50 Sq.ft situated at 112, Appusamynaidu Layout, Redfields, Coimbatore - 641 018 USR dated 24.10.2013 of Mr.Chelimuthu. Property has been valued at Rs.546.10 lakhs. FSV: Rs.450.00 lakhs (Built up area 2036 sq.ft.) as per Valuation Report from M/s.Ramakrishnan & Associates dated 25.10.2013	Yet to be created

5. In addition to the above, Mrs.K.P.Punithavathi, Mr.S.Ajith Kumar and Mrs.K.N.Meenakshikutty have also executed a memorandum relating to deposit of title deeds on 14.11.2013 to the bank. There was default. Therefore, bank has issued a notice under Section 13(2) of the SARFAESI Act, 2002, calling upon M/s.Dynagro Trading Inc., Coimbatore, Mr.Sandeep Nagarajan, Mr.S.Ajith Kumar, Mrs.K.P.Punithavathi and Mrs.K.N.Meenakshikutty to pay a sum of Rs.1,93,52,864/-, due as on

30.06.2015 along with future interest, in account No.300408411000170 w.e.f.21.06.2015, at the contractual rates, together with costs, charges, other monies until payment or realisation.

6. In the notice issued under Section 13(2) of the Act, bank has also given the description of the property mortgaged. Thereafter, possession notice dated 19.09.2015, has been issued under Section 13(4) of the SARFAESI Act 2002.

7. Seeking assistance for taking possession Vijaya Bank, Coimbatore has filed an application under Section 14 of the SARFAESI Act, 2002 before the District Collector cum District Magistrate, Coimbatore. Bank has also issued notice dated 07.03.2017, to bring the property for auction. Statutory 15 days sale notice for bringing the immovable property for auction, has also been issued to Mr.S.Ajith Kumar, Mrs.K.P.Punithavathi and Mrs.K.N.Meenakshikutty, the writ petitioner herein, with copies marked to M/s.Dynagro Trading Inc., Coimbatore and Mr.Sandeep Nagarajan, Parnter.

8. Contending inter alia that no orders under Section 14 of the SARFAESI Act, 2002, has been passed by the District Collector cum District Magistrate, Coimbatore, Vijaya Bank, Coimbatore has filed W.P.No.11617 of 2017, for a mandamus directing the District Collector-cum-District

Magistrate, Coimbatore, to pass orders on the application dated 29.06.2016. District Collector-cum-District Magistrate, Coimbatore, was the sole respondent in the said writ petition. After hearing the learned counsel for Vijaya Bank and the learned Additional Government Pleader on behalf of the District Collector-cum-District Magistrate, Coimbatore, a Hon'ble Division Bench of this Court, vide order dated 04.05.2017 in W.P.No.11617 of 2017, granted directions to the District Collector-cum-District Magistrate, Coimbatore, to dispose of the application filed under Section 14 of the Act.

9. Thereafter, on 03.10.2017, Authorised officer, Vijaya Bank, Coimbatore, has issued e-auction notice. Statutory notice has been given to the writ petitioner and others.

10. Acting on the petition filed under section 14 of the SARFAESI Act, 2002, District Collector-cum-District Magistrate, Coimbatore, has issued an enquiry notice in R.C.No.10376/2016/Vu.3 dated 20.10.2017, calling upon M/s.Dynagro Trading Inc., Coimbator, Sandeep Nagarajan, Partner, Mr.Ajith Kumar, Mrs.K.P.Punithavathi and Mrs.K.N.Meenakshikutty, the writ petitioner herein, to appear before the District Collector-cum-District Magistrate, Coimbatore, on 06.11.2017. Said enquiry notice dated 20.10.2017, is impugned in the instant writ petition for a prayer to prohibit the District Collector-cum-District Magistrate, Coimbatore, from proceeding

further.

11. Taking this Court through the sale deed dated 30.03.1968 and Will dated 30.04.1986, Mr.Edwin Prabakar, learned counsel submitted that the Petitioner, K.N.Meenakshikutty has interest over the property till her life time and Mrs.K.P.Punithavathi, daughter-in-law of K.P.Ramakrishna Pillai and S.Ajith Kumar, Grand son of the testator are the absolute beneficiaries and heir apparent succeeding to the interest of the testator.

12. Inviting the attention of this Court to sub Section (a) and (d) of Section (6) of the Transfer of Property Act, 1882, learned counsel for the petitioner submitted that the subject property, cannot be transferred. Said provision reads thus:

> **What may be transferred.**—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force,—
>
> (*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;
>
> (*b*) ...
>
> (*c*) ....
>
> (*d*) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him;

13. Referring to the definition 2(zc) and 2(ze) of the SARFAESI Act,

2002 learned counsel for the petitioner further submitted that to create a security, there should be a transfer of property and in the case on hand, the writ petitioner entitled only to enjoy the property till life her time and thereafter, the beneficiaries, after the demise of the writ petitioner. According to him, in the absence of any transfer of property, the same would not fall under the definition of security asset for the loan availed and that therefore, bank cannot proceed under the provisions of the SARFAESI Act, 2002 and consequently, the District Collector-cum-District Magistrate, Coimbatore, has no jurisdiction to pass orders under Section 14 of the said Act.

14. Inviting the attention of this Court to the memorandum of deposit of titles dated 14.11.2013, learned counsel for the petitioner further submitted that the bank was aware of the limitations of the documents produced viz., Will and Sale deed, by which K.N.Meenakshikuttty/writ petitioner, can only enjoy the property till her life time, but the bank had pursued action under the provisions of the SARFAESI Act, 2002, instead of filing a suit for recovery.

15. Mr.Edwin Prabakar, learned counsel for the petitioner further submitted that in so far as the action of the bank, in issuing possession and sale notices, is concerned, the petitioner would question the same before

the Debts Recovery Tribunal.

16. On the above pleadings and submissions, learned counsel contended that District Collector-cum-District Magistrate, Coimbatore, has no jurisdiction or authority to proceed under SARFAESI Act, 2002.

17. Heard the learned counsel for the parties and perused the materials available on record.

18. There is no quarrel that writ petitioner is entitled to enjoy the subject property and the heir apparent under the Will are the daughter-in-law and Grandson of K.P.Ramakrishna Pillai viz., Mrs. Punithavathi and Ajith Kumar, respectively.

19. Admittedly, M/s.Dynagro Trading Inc., Coimbatore has availed loans as stated supra. Guarantors for the loan availed or Mr.Sandeep Nagarajan and Mr.S.Ajith Kumar, partners, Mrs.P.K.Punithavathi, mother of Mr.S.Ajith Kumar and Mrs.Meenakshikutty, grand mother of Mr.SAjith Kumar. Primary and collateral securities have been offered for the loan availed. Added further, Mrs.Punithavathi, Mr. Ajith Kumar and Mrs.K.N.Meenakshikutty, who stood as guarantors for the loan availed have executed a memorandum dated 14.11.2013, for deposit of title deeds.

Memorandum relating to deposit of title deed is extracted hereunder.

MEMORANDUM RELATING TO

DEPOSIT OF TITLE DEED

THIS MEMORANDUM RELATING TO DEPOSIT OF TITLE DEED executed on this the 14th day of November, 2013 by

1) Mrs.P.K.PUNITHAVATHI (PAN:AIQPP3669N) Wife of late Mr.K.R.Suresh.

2) Mr.S.AJITHKUMAR (PAN:ALAPA8405C) Son of late Mr.K.R.Suresh and

3) Mrs.K.N.MEENAKSHI KUTTY (ELECTION COMMISSION OF INDIA I.D. NO.:TN/20/106/0105879) Wife of late Mr.Ramakrishna Pillai, Mother of late Mr.K.R.Suresh

All residing at Door No.112, Appusamy layout, Red fields, Coimbatore – 641 018 (hereinafter called the “EXECUTANTS”)

The Executants hereby confirm having deposited with VIJAYA BANK at Dr.Nanjappa Road Branch situated at No.454, Dr.Najappa Road, Coimbatore – 641 018, the documents of the title listed hereunder relating to the property/ies of the Executants described in the Schedule 'A' herewith attached with intent to create an equitable mortgage by way of deposit of title deeds to secure the debts owing to Vijaya Bank by M/s.Dynagro Trading Inc. having its registered office at Door No.121, Zion Complex, Avinashi Road, Hope College, Peelamedu Post, Coimbatore – 641 004 now and / or at any time hereinafter owning to Vijaya Bank by M/s.Dynagro Trading Inc. having its registered office at Door No.121, Zion Complex, Avinashi Road, Hope College, Peelamedu Post, Coimbatore – 641 004 whether singly or jointly with other person/s as principal borrower/s, gurantor/s or in any other capacity whatsoever to the extent of Rs.3,50,00,000/- (Rupees Three crore and fifty lakhs only) by way of PCL / FDBP / FUDBP and interest, commissions and Banking and other incidental charges and costs incurred in connection with the realization.

SCHEDULE – A

LIST OF DOCUMENTS DEPOSITED

Sl. No.	*Document No. & Date*	*Name of office of Registrar where registered*	*Description of Documents*	*Name of the Executants Executed by whom and in whose favour or issued by which office*	*Name of beneficiary in whose favour the document is executed*	*Original / certified copy*
1	147/Bk3/1986 30.04.1986	Joint-I, Coimbatore	WILL	K.P.Ramakrishna Pillai	K.N.Meenakshi Kutty	Original
2	1200/1968 30.03.1968	Joint-I, Coimbatore	Sale deed	S.Parimala Kanthi Ammal	K.P.Ramakrishna Pillai	Original
3	18378/2013 01.01.1968 to 31.12.1985		Encumbrance Certificate	RO, Coimbatore		Original
4	18374/2013 01.01.1986 to 28.11.1994		Encumbrance Certificate	RO, Coimbatore		Original
5	7215/2013 29.11.1994 to 21.10.2013		Encumbrance Certificate	Peelamedu, Coimbatore		Original
6	20.08.1992		Death certificate in the name of K.P.Ramakrishnapillai			Xerox
7	21.02.2012		Legal Heirship certificate of K.R.Suresh	Coimbatore North Tahsildar		Xerox
8	03.12.2001		Approved Building Plan	Coimbatore Municipal Corporation		Original
9	31.05.2001		Approved Building Plan	Coimbatore Municipal Corporation		Original
10			Property tax Assessment Books (2 Nos.)			xerox
11	17.06.2013		Water Tax Receipt			Original
12	23.08.2013		Electricity Receipts (4 Nos.)			Original

Sl. No.	Document No. & Date	Name of office of Registrar where registered	Description of Documents	Name of the Executants Executed by whom and in whose favour or issued by which office	Name of beneficiary in whose favour the document is executed	Original / certified copy
13	23.10.2013		Affidavit of K.M.Valsala			Original

SCHEDULE - B
DESCRIPTION OF PROPERTY

Document No.& Date	Survey No./Khata No./House No./Site No.	Extent / Areas of land	Location / Sub District / Dist. Village / Municipality	Boundary
147/Bk3/1986 30.04.1986	Door Nos.112 and 113 in Site Nos.14, 15, 16 & 17 situated in Appusamy Naidu layout in T.S.Nos.10/1669, 1670/2, New Ward No.3, Old Ward No.10, Red Fields, Puliakulam, Coimbatore, Assessment No.95449 & 95450	5737.5 sq.ft with buildings thereon	Coimbatore Registration District, Coimbatore Taluk within the limits of Coimbatore City Municipal Corporation	Boundaries:- North of - Land of A.Appusamy Naidu. South of - Centre, East of - Vacant Space of James Pillai West of - House and Land of Nagabooshanam Ammal Measurements: - East -west on the northern side ... 45 feet East-west on the Southern side - 40 feet North-south on the both sides - 13.5 feet With right of way and all other appurtenances, etc., Door No.6/76, New Door No.6/112 and 6/113, Appusamy Naidu layout.

In witness whereof, the Executants have signed this Memorandum Relating to Deposit of

Title Deeds on this the 14th day of November, 2013"

20. Thereafter, bank has issued possession and sale notice as stated supra. When application dated 29.06.2016 under Section 14 of the SARFAESI Act, 2002, was pending on the file of the District Collector-cum-District Magistrate, Coimbatore,, W.P.No.11617 of 2017 has been filed by Vijaya Bank, for a mandamus directing the District Collector-cum-District Magistrate, Coimbatore, to pass orders. Vide order dated 04.05.2017 in W.P.No.11617 of 2017, a Hon'ble Division Bench of this Court has directed District Collector-cum-District Magistrate, Coimbatore, to pass orders, after giving notice and hearing all parties concerned. Thereafter, enquiry notice dated 21.10.2017 has been issued to the writ petitioner. District Collector-cum-District Magistrate, Coimbatore, has also issued a notice to the authorized officer, Vijaya bank, Coimbatore and VAO, Puliakkulam, Coimbatore West, Coimbatore District.

21. Section 14 of the SARFAESI Act, 2002 mandates that on receipt of an affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit, pass suitable orders for the purpose of taking possession of the secured assets, within a period of 30 days from the date of application. Proviso to the said Section states that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate, within the said

period of thirty days, for the reasons beyond his control, he may after recording reasons, in writing, for the same, pass the order within such also period but not exceeding in aggregate 60 days.

22. As per Section 14 of the Act, duty is cast on the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, to assist the secured creditor in taking possession of the secured asset.

23. As per Section 2(zc), Secured Asset means the property on which security interest is created. As per Section 2(zd) secured creditor means any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (l).

24. As per 2 (ze), Secured debt is a debt which is secured by any security interest. As per Section 2(zf), 'security interest' means, right, title and interest of any whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31 upon property created in favour of any secured creditor and includes --

> (i) any mortgage, charge, hypothecation, assignment or any right, title, or interest or any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or

financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or any obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or

(ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset."

25. In the light of the definitions, extracted supra, contention of the learned counsel for the writ petitioner that unless and until there is transfer of property, in terms of Section 6 of the Transfer of Property Act, 1882, property cannot be mortgaged with the Vijaya Bank and therefore that would not create any security interest warranting Vijaya Bank, Coimbatore District to invoke Section 14 of the SARFAESI Act, 2002 for assistance and consequently, the District Collector-cum-District Magistrate, Coimbatore, has no jurisdiction or authority to pass orders and that therefore, there is no other alternative and effective remedy, except to approach this Court under Article 226 of the Constitution of India, cannot be accepted.

26. Under the scheme of Act, District Collector cum District Magistrate or the Chief Metropolitan Magistrate, as the case may be, is empowered to pass orders, after considering the parameters, set out in the

said section. Statutory authority cannot be restrained from discharging his duties and functions by issuance of a writ of prohibition. Reference can be made to few decisions.

(i) In **Smt.Ujjam Bai v. State of Uttar Pradesh** reported in **1963 (1) SCR 778,** it is held as follows:

> **"....** A writ of prohibition is normally issued only when the inferior Court or Tribunal (a) proceeds to act without or in excess of jurisdiction, (b) proceeds to act in violation of rules of natural justice, (c) proceeds to act under law which is itself ultra vires or unconstitutional, or (d) proceeds to act in contravention of fundamental rights. The principles, which govern exercise of such power, must be strictly observed. A writ of prohibition must be issued only in rarest of rare cases. Judicial disciplines of the highest order has to be exercised whilst issuing such writs. It must be remembered that the writ jurisdiction is original jurisdiction distinct from appellate jurisdiction. "

(ii) In **S.Govinda Menon** v. **Union of India** reported in **AIR 1967 SC 1274,** the Hon'ble Supreme Court, at Paragraph 5, held as follows:

> "The jurisdiction for grant of a writ of prohibition is primarily supervisory and the object of that writ is to restrain courts or inferior tribunals from exercising a jurisdiction which they do not possess at all or else to prevent them from exceeding the limits of their jurisdiction. In other words, the object is to confine courts or tribunals of inferior or limited jurisdiction within their bounds. It is well-settled that the writ of prohibition lies not only for excess of jurisdiction or for absence of jurisdiction but the writ also lies in a case of departure from the rules of natural justice (See Halsbury's Laws of England, 3rd Edn., Vol. II, p. 114). It was

held for instance by the Court of Appeal in **The King v. North ([1927] 1 K.B. 411)** that as the order of the judge of the consistory court of July 24, 1925 was made without giving the vicar an opportunity of being: heard in his defence, the order was made in violation of the principles of natural justice and was therefore an order made without jurisdiction and the writ of prohibition ought to issue. But the writ does not lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings. It is also well-established that a writ of prohibition cannot be issued to a court or an inferior tribunal for an error of law unless the error makes it go outside its jurisdiction (See **Regina v. Comptroller-General of Patents and Designs,(1953-2 WLR 760 at p.675) and Parisienne Basket Shoes Proprietary Ltd. v. Whyte (59 CLR 369)**. A clear distinction must therefore be maintained between want of jurisdiction and the manner in which it is exercised. If there is want of jurisdiction then the matter is coram non Judice and a writ of prohibition will lie to the court or inferior tribunal forbidding it to continue, proceedings therein in excess of its jurisdiction."

(iii) In **Isha Beevi v. Tax Recovery Officer** reported in **1976 (1) SCC 70,** the Hon'ble Supreme Court, the petitioners therein have sought for a writ of Prohibition. At Paragraph 5, observed as follows:

"....The existence of an alternative remedy is not generally a bar to the issuance of such a writ or order. But, in order to substantiate a right to obtain a Writ of Prohibition from a High Court or from this Court, an applicant has to demonstrate total absence of jurisdiction to proceed on the part of the officer or authority complained against. It is not enough if a wrong Section or provision of law is cited in a notice or order if the power to proceed is actually there under another provision."

(iv) In **Union of India v. Upendra Singh** reported in **1994 (3) SCC 357** the Hon'ble Apex Court held that

> "4. …...A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view, as observed by this Court in **T.C.Basappa** v. **T.Nagappa ((1955) 1 SCR 250 : AIR 1954 SC 440**).

(v) In **U.P.Sales Tax Service Assocation v. Taxation Bar Association** reported in **1995 (5) SCC 716,** it has been held that the writ of Prohibition can only be issued when the inferior Court or Tribunal (a) proceeds to act without or in excess of jurisdiction, (b) proceeds to act in violation of rules of natural justice, (c) proceeds to act under law which is itself ultra vires or unconstitutional, or (d) proceeds to act in contravention of fundamental rights.

(vi) In **P.Gajapathi, President, "Thinkers Forum" v. Election Commission of India** reported in **2001 (3) LW 291,** this Court held as follows:

> "No doubt, a writ of prohibition is not a writ of course. It is a writ of right and not merely discretionary in character. So, the question remains as to when it can be issued. Writ of Prohibition can be issued when there is a defect of the jurisdiction apparent on the face of the proceedings and it can be issued if the authority exceeded the jurisdiction or assumed jurisdiction when there is no jurisdiction."

(vii) In **Standard Chartered Bank v. Directorate of Enforcement** reported in **2006 (4) SCC 278,** the Hon'ble Supreme Court, at Paragraph 25, held as follows:

> "25. The prayer for the issue of a writ of prohibition restraining the authorities under the Act from proceeding with the adjudication and the prosecution is essentially based on the constitutional challenge to the relevant provisions of the Act on the ground that they violate Articles 14 and 21 of the Constitution of India. Once we have held, as the High Court did, that the provisions are constitutional, the basis on which the writ of prohibition is sought for by the appellants disappears. It is settled by the decisions of this Court that a writ of prohibition will issue to prevent a Tribunal or Authority from proceeding further when the Authority proceeds to act without or in excess of jurisdiction; proceeds to act in violation of the rules of natural justice; or proceeds to act under a law which is itself ultra vires or unconstitutional. Since the basis of the claim for the relief is found not to exist, the High Court rightly refused the prayer for the issue of a writ of prohibition restraining the Authorities from continuing the proceedings pursuant to the notices issued. As indicated by this Court in **State of Uttar Pradesh Vs. Brahm Datt Sharma [(1987) 2 SCC 179]** when a show cause notice is issued under statutory provision calling upon the person concerned to show cause, ordinarily that person must place his case before the Authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. On the facts of this case, it cannot be said that these notices are palpably without authority of law. In that situation, the appellants cannot successfully challenge the refusal by the High Court of the writs of prohibition prayed for by them."

27. In the case on hand, statute empowers the District Magistrate cum District Collector, to pass orders on the application filed under Section 14 of the SARFAESI Act, 2002. He cannot be said to have acted without jurisdiction. Action of the District Magistrate cum District Collector cannot be said to be in excess of jurisdiction. Adhering to the principles of natural justice, the District Magistrate Cum District Collector, has issued notice to the petitioner and others. There is no violation to fundamental right. Request of the petitioner to issue a writ of Prohibition does not satisfy the parameters. Moreso, in the case on hand, vide order dated 04.05.2017 in W.P.No.11617 of 2017, a Hon'ble Division Bench of this Court has already issued directions to the District Collector-cum-District Magistrate, Coimbatore, to pass orders under Section 14 of the SARFAESI Act. The said authority is bound to implement the directions of this Court. Having executed the memorandum dated 14.11.2013, for deposit of title and created security interest for the loan availed, it is not open to the writ petitioner to contend that there is no transfer of property in terms of Section 6 of the Transfer of Property Act. Prayer sought for, in the instant writ petition W.P.No.31563 of 2017 to prohibit a statutory authority from discharging his duties under Section 14 of the SARFAESI Act, cannot be granted.

28. What is impugned in the instant writ petition is only a notice calling upon the writ petitioner and others to appear before the District Collector-cum-District Magistrate, Coimbatore. Though, what is pleaded before us could have been submitted before the District Collector-cum-District Magistrate, Coimbatore, in response to the enquiry notice, writ petitioner has approached this Court and hence we are constrained to answer. There are no merits in the writ petition warranting interference. Hence, Writ petition is dismissed. No Costs. Consequently the connected Writ Miscellaneous Petitions are closed.

(S.M.K., J.) (R.P.A., J.)
06.12.2017

Index: Yes.
Internet: Yes
Speaking/Non speaking
ars

To

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

2. The Authorized officer & Chief Manager,
Vijaya Bank, Raja Plaza, 3rd Floor,
No.112, Avinashi Road, Coimbatore - 641 037

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