IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.08.2017**

CORAM:

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

W.P.No.21318 of 2017
and W.M.P.No.22555 of 2017

P.Baskaran ... Petitioner

vs.

1. The District Collector,
Tiruvallur,
Tiruvallur - 602 001.

2. The Authorised Officer,
Bank of India,
33/3, First Main Road,
Gandhi Nagar, Adyar, Chennai - 600 020.

3. M/s.Saibaba Traders,
Rep. by of on its Proprietrix,
Mrs.K.Vijaya.

4. K.Vijaya,
Proprietrix,
M/s.Saibaba Traders ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records of the 1st respondent pertaining to the notice dated 13.07.2017 in Rc.No.6610/2017/M2, and quash the same.

For Petitioner : Mr.L.Chandrakumar
for Mr.H.Manojin

ORDER

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

Challenge in this writ petition is to a hearing notice dated 13.07.2017 of the District Magistrate-cum-District Collector, Tiruvallur, by which, the said authority, acting on the petition dated 23.03.2017 filed by Bank of India, Chennai under SARFAESI Act, 2002, requesting assistance for taking possession of the secured property, has only directed the petitioner/guarantor to appear, either in person or through counsel (with all documentary evidences and written statements if any, further documents, if any), for an enquiry on 28.07.2017 at 4.30pm, to be conducted by the District Magistrate cum District Collector. Said hearing notice is challenged on various grounds inter alia that there is a tenant in the property and that he has not been put on notice. Reliance is also made on the decision of the Hon'ble Supreme Court in ***Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and other***s reported in **2014(5) CTC 546** and ***Vishal N.Kalsaria Vs. Bank of India and Others***, reported in **(2016) 3 SCC 762.**

2. Contention has also been made that by virtue of the amended provision to Section 17(4-A) of the SARFAESI Act, 2002 by Act 44 of 2016 with effect from 01.09.2016, tenant is entitled to notice so as to enable him to take out an application under Section 17(1) of SARFAESI Act, 2002, before the tribunal.

3. Contention has also been made that the affidavit, filed in support of the application under Section 14 of the Act, does not disclose, the statutory parameters contained in Section 14 of the Act.

4. Added further, Mr.L.Chandra Kumar, learned counsel for the writ petitioner / guarantor further submitted that sale notice has already been challenged by the guarantor, in which directions have been given issued.

Heard the learned counsel for the petitioner and perused the material on record.

5. Notice impugned in this writ petition is extracted hereunder.

Rc.No.6610/2017/M2
Dated:13.07.2017

Office of the District Magistrate/
District Collector,
Tiruvallur

HEARING NOTICE

Sub: *SARFAESI Act 2002 - Securitisation and Reconstruction of financial Assets and Enforcement of Security interest Act, 2002 - Petition filed by M/s.Bank of India, No.33/3, First Main Road, Gandhi Nagar, Adyar, Chennai - 20 - Loan granted to the Mrs.K.Vijaya, W/o. Kesavamoorthy and Mr.Baskaran (Guarantor), S/o. Paramasivam - Defaultment on repayment of loan - Taking possession of the secured assets - Requested - Reg.*

Ref.: *1. Petition filed by M/s.Bank of India, No.33/3, First Main Road, Gandhi Nagar, Adyar, Chennai - 20 under SARFAESI Act, dated 23.03.2017.*
2. This Office Rc.No.6610/2017/M2 dated 04.04.2017
3. Tahsildar, Tiruvallur letter Rc.No.2733/2017/A4 dated 30.06.2017.

M/s.Bank of India, No.33/3, First Main Road, Gandhi Nagar, Adyar, Chennai-20 have approached the District Magistrate, praying the District Administration to take possession of the scheduled mentioned Property under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 u/s.14.

Hence, in this connection, you are directed to appear in person or through your counsel (with all documentary evidences and written statements if any, further documents if any) for enquiry on 28.07.2017 (Friday) at 4.30 pm., to be conducted by the District Collector, Tiruvallur, at Collector's Chambers (First Floor), Collectorate, Tirvallur without fail. If you fail to do so, orders will be passed in your absence.

Sd/- J.Narayanan,
for District Collector,
Tiruvallur

/by order/
Huzur Sarishtadar (Magisterial)

To
1. M/s. Bank of India, No.33/3, First Main Road,
Gandhi Nagar, Adyar, Chennai - 20.
2) Mrs.K.Vijaya, Proprietrix, M/s.Saibaba Traders, No.1/549,
J.J.Nagar, Mogappair West, Chennai - 37.
3) Mr.P.Baskaran (Guarantor), S/o. Paramasivam,
No.4/167, E1, No.26, M.Po.C. Street, Kakkalur, Tiruvallur 602 001."

6. Perusal of the same shows that the bank has filed an application dated 23.03.2017 under Section 14 of the SARFAESI Act, 2002, seeking assistance to take possession of property mortgaged. The District Magistrate cum District Collector, Tiruvallur District has issued only a hearing notice to the writ petitioner/guarantor directing him to appear in person or through counsel, with all documentary evidences and written statements, if any.

7. During the course of hearing, Mr.L.Chandra Kumar, learned counsel for the petitioner submitted that hearing has been fixed on 18.08.2017. When the District Magistrate-cum-District Collector, Tiruvallur District, is mandated to consider as to whether the application by the secured creditor accompanied by an affidavit duly sworn in by the authorised officer of the secured creditor, satisfy the parameters set out in Section 14 of the Act, it is the duty of the District Magistrate cum District Collector, to consider the same and if satisfied, to pass suitable orders for the purpose of taking possession of the secured assets.

8. When opportunity has been given to the District Magistrate cum District Collector, Tiruvallur to the guarantor, as well as to the

borrower, it is always open to the writ petitioner, to canvass all the points urged before us. We wish to observe that this Court cannot be relegated to the position of District Magistrate-cum-District Collector, to ascertain, as to whether the affidavit and other materials furnished along with the application dated 23.03.2017 filed under Section 14 of the SARFAESI Act, 2002, satisfy the parameters or not. Inasmuch as the District Magistrate-cum-District Collector, Thiruvallur, has directed the writ petitioner for an enquiry, at this juncture, we do not wish to make any observation on the merits of the contentions as to whether under Section 14 of the Act, the District Magistrate Cum District Collector, is mandated to issue any notice to the tenant, said to be in possession. For the abovesaid reasons, Writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous petition is closed.

(S.M.K., J.) (V.B.S., J.)
10.08.2017

Index: Yes/No
Internet: Yes
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