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.21382 of 2017
and W.M.P.No.22349 of 2017

Mr.C.Shanmugasundaram ... Petitioner

vs.

1. The Authorised Officer,
Axis Bank, Arcot Plaza,
Old No.38, New No.165,
Arcot Road, Kodambakkam,
Chennai - 600 024.

2. The Manager,
Axis Bank, Arcot Plaza,
Old No.38, New No.165,
Arcot Road, Kodambakkam,
Chennai - 600 024. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondent Bank not to take any further proceedings without sending any statutory notice under Section 13(2) of SARFAESI Act as alleged to have been sent on 26.5.2017 and prohibiting the respondent Bank not to take any further proceedings in pursuance of rejoinder notice dated 20.06.2017 except due process of law as contemplated under SARFAESI Act.

For Petitioner : Mr.R.Boopathy
for Mr.RST.Ravanan

ORDER

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

Father of the deceased son/writ petitioner has submitted that his son had availed loan for Rs.2.90 Crores on 17.08.2015, to be repaid from 18.11.2015 to 10.08.2029, in 165 equal installments of Rs.3,43,358/-. According to the petitioner, property belongs to him. His son had created a mortgage by depositing the title deeds in respect of the house property bearing Plot No.4, forming part of Survey No.240/1, 240/4 (Paimash Nos.354, 356, 357, 358 and 363) in Adambakkam Village No.136.

2. Petitioner has further contended that his son had paid the monthly instalments regularly to the 2nd respondent bank. Unfortunately on 29.01.2016, he was murdered. Bank has sent a notice dated 22.12.2016, in the name of the dead person, Sabesan stating that as per the provisions of the SARFAESI Act, 2002, bank has right to repossess and auction the property, without the intervention of the Court.

3. Notices dated 18.01.2017 and 17.04.2017, respectively ,do not disclose any particulars and details of the loan amount as

contemplated under Section 13(2) of the Act. Nevertheless, on 30.01.2017, father/writ petitioner has paid Rs.3,43,500/-. A further sum of Rs.3,43,500/- on 27.02.2017 and a sum of Rs.3,00,000/- on 28.03.2017, have been paid. He has also made further payment of Rs.43,500/- on 30.03.2017.

4. Writ petitioner has further contended that for the notice dated 17.04.2017 issued under Section 13(2) of the SARFAESI Act, 2002 he has sent a reply dated 12.06.2017, wherein, he has contended that he has not received any statutory notice dated 26.05.2017, as averred by the bank. In the abovesaid circumstances, petitioner has sought for a mandamus, directing the respondent Bank not to take any further proceedings, without sending any statutory notice under Section 13(2) of SARFAESI Act, 2002, as alleged to have been sent on 26.5.2017 and to prohibit the respondent Bank, not to take any further proceedings in pursuance of the rejoinder notice dated 20.06.2017, except due process of law as contemplated under SARFAESI Act, 2002

5. Though, Mr.R.Boopathy, learned counsel for the writ petitioner made submissions on the above averments, we are not inclined to entertain the writ petition, for the reason that from the

averments it could be deduced, that so far bank has not resorted to any of the measures under Section 13(4) of the SARFAESI Act, 2002. As per the averments made in the supporting affidavit, bank by way of reply has reiterated that a statutory notice dated 26.05.2017 under Section 13(2) of the Act, has been sent and whereas, the petitioner, disputes.

6. At paragraph No.6 of the affidavit, writ petitioner has contended that he has sent a detailed reply through his counsel to the notice sent by the respondent bank dated 17.04.2017 under Section 13(2) of the SARFAESI Act, and whereas in the later paragraphs of the affidavit, petitioner has contended that there is no such statutory notice.

7. Be that as it may, a notice issued under 13(2) of the SARFAESI Act, 2002 is only a demand made by the Bank and the Hon'ble Supreme Court in **Mardia Chemicals v. Union of India** reported in **AIR 2004 SC 2371 : 2004(4) SCC 311** held that notice under Section 13(2) would not give rise to a cause to challenge. However, as per Section 13(3A) of the SARFAESI Act, 2002, 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.

8. If bank resorts to any of the measures under Section 13(4) of the Act, 2002, it is always open to the writ petitioner to urge the above grounds. At this juncture, no mandamus, can be issued against the bank, not to take further proceedings under the provisions of the SARFAESI Act, or to issue prohibitory order. Writ petition is misconceived and hence, the same is dismissed. No costs.

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

Index: Yes/No
Internet: Yes
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S.MANIKUMAR, J.
AND
V.BHAVANI SUBBAROYAN, J.

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To

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