

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.12369 of 2017
and
W.M.P.No.13118 of 2017

C.Balakrishnan

... Petitioner

vs.

The Authorised Officer,
Axis Bank, Data Centre Branch,
No.439, Magnum Towers,
Dr.Nanjappa Road,
Gandhipuram, Coimbatore - 641 018

... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondent bank to forbear and refrain from taking possession of the petitioner properties mentioned hereunder.

For Petitioner : Mr.Abul Kalaam
for Mrs.R.K.Sekina Reshma
For Respondent : Mr.R.Naga Sundaram (for R1)

ORDER

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

Petitioner has borrowed a sum of Rs.22.75 Lakhs on 20.08.2014.

Repayment has to be made in 22 equal instalments at Rs.6,75,000/- on 10th

of every month. Properties herein mentioned, in Section 13(2) notice has been offered as security.

Property No.1

Coimbatore Registration District, Periyanaickenpalayam Sub Registration District, Coimbatore North Taluk, Kurudampalyam Village, in S.F.No.336 part an extent of 1.12 acres, which has been converted into layout of house sites and approved by Periyanaickenpalayam Panchayat No.4499/1993, in this as per the sale Deed No.4298/2000 in Site No.1A with an extent of 3168 sq.ft and in this an extent of 2758 sq.ft situated at No.2/137, Krishnammal Nagar, Bombay Nagar Road, N.S.N.Palayam, Coimbatore - 641 031.

Property No.2

Coimbatore Registration District, Periyanaickenpalayam Sub Registration District, Coimbatore North Taluk, Bilichi Village (Patta No.199), in S.F.No.765/3 an extent of 4.94 acres, in this Eastern portion to an extent of 2.30 acres and in S.F.No.765/2B an extent of 2.35 acres both totaling 4.99 acres which has been converted into layout of house sites and in this site No.33 with an extent of 1800 sq.ft., land and rights in the layout road and all the amenities and appurtenances thereto.

2. There was default in payment. Hence, bank has issued a notice dated 01.02.2017 under sub section (2) of Section 13 of the SARFAESI Act, 2002, demanding a sum of Rs.23,43,088/- (Rupees Twenty Three Lakh Forty Three Thousand Eighty Eight only), being the amount due, as on 01.02.2017,

(the amount includes interest, applied till 01.02.2017) together with further contractual rate of interest thereon, till the date of payment, within a period of 60 days from the date of the notice, failing which the Bank will be entitled to and will exercise all or any of the rights available to it under Section 13(4) and 15 of the Act in respect of the secured asset(s).

3. Thereafter, possession notice dated 21.04.2017, under sub Section (4) of Section 13 of the SARFAESI Act, 2002, has been issued, intimating that the borrower / guarantor/mortgager in particular, and the public in general, not to deal with the property and any dealings with the property will be subject to the charge of Axis Bank Limited, for an amount of Rs.24,11,020/- (Rupees Twenty Four Lakhs Eleven Thousand and Twenty Only) being the amount due, as on 20th April 2017 (this amount includes interest applied till 20th April 2017, costs and other consequences, damages, etc., including the expenses for the said takeover and sale of assets thereon. Attention of the borrower, has also been invited to sub section 8 of Section 13 of the Act, in respect of the time available, to redeem the secured assets.

4. Being aggrieved by the action of Axis Bank, Coimbatore, petitioner has sought for a mandamus, directing the respondent bank to forbear and refrain from taking possession of his secured assets under the provisions of

SARFAESI Act, 2002, mainly contending inter alia that Item No.2 of the property shown, in the notice dated 21.04.2017 issued under Section 13(4) of the SARFAESI Act, has not been mortgaged with the bank, and therefore, it cannot be termed as secured asset. Further contentions have also been made.

5. Record of proceedings shows that notice has been ordered, as early as on 10.05.2017. Subsequently, writ petition has been listed on 24.05.2017 and a Hon'ble Bench of this Court ordered, as follows:

"Despite notice, none appears on behalf of the respondent.

In view of the above and taking note of the submission made by the learned counsel for the petitioner that the property, which is not the subject matter of mortgage has been brought forth within the purview of the enactment, we are inclined to grant interim order for a period of two weeks.

Post after two weeks."

6. On this day, when the matter came up for further hearing, Mr.R.Naga Sundaram, learned counsel for Axis Bank, Data Centre Branch, Coimbatore, 1st respondent, submitted that during the course of discussion for grant of loan, two properties came up for consideration and by oversight, property No.2, has been mistakenly mentioned, both in the demand notice dated 01.02.2017, issued under Section 13(2) of the Act and

possession notice dated 21.04.2017, issued under Section 13(4) of the Act. He submitted that property in Item No.2 has not been mortgaged and no action can be taken under the provisions of the SARFAESI Act, 2002. Learned counsel for the bank further submitted that further proceedings would be taken only against the property mentioned in Item. No.1 of the demand and possession notices, respectively.

7. Placing on record the submission of the learned counsel for the bank, writ petition is disposed of, permitting the bank to proceed against the borrower, in respect of Item No.1 of the property, in the manner known to law. Interim order granted earlier, stands vacated. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

(S.M.K., J.) (M.D.I., J.)

11.09.2017

Index: Yes/No.

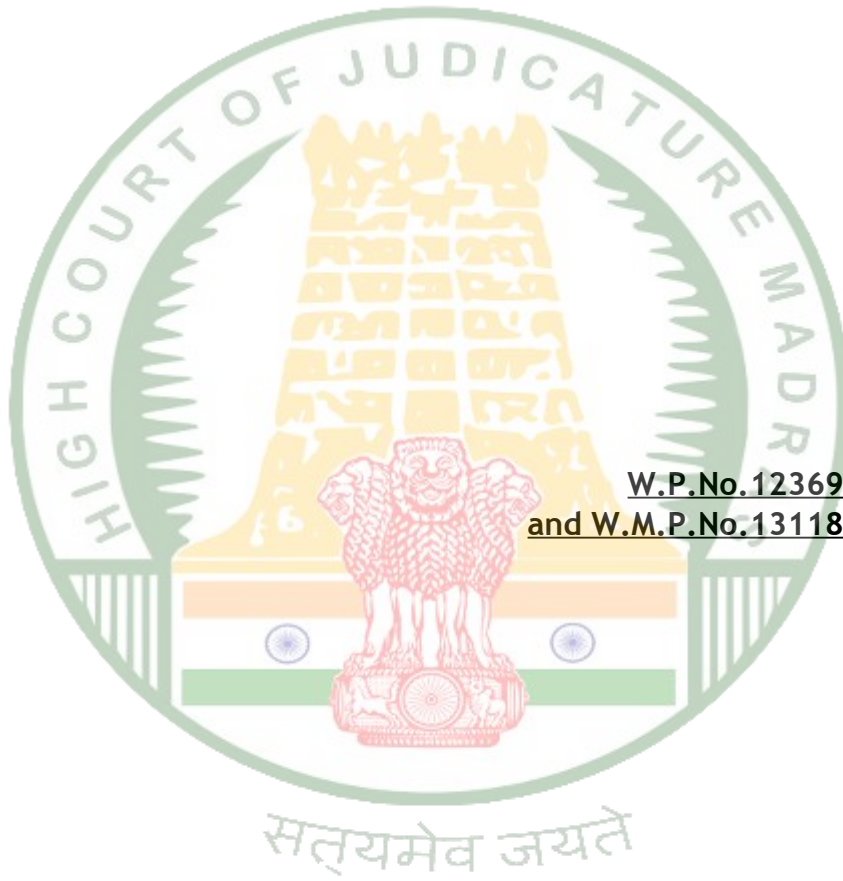
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