

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S. MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No.33123 of 2014
M.P.Nos.1 and 2 of 2014

1. D.Krishnan
2. K.Kishore Kumar
3. Smt.Rajalakshmi ... Petitioner

v.

1. The Branch Manager,
The Federal Bank Ltd.,
Br.Kotagiri 27/131L,
Johnstore Square,
Kotagiri Branch,
Kotagiri Post 643 217,
The Nilgiris District,
Tamil Nadu.

2. The Chief Manager (Legal),
The Federal Bank Ltd.,
Br.Kotagiri 27/131L,
Johnstore Square,
Kotagiri Post 643 217,
The Nilgiris District,
Tamil Nadu.

... Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records, relating to the proceedings of the respondent-Bank in FBL/KTG/TL-50.00L/15/25/2014, dated 20.10.2014, quash the same and consequently, direct the respondent-Bank to disburse the balance loan amount of Rs.30,56,100/-, as per the Term Loan Agreement, dated 30.01.2014, to the petitioner.

For Petitioners : Dr.R.Gouri

For Respondents
1 & 2

: Mr.M.Arunkumar
for M/s.Sampath Kumar Association

O R D E R

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

Challenge in this writ petition, is to the notice, dated 20.10.2014, issued under Section 13(2) of the SARFAESI Act, 2002, by issuance of a writ of Certiorarified Mandamus, to quash the same and consequently, sought for a direction to the Federal Bank, to disburse the petitioners, the balance loan amount of Rs.30,56,100/-, as per the Term Loan Agreement, dated 30.01.2014.

2. As the principal borrower, the 1st petitioner has availed the term loan of Rs.50,00,000/- on 30.01.2014, from Federal Bank Ltd., for the purpose of repair and renovation of building. Petitioners 2 and 3, being son and wife, are the co-borrowers. Property has been mortgaged. First installment fell due on 30.05.2014 and that the petitioners were supposed to pay the monthly installment of Rs.1,00,074.03. After satisfaction of the work carried on, as per the quotations submitted by the 1st petitioner, the Bank had initially released a sum of Rs.11,51,900/-, on 08.02.2014 and also released a sum of Rs.6,92,000/- on 07.02.2014, for the purpose of purchasing the building materials and altogether, disbursed a total sum of Rs.19,43,900/-.

3. The petitioners have further contended that the said amount was utilised for renovation of building and purchase of building materials. The petitioner has requested to disburse the remaining loan amount of Rs.30,56,100/-. However, the Bank has refused to disburse the same, in time and therefore, the entire renovation and construction works, could not be continued.

4. The petitioners have further contended that had the Federal Bank complied with the terms and conditions, they would have remitted the first intallment, which fell due on 30.05.2014 and continued to make future installments promptly. Having failed to disburse the balance amount of Rs.30,56,100/-, even before the due date of payment of the first installment, ie., on 30.05.2014, the Bank has issued a letter, dated 04.04.2014, stating that payment would not be made. In the said letter, the reason assigned by the Bank was that there was a monetary rival claim, between the 1st petitioner and one Mr.Loganathan, towards starting of guest house, which is subject matter of mortgage and in this regard, the Bank seemed to have received a legal notice from the said Mr.Loganathan, calling upon the petitioner to first settle the issue between themselves, and for that reason, the Bank had failed to fulfil the obligations.

5. It is the further case of the petitioners that the above litigation, between the 1st petitioner and Mr.Loganathan, was pending before the civil Court and it has nothing to do with the Bank, to disburse the remaining loan amount. In the abovesaid circumstances, payments could not be made. The respondents-Bank has issued a notice, dated 20.10.2014, under Section 13(2) of SARFAESI Act, 2002, demanding the petitioners to pay a sum of Rs.21,23,386/-, as on 30.09.2014, with costs and other charges along with further interest thereon, at the rate of 13.95% per annum, with monthly rests and penal interest, at the rate of 2% per annum, from 30.09.2014, till the date of payment and costs/other charges, within 60 days from the date of receipt of the said notice, failing which, the bank would take recourse, under Section 14 of the SARFAESI Act, 2002. On the above facts and circumstances, the petitioners have filed the instant writ petition, for the relief, as stated supra.

6. Supporting the prayer sought for, Dr.R.Gouri, learned counsel for the petitioners submitted that the Bank has failed to discharge their obligations, by making payment of remaining loan amount of Rs.30,56,100/- and due to such breach, the petitioners could not pay the monthly installments. She further submitted that the reason assigned by the Bank is untenable and the dispute between the petitioner and Mr.Loganathan, is in no way connected to the loan borrowed.

7. Placing reliance on the decision of this Court reported in 2010 (5) CTC 337 [Signal Apparels Pvt. Ltd., v. Canara Bank], learned counsel for the petitioners submitted that as per the guidelines of the Reserve Bank of India, dated 01.07.2009, the bank has to classify a debt, as 'Non-Performing Asset' (In short "NPA"), before issuing notice, under Section 13(2) of the SARFAESI Act, 2002. She further submitted that in the instant case, the Bank has not followed the above guidelines, while classifying the debt as NPA, in the manner, as provided therefor and therefore, the writ petition, challenging the notice, under Section 13(2) of SARFAESI Act, 2002, is maintainable.

8. Supporting the above submission, learned counsel for the petitioners drew the attention of this Court in Signal Apparels' case (cited supra), wherein, a Hon'ble Division Bench of this Court has considered the definition of "Non-Performing Asset" and the decisions made in Mardia Chemicals Ltd., v. Union of India reported in (2004) 4 SCC 311 and M/s.Transcore v. Union of India reported in AIR 2007 SC 712 and discussed as hereunder:

"11. Section 2(0) defines "non-performing asset" as hereunder:

"non-performing asset" means an asset or account of a borrower, which has been classified by a bank or

financial institution as sub-standard, doubtful or loss asset, -

(a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;

(b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank.

"Non-performing Asset" means that an asset or account of a borrower, which does not either generate income from the bank on actual realisation basis or ceases to generate the said income. In another sense, non-performing asset means an asset or account of a borrower which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset. In order to declare an asset or account to be a non-performing asset, the secured creditor must satisfy itself that such asset is not effectively producing income on actual realisation and consequentially, such asset or account could be declared as sub-standard, doubtful or loss asset. Though the provisions of Section 2(o) defines non-performing asset, no set of procedures are contemplated under that provision or under any other provisions of the Act enabling the banks or financial institutions to follow the same before declaring such asset or account as non-performing asset. However, that provision contemplates that in case, a bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law, then the declaration must be in accordance with the directions or guidelines relating to assets classifications issued by such authority or body. In all other cases, the bank or financial institution should follow the directions or guidelines relating to the assets classifications issued by the Reserve Bank.

12. In *Mardia Chemicals'* case, referred supra, the Apex Court, while dealing with the rights of the secured creditor to declare a debt as non-performing asset, has held in paragraph 44 as follows:-

"44. As a matter of fact, the Narasimhan Committee also advocates for a legal framework which may clearly define the rights and liabilities of the parties to the contract and provisions of speedy resolution of disputes, which is a sine qua non for efficient trade and commerce, especially for financial intermediation. Even the guidelines of Reserve Bank of India in

relation to classifying NPAs, while stressing the need of expeditious steps in taking a decision for classifying and identification of NPAs says, a system be evolved which should ensure that the doubts in asset classification are settled through specified internal channels within the time specified in the guidelines. It is thus clear that while recommending speedier steps for recovery of the debts it is envisaged by all concerned that within the legal framework, such provisions may be contained which may curtail the delays. Nonetheless, dues or disputes regarding classification of NPAs should be considered and resolved by some internal mechanism. In our view, the above position suggests the safeguards for a borrower, before a secured asset is classified as NPA. If there is any difficulty or any objection pointed out by the borrower by means of some appropriate internal mechanism it must be expeditiously resolved." Subsequently, the Apex Court in *M/s. Transcore v. Union of India*, AIR 2007 SC 712, in paragraph 45, has once again reiterated as follows:-

"45. Therefore, when Section 13(4) talks about taking possession of the secured assets or management of the business of the borrower, it is because a right is created by the borrower in favour of the bank/FI when he takes a loan secured by pledge, hypothecation, mortgage or charge. For example, when a company takes a loan and pledges its financial asset, it is the duty of that company to see that the margin between what the company borrows and the extent to which the loan is covered by the value of the financial asset hypothecated is retained. If the borrower company does not repay, becomes a defaulter and does not keep up the value of the financial asset which depletes then the borrower fails in its obligation which results in a mis-match between the asset and the liability in the books of the bank/FI. Therefore, Sections 5 and 9 talks of acquisition of the secured interest so that the balance sheet of the bank/FI remains clean. Same applies to immovable property charged or mortgaged to the bank/FI. These are some of the factors which the Authorised Officer of the bank/FI has to keep in mind when he gives notice under Section 3(2) of the NPA Act. Hence, equity exists in the bank/FI and not in the borrower. Therefore, apart from obligation to repay, the borrower undertakes to keep the margin and the value of the securities hypothecated so that there is no mis-match between the asset-liability in the books of the bank/FI. This obligation is different and distinct from the obligation to repay. It is the former obligation of the borrower which attracts the

provisions of NPA Act which seeks to enforce it by measures mentioned in Section 13(4) of NPA Act, which measures are not contemplated by DRT Act and, therefore, it is wrong to say that the two Acts provide parallel remedies as held by the judgment of the High Court in M/s.Kalyani Sales Co. (AIR 2006 P&H 107). As stated, the remedy under DRT Act falls short as compared to NPA Act which refers to acquisition and assignment of the receivables to the asset reconstruction company and which authorizes banks/FIs to take possession or to take over management which is not there in the DRT Act. It is for this reason that NPA Act is treated as an additional remedy (Section 37), which is not inconsistent with the DRT Act."

The Apex Court in Mardia Chemicals' case, has stressed that the guidelines of the Reserve Bank of India in relation to classifying non-performing asset should be followed by the secured creditor and has also observed that a system be evolved in order to ensure that the doubts in asset classification are to be settled through specified internal channels within the time specified in the guidelines. Our attention is not drawn as to whether such internal mechanism is evolved so far to resolve such a dispute.

13. Again, in Mardia Chemicals' case, while considering the rights of the banks or financial institutions and to follow the Reserve Bank guidelines issued through a circular dated 30.08.2001 by the banks before declaring a debt as "non-performing asset", the Apex Court had observed in paragraph 37 as follows:-

37. Next we come to the question as to whether it is on whims and fancies of the financial institutions to classify the assets as non-performing assets, as canvassed before us. We find it not to be so. As a matter of fact a policy has been laid down by the Reserve Bank of India providing guidelines in the matter for declaring an asset to be a non-performing asset known as "RBI's prudential norms on income recognition, asset classification and provisioning - pertaining to advances" through a Circular dated August 30, 2001. It is mentioned in the said Circular as follows :

"1.1 In line with the international practices and as per the recommendations made by the Committee on the Financial System (Chairman Shri M.Narasimham), the Reserve Bank of India has introduced, in a phased manner, prudential norms for income recognition, asset classification and provisioning for the advances portfolio of the banks so as to move towards greater

consistency and transparency in the published accounts."

2.1 Non-performing Assets:

"2.1.1 An asset, including a leased asset, becomes non-performing when it ceases to generate income for the bank. A 'non-performing asset' (NPA) was defined as a credit facility in respect of which the interest and/or instalment of principal has remained 'past due' for a specified period of time. The specified period was reduced in a phased manner as under:

Year ending March 31	Specified period
1993	four quarters
1994	three quarters
1995 onwards	two quarters

2.1.2 An amount due under any credit facility is treated as "past due" when it has not been paid within 30 days from the due date. Due to the improvements in the payment and settlement systems, recovery climate, upgradation of technology in the banking system, etc., it was decided to dispense with 'past due' concept, with effect from March 31, 2001. Accordingly, as from that date, a Non-performing Asset (NPA) shall be an advance where

(i) interest and/or installment of principal remain overdue for a period of more than 180 days in respect of a Term Loan,

(ii) the account remains 'out of order' for a period of more than 180 days, in respect of an Overdraft/Cash Credit (OD/CC),

(iii) the bill remains overdue for a period of more than 180 days in the case of bills purchased and discounted,

(iv) interest and/or installment of principal remains overdue for two harvest seasons but for a period not exceeding two half years in the case of an advance granted for agricultural purposes, and

(v) any amount to be received remains overdue for a period of more than 180 days in respect of other accounts.

4.2.2 Banks should establish appropriate internal systems to eliminate the tendency to delay or postpone the identification of NPAs, especially in respect of high value accounts. The banks may fix a minimum cut off point to decide what would constitute a high value account depending upon their respective business levels. The cut off point should be valid for the entire accounting year. Responsibility and validation levels for ensuring proper asset classification may be fixed by the banks. The system should ensure that doubts in asset classification due to any reason are settled through specified internal channels within one

month from the date on which the account would have been classified as NPA as per extant guidelines."

From what is quoted above, it is quite evident that guidelines as laid down by the Reserve Bank of India which are in more details but not necessary to be reproduced here, laying down the terms and conditions and circumstances in which the debt is to be classified as non-performing asset as early as possible. Therefore, we find no substance in the submission made on behalf of the petitioners that there are no guidelines for treating the debt as a non-performing asset."

9. Referring to RBI guidelines, learned counsel for the petitioner also drew the attention of this Court to Paragraphs 15 and 16 of Signal Apparels' case (cited supra), which are extracted hereunder:

"15. The decision of the secured creditor should not be arbitrary, since such decision would necessarily lead to drastic consequences, especially when the borrower has no right to question the notice under Section 13(2) except a right to make representation or objection. While considering an asset of a borrower to be declared as non-performing asset, a secured creditor should act judicially supported by materials and there must be transparency in arriving at such decision. In that sense, the bank must strictly follow the directions or guidelines relating to the asset classification issued by the Reserve Bank of India from time to time. The Apex Court in the judgment rendered in *Sardar Associates v. Punjab and Sind Bank* reported in [2009 (2) DRTC 409 (SC)], has held that the Reserve Bank of India is a statutory authority and it exercises supervisory powers in the matter of functioning of the scheduled banks. The matter relating to supervision of scheduled banks is also governed by the R.B.I. Act and for the enforcement of the aforementioned purpose, it is entitled to issue guidelines from time to time. With the above observation, the Apex Court ultimately held that such guidelines issued by the Reserve Bank of India is binding on the every banking company. Hence, it is mandatory for the bank to strictly follow the guidelines or directions issued by the administering or regulatory authority of such bank or the Reserve Bank, as the case may be and a breach of such directions or guidelines would invalidate the classification itself and can render illegal the further steps towards securitisation or asset reconstruction.

16. To put it precisely, for invocation of provision of Section 13(2) of the Act, the declaration of an asset or account to be a non-performing asset is

a condition precedent. In the event such declaration is not in accordance with the R.B.I. guidelines and the account of a borrower is a performing account, Section 13(2) may not be pressed into service, as such account cannot be brought under Section 2(o) of the Act. Equally, going by the scheme of the Act, the discretion conferred on the bank to declare an asset to be a non-performing asset is in order to tackle the issue of increase of non-performing asset to high level. That is why, the legislature had left the discretion to the bank while declaring a debt as a non-performing asset, qualifying such bank to follow the directions or guidelines issued by the Reserve Bank of India while classifying the assets to be sub-standard, doubtful or loss assets to be known as non-performing assets. This discretion is on national policy and all that requires for the secured creditor is to exercise the discretion judicially. In the wake of the right of the secured creditor to declare a debt as a non-performing asset, to show the application of mind for such declaration, it may indicate the reasons thereof in the notice under Section 13(2) and the Section does not contemplate that in all cases such reasons should be indicated in the notice. The application of mind could be culled out from the materials that were existed on the date of such declaration."

10. Per contra, placing reliance on a decision of the Hon'ble Apex Court in Federal Bank Ltd., v. Sagar Thomas and others, reported in AIR 2003 SC 4325, Mr.M.Arunkumar, learned counsel appearing the respondents submitted that Federal Bank Ltd., is a private company, carrying on banking business, as a scheduled bank, which cannot be termed as an institution or company carrying on any statutory or public duty and hence, submitted that a writ petition against a private company, is not maintainable.

11. By way of reply, learned counsel for the petitioners submitted that the the Bank has not followed the above guidelines, for classifying the debt as NPA and therefore, prayed to overrule the objections of the learned counsel for the respondents.

12. Learned counsel for the petitioner further submitted that no sooner, notice under Section 13(2) is received, a representation, dated 05.11.2014, was made, which was rejected on 07.11.2014, without due consideration to the averments made in the said representation. She submitted that the bank has rejected the request, without assigning valid reasons.

13. Towards the end of arguments, learned counsel for the petitioners submitted that the Bank, thereafter, has initiated action, under Section 13(4) of the SARFAESI Act, against which, S.A.No.37 of 2015 has been filed, before the DRT, Coimbatore and that the same is pending. On 27.02.2015, while entertaining the said application, DRT, Coimbatore has granted interim order, subject to certain conditions.

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

14. Though the Hon'ble Division Bench of this Court in Signal Apparels' case (cited supra), following the Supreme Court decisions in Mardia Chemicals Ltd., v. Union of India reported in (2004) 4 SCC 311 and M/s.Transcore v. Union of India reported in AIR 2007 SC 712 and also considering various statutory provisions, held that a notice, under Section 13(2) of SARFAESI Act, without classifying the debt as "Non Performing Asset", can be challenged, by way of a writ petition, when there is a violation of the guidelines of RBI, the Hon'ble Supreme Court in Federal Bank Ltd's case, party to this writ petition, while considering a issue, as to whether, a private company carrying on banking business as a scheduled bank, can be termed as an institution or company carrying on any statutory or public duty, after considering a plethora of decisions, at Paragraphs 15, 26, 27, 28, 32 and 33, held as follows:

"17. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

25. A company registered under the Companies Act, for the purposes of carrying on any trade or business is a private enterprise to earn livelihood and to make profits out of such activities. Banking is also a kind of profession and a commercial activity, the primary motive behind it can well be said to earn returns and profits. Since time immemorial, such activities have been carried on by individuals generally. It is a private affair of the company though case of nationalized banks stands on a different footing. There may, well be companies, in which majority of the share capital may be contributed out of the State funds and

in that view of the matter there may be more participation or dominant participation of the State in managing the affairs of the company. But in the present case we are concerned with a banking company which has its own resources to raise its funds without any contribution or shareholding by the State. It has its own Board of Directors elected by its shareholders. It works like any other private company in the banking business having no monopoly status at all. Any company carrying on banking business with a capital of five lacs will become a scheduled bank. All the same, banking activity as a whole carried on by various banks undoubtedly has an impact and effect on the economy of the country in general. Money of the shareholders and the depositors is with such companies, carrying on banking activity. The banks finance the borrowers on any given rate of interest at a particular time. They advance loans as against securities. Therefore, it is obviously necessary to have regulatory check over such activities in the interest of the company itself, the shareholders, the depositors as well as to maintain the proper financial equilibrium of the national economy. The Banking companies have not been set up for the purposes of building economy of the State on the other hand such private companies have been voluntarily established for their own purposes and interest but their activities are kept under check so that their activities may not go wayward and harm the economy in general. A private banking company with all freedom that it has, has to act in a manner that it may not be in conflict with or against the fiscal policies of the State and for such purposes, guidelines are provided by the Reserve Bank so that a proper fiscal discipline, to conduct its affairs in carrying on its business, is maintained. So as to ensure adherence to such fiscal discipline, if need be, at times even the management of the company can be taken over. Nonetheless, as observed earlier, these are all regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company. For other companies in general carrying on other business activities may be manufacturing, other industries or any business, such checks are provided under the provisions of the Companies Act, as indicated earlier. There also, the main consideration is that the company itself may not sink because of its own mismanagement or the interest of the shareholders or people generally may not be jeopardized for that reason. Besides taking care of such interest as indicated above, there is no other interest of the State, to control the affairs and management of the

private companies. The care is taken in regard to the industries covered under the Industries (Development and Regulation) Act, 1951 that their production which is important for the economy may not go down yet the business activity is carried on by such companies or corporations which only remains a private activity of the entrepreneurs/companies.

26. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, and Factories Act or for maintaining proper environment say Air (Prevention and Control of Pollution) Act, 1981 or Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance of those provisions. For instance, if a private employer dispense with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and have issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.

27. The six factors which have been enumerated in the case of Ajay Hasia (supra) and approved in the later decisions in the case of Ramana (supra) and the seven Judges Bench in the case of Pradeep Kumar Biswas (supra) may be applied to the facts of the present case and see as to those tests apply to the appellant bank or not. As indicated earlier, share capital of the appellant bank is not held at all by the government nor any financial assistance is provided by the State, nothing to say which may meet almost the entire expenditure of the company. The third factor is also not answered since the appellant bank does not enjoy any monopoly status nor it can be said to be an institution having State protection. So far control over the affairs of the appellant bank is concerned, they are managed by the Board of Directors elected by its shareholders. No governmental agency or officer is

connected with the affairs of the appellant bank nor anyone of them is a member of the Board of Directors. In the normal functioning of the private banking company there is no participation or interference of the State or its authorities. The statutes have been framed regulating the financial and commercial activities so that fiscal equilibrium may be kept maintained and not get disturbed by the mal-functioning of such companies or institutions involved in the business of banking. These are regulatory measures for the purposes of maintaining the healthy economic atmosphere in the country. Such regulatory measures are provided for other companies also as well as industries manufacturing goods of importance. Otherwise these are purely private commercial activities. It deserves to be noted that it hardly makes any difference that such supervisory vigilance is kept by the Reserve Bank of India under a Statute or the Central Government. Even if it was with the Central Government in place of the Reserve Bank of India it would not have made any difference, therefore, the argument based on the decision of All India Bank Employees' Association (supra) does not advance the case of the respondent. It is only in case of mal-functioning of the company that occasion to exercise such powers arises to protect the interest of the depositors, shareholders or the company itself or to help the company to be out of the woods. In the times of normal functioning such occasions do not arise except for routine inspections etc. with a view to see that things are moved smoothly in keeping with fiscal policies in general.

28. There are a number of such companies carrying on the profession of banking. There is nothing which can be said to be close to the governmental functions. It is an old profession in one form or the other carried on by individuals or by a group of them. Losses incurred in the business are theirs as well as the profits. Any business or commercial activity, may be banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money are no doubt, are such which do have impact on the economy of the country in general. But such activities cannot be classified one falling in the category of discharging duties, functions of public nature. Thus the case does not fall in the fifth category of cases enumerated in the case of Ajay Hasia (supra). Again we find that the activity which is carried on by the appellant is not one which may have been earlier carried on by the government and transferred to the appellant company. For the sake of argument even if it may be assumed that

one or the other test as provided in the case of Ajay Hasia (supra) may be attracted that by itself would not be sufficient to hold that it is an agency of the State or a company carrying on the functions of public nature. In this connection, observations made in the case of Pradeep Kumar Biswas (supra) quoted earlier would also be relevant.

32. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed.

33. In the result, the appeal is allowed and the judgment and order passed by the High Court is set aside and the writ petition is held to be not maintainable. There will, however, be no order as to costs."

15. Added further, from the version of the learned counsel for the petitioners that the Bank has already initiated SARFAESI action, under Section 13(4), against which, S.A.No.37 of 2015, has been filed by the petitioners, before DRT, Coimbatore, wherein, it is always open to the petitioners to raise grounds, as to whether, loan account ought to have been treated as "Non Performing Asset" and whether the Bank has followed the procedure, in accordance with the guidelines of the RBI or not. As the matter is pending before the DRT, Coimbatore, it would be inappropriate to delve into such contentions.

16. It is also to be noted that as per the version of the learned counsel for the petitioners, the Tribunal has granted an

interim order. In the light of the decision of the Hon'ble Supreme Court in Federal Bank Ltd's case (cited supra), contentions to the contra, cannot be entertained, at this juncture. Further, this Court is of the view that there cannot be any parallel proceedings.

17. Writ petition is filed only against the notice, under Section 13(2) of the SARFAESI Act, 2002. Notice under Section 13 (2) is only a demand made by the Bank. However, as per Section 13(3A) of the SARFAESI Act, 2002, introduced with effect from 11.11.2004, inserted by Act 30 of 2004, 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. Proviso to the said Section states 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. In the light of the above decision and the statutory provision, writ of certiorari, cannot be issued to quash the notice under Section 13(2) of the SARFAESI Act 2002.

18. In the light of the decision of Federal Bank of India Ltd's case (cites supra), mandamus cannot be issued against a scheduled private limited bank. Federal Bank of India is a party in this writ petition and hence, the above decision is squarely applicable to the case on hand.

19. In the result, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

skm

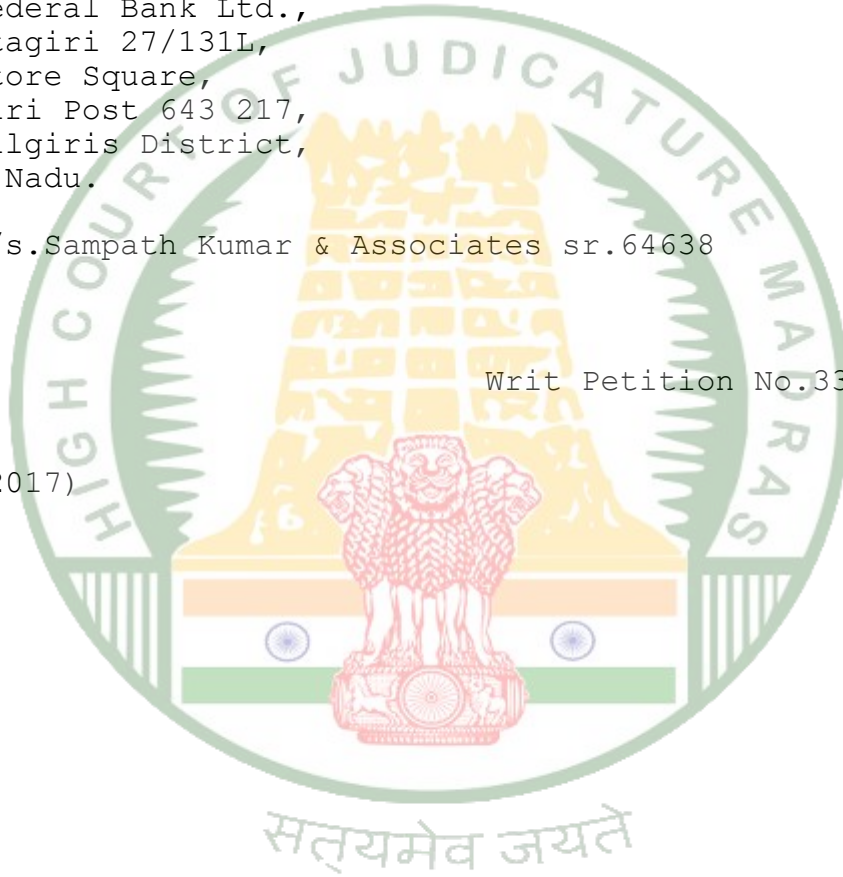
To:

1. The Branch Manager,
The Federal Bank Ltd.,
Br.Kotagiri 27/131L,
Johnstore Square,
Kotagiri Branch,
Kotagiri Post 643 217,
The Nilgiris District,
Tamil Nadu.
2. The Chief Manager (Legal),
The Federal Bank Ltd.,
Br.Kotagiri 27/131L,
Johnstore Square,
Kotagiri Post 643 217,
The Nilgiris District,
Tamil Nadu.

+1cc to M/s.Sampath Kumar & Associates sr.64638

Writ Petition No.33123 of 2014

ss1(co)
ss(13/10/2017)



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