IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.12.2017
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

W.P.No.33001 of 2017
and WMP No.36366 of 2017

N.Subramani ... Petitioner

vs.

1. The District Magistrate and
District Collector, Namakkal District,
Collectorate, Namakkal.

2. The Sub Collector,
Sub Collector Office,
Namakkal District,
Namakkal - 637 001.

3. The Superintendent of Police,
Office of the Superintendent of Police,
Namakkal District, Namakkal.

4. The Authorised Officer,
M/s.Allahabad Bank,
No.176/173A, Paramathy Road,
S.P.Pudhur, Namakkal - 637 001. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified Mandamus, calling for the records from the file of the 1st respondent made in Roc.No.4793/2017-M4 dated 26.10.2017 issued U/s.14(1) and (2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, Act, 2002 and quash the same and further direct the 1st respondent to consider and pass fresh orders based on the statement dated 01.09.2017 and the representation of the petitioner dated 31.10.2017.

For Petitioner : Mr.C.Kulanthaivel
For Respondents : Mr.M.Elumalai (for R1 to R3)
Government Advocate

ORDER

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

Order impugned by the borrower, in the instant writ petition filed for a certiorarified mandamus is the proceedings of the District Magistrate and District Collector, Namakkal District, Namakkal in Roc.No.4793/2017-M4 dated 26.10.2017, and the same is extracted hereunder

ROC.No.4793/2017-M4
Dated:26.10.2017

Sub: The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 - Loan for Rs.15,00,000/- (Rupees Fifteen Lakhs Only) sanctioned to Mr.N.Subramani (Prop.M/s.Nallusamy Mondy), No.85, Salem Road, Namakkal and Residence address is : 24/98, Ganesapuram, 1st Street, Namakkal. The Authorised Officer, Allahabad Bank, Namakkal Branch - Borrower failed to repay the loan amount - Requisition of M/s.Allahabad Bank, Namakkal Branch to attach land and building of borrowers for the default to pay - Order under Section 14 [1] of the Act, issued.

Ref: 1. Petition filed under Section 14 from M/s.Allahabad Bank, Namakkal Branch, represented by its Authorised Officer, Dated: Nil.
2. Petition filed under Section 14 from M/s.Allahabad Bank, Namakkal Branch, represented by its Authorised Officer, Dated 21.09.2017.

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ORDER:

The Authorised Officer, M/s.Allahabad Bank, Namakkal Branch, has filed an affidavit before the District Collector, Namakkal U/s.14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, with the prayer to render assistance to the above institution to take possession of the following secured assets and mortgaged property.

1. The petitioner states that the Respondent Mr.N.Subramani (Prop.M/s.Nallusamy Mondy), No.85, Salem Road, Namakkal and Residence address is: 24/98, Ganesaupram 1st Street, Namakkal. The address for service of all notices and process on the respondent are the same as stated above.

2. The petitioner states that the respondent engaged in the business of Trade of maize, Baijra, Jowar and food grains. The respondent requiring credit facilities to the tune of Rs.15,00,000/- approached the petitioner for a loan of the facilities agreeing to abide by the terms and conditions of such loans of the petitioner's bank.

3. The petitioner states that sanction the respondent the credit facilities to the tune of Rs.15,00,000/- for which executed necessary loan documents in favour of the bank on 05.02.2014. The respondent has also offered his property as security for the loand and had deposited the documents of title of the said property into bank on 25.02.2014 and has created a Mortgage by Deposit of Title deeds in favour of the bank. Further the respondent has also executed a Memorandum of Deposit of Title deeds in favour of the Petitioner's Bank on 25.02.2014 and the same has been registered with Doc.No.494/2014.

4. The petitioner states that further submits that pursuant to the provisions of the said Act, the Petitioner through its Authorized Officer, issued a notice, under Section 13(2) of the said Act on 04.01.2016, calling upon the respondent to pay the outstanding mentioned therein within 60 days of the said notice. As the respondent failed to of the bank has taken possession of the subject property under Sec 13(4) of Act on 15.03.2016 and the same was also delivered to the respondent.

5. The petitioner states that the possession notice affixed on the conspicuous part of the mortgaged property described hereunder and the same was published in 2 dailies as per the Rules 8(1) & (2) of Security Interest (Enforcement) Rules. And the petitioner has fixed a date for e-auction on 29.06.2016 and the reserved price was fixed at

Rs.36,00,000/-. The sale notice was served to the respondent on 25.05.2016, giving 30 days for redeem the property described hereunder. The Sale notice was affixed on the property and was published in two newspapers, Dhinakaran and others as per Rule 9(1) of the relevant rules. Respondent have neither responded not paid the amount due to the petitioner.

6. The petitioner states that the e-auction conducted and successful bidder and has purchased the same for a sum of Rs.38.80 lakhs. A letter confirming the sale has also been issued to her on 29.07.2016. And the petitioner was issued a notice to the respondent on 22.11.2016 to deliver the vacant possession of the subject mortgaged property sold in the e-auction to him to enable him to deliver possession of the same to the auction purchaser. So the respondent has not come forwarded to deliver the vacant possession of the subject mortgaged property to the Authorized officer.

7. The petitioner states that Applicant prays that the Hon'ble Authority to exercise the power pleased to pass an order of section 14 of the Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act, 54 of 2002) to take possession of the securities detailed herein and/or to pass appropriate orders/directions etc. to any authority or official or cause to use such force as may be necessary in order to take possession and handover physical possession of the following property as provided by law.

SCHEDULE OF PROPERTY

The Property in the Name of Mr.N.Subramani S/o.P.Nallusamy, 980 sqft of land situated Old SF No.175/2 Ward-A, Block 10 T.S.No.84/4, Old Door No.29A3, New Door No.83, Opp. to Vaigai Traders office, Salem Road West lying within Namakkal District, Namakkal Registration District, Namakkal No.1, Jt.SRD, Namakkal Town and bounded,

On the East By : Land of N.Subramani
On the West By: Property of Pandurangan
On the North By: Property of Kolandhagounder and Others.

On the South By: East West Road.

Admeasuring East to West on the North side 20 ft, on the South side 20 ft, North-south on the East 49 ft on the West 49 ft, totally to an extent of 980 Sqft house site with all its easement rights.

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, Section 14[1] provides that

"... the secured creditor may for the purpose of taking possession or control of any such secured asset, request, in writing the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be, the situated or found, to take possession thereof and the Chief Metropolitan Magistrate or as the case may be District Magistrate, shall on such request being made to him.

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

Under the powers conferred u/s.14[1] and 14[2] of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 the District Magistrate and District Collector is empowered to take possession of the secured assets of property mentioned in the schedule above and to handover it to the Authorised Officer, M/s.Allahabad Bank, Namakkal Branch.

Hence, Sub Collector, Namakkal is hereby authorised to take possession of the property mentioned in the schedule above immediately with police protection, if needed, and handover the same to the Authorised Officer, M/s.Allahabad Bank, Namakkal Branch under proper acknowledgement, and intimate the fact to this office.

Sd/- M.Asia Mariam
District Magistrate and
District Collector,
Namakkal.

//By Order//

For District Collector

2. On this day, when the matter came up for hearing, Mr.C.Kulanthaivel, learned counsel for the petitioner submitted that on 14.12.2017, possession has been taken by the bank.

Order impugned before us, has been given effect. According to the petitioner, tenant has been thrown out.

3. Further, learned counsel for the petitioner submitted that he is ready to repay the loan amount and till such time, bank be restrained from demolishing the building.

4. Material on record discloses that petitioner and others have filed S.A.Sr.No.8591 of 2016, before the Debts Recovery Tribunal, Madurai, to quash the sale certificate dated 09.11.2016, registered in favour of Ms.Kalavathi, w/o.Prabhooram and Prabhooram, defendants in SA SR.No.8591 of 2016, registered as Doc.No.2906 of 2016. Petitioner has sought for an interim order, against the said defendants 3 and 4, not to alienate the said property. In SA.Sr.No.8591 of 2016, he has also sought for an interim order, restraining the defendants therein, from evicting the petitioner and others, from the property. There are no materials, in the typed set of papers indicating any order in SA.SR.No.8591 of 2016.

5. 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.

6. Though, the learned counsel for the petitioner submitted that the tenant has been evicted, statute provides a remedy to the tenant, under Section 17(4) (A) of the Act, which reads thus.

> (i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purpose of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy, -
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> (a) has expired or stood determined; or
>
> (b) is contrary to Section 65 A of the Transfer of Property Act, 1882 (4 of 1882); or
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> (c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of Section 13 of the Act; and

(ii). the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act."

7. E-auction has been conducted and sale certificate has also been issued. Bank which has sold the subject property mortgaged is bound to deliver the possession to the auction purchasers and in that context, under Section 14 of the SARFAESI Act, 2002, can seek for appropriate orders from the District Magistrate and District Collector, Namakkal District.

8. As per Sub section 3 of Section 14 of SARFAESI Act, 2002, no act of Chief Metropolitan Magistrate or the District Magistrate (any officer authorised by Chief Metropolitan Magistrate or the District Magistrate) done in pursuance of this Section shall be called in question in any Court or before the authority. Order passed by the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, can also be challenged before the tribunal, if the petitioner is so advised.

9. With the above observations, the writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District Magistrate and
District Collector, Namakkal District,
Collectorate, Namakkal.

2. The Sub Collector,
Sub Collector Office,
Namakkal District,
Namakkal - 637 001.

3. The Superintendent of Police,
Office of the Superintendent of Police,
Namakkal District, Namakkal.

4. The Authorised Officer,
M/s.Allahabad Bank,
No.176/173A, Paramathy Road,
S.P.Pudhur, Namakkal - 637 001.

5.The Chief Metropolitan Magistrate Namakkal
6.The District Magistrate, Namakkal

+1 cc to M/s.C.Kulanthivel Advocate sr 90544
+1 cc to the Govt Pleader sr 90838

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and WMP No.36366 of 2017

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