IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.09.2017**

CORAM:

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

W.P.No.13060 of 2017
and WMP No.13938 of 2017

G.Muthuraman ... Petitioner

vs.

1. The Catholic Syrian Bank Limited,
Rep. by Manager,
Guindy Branch,
AMG Towers, No.28, Lawyer Jagannathan Street,
Alandur, Guindy, Chennai - 600 032.

2. The Catholic Syrian Bank Limited,
Rep. by Authorized Officer,
Rani Seethai Hall,
7th Floor, No.603, Anna Salai, Chennai - 06.

3. T.K.Santhosh
Managing Director,
M/s.Royal Splendour Developers Pvt Ltd.

4. T.P.Mini

5. The District Collector,
Collectorate, Tiruvallur.

6. Tahsildar,
Ambattur, Tiruvallur District. ... 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 relating to the proceedings of Rc.No.8953/2017/M2 dated 19.04.2017 on the file of 5th respondent and quash the same and direct the 5th & 6th respondents not to interfere with the peaceful possession and enjoyment of the petitioner schedule property bearing land admeasuring 2780 sq.ft and house constructed thereon bearing Plot No.104 in Sy.No.111, Layout Plan No.197/74, at Brindavan Nagar, 1st Main Road, Valasaravakkam Village, Ambattur Taluk, Tiurvallur District in the ownership of the petitioner Mr.G.Muthuraman, (More fully described in schedule of Sale Deed Reg.No.5517/2007 of SRO, Virugambakkam).

For Petitioner : Mrs.Girija
for Mr.G.Murugendran

For Respondents : Mr.S.Patric (for R1 & R2)
for K.Rajasekaran

ORDER

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

Contending inter alia that the petitioner, is neither a borrower nor guarantor, for the loan availed by Mr.T.K.Santhosh, instant writ petition has been filed for a Certiorarified Mandamus, calling for the records relating to the proceedings of Rc.No.8953/2017/M2 dated 19.04.2017, on the file of the District Collector, Tiruvallur, the 5th respondent herein and to quash the same and consequently, direct the District Collector, Tiruvallur and the Tahsildar, Ambattur, Tiruvallur, respondents 5 and 6 herein, respectively, not to interfere with the peaceful possession and enjoyment of the petitioner, schedule property bearing land admeasuring 2780 sq.ft and house constructed thereon bearing Plot No.104 in Sy.No.111, Layout Plan No.197/74, at Brindavan Nagar, 1st Main Road, Valasaravakkam Village, Ambattur Taluk, Tiurvallur District, owned by the petitioner, Mr.G.Muthuraman, (More fully described in schedule of Sale Deed Reg.No.5517/2007 of SRO, Virugambakkam).

2. We have gone through the entire material on record, and on the facts and circumstances of the case, found that the said contention is apparently wrongly, as perusal of the notice dated 15.07.2016, issued under Section 13 (2) of the SARFAESI Act, 2002, makes it clear that Mr.T.K.Santhosh, has availed loan and Mrs.T.P.Mini and Mr.G.Muthuraman, the writ petitioner herein, has stood as a guarantor. Details culled out, from the notice dated 15.07.2016, are reproduced hereinafter,

> *"2. Considering the request, the Catholic Syrian Bank Ltd., Guindy Branch extended financial assistance to No.(1)*

above after obtaining necessary loan documents and security agreements. Details of the loans / credit facilities are shown below:

Name of the borrower	**Name of the Guarantor**	**Nature of Advance**	**Date of Documents / Acknowledgment of debt**	**Balance outstanding as on 30.06.2016 in Rupees**
1) Mr.T.K.Santhosh	*1) Mrs.T.P.Mini 2) Mr.G.Muthuraman*	*1) TPLS-OD Rs.185.00 Lakhs*	*12/08/2013, 07/11/2015*	*Rs.1,91,49,076/-*

3) Number (3) above have further created security interest in respect of the following assets belonging to him. Mortgage by way of deposit of title deeds of all that piece and parcel of land admeasuring 2780 sq.ft and house constructed thereon bearing Plot No.104 in Sy.No.111, Layout Plan No.197/74, at Brindavan Nagar, 1st Main Road, Valasaravakkam Village, Ambattur Taluk, Thiurvallur District in the ownership of Mr.G.Muthuraman, (more fully described in schedule "A" hereunder and hereinafter referred as the "A" Schdeule property).

4) Mr.T.K.Santhosh No.(1) as borrower has defaulted repayment of the aforesaid secured debt / installment thereof in violation of the sanction terms, loan documents and other terms agreed upon and the account has been classified by the Bank as "Non-Performing Asset" on 30.06.2016 as defined in S.2(O) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. Property mortgaged is extracted hereunder

Schedule 'A'.

All that piece and parcel of land admeasuring 2780 sq.ft. and house constructed thereon bearing Plot No.104 in Sy.No.111, Layout Plan No.197/74, at Brindavan Nagar, 1st Main Road, Valasaravakkam Village, Ambattur Taluk, Tiurvallur District in the ownership of the petitioner Mr.G.Muthuraman, (More fully described in schedule of Sale Deed Reg.No.5517/2007 of SRO, Virugambakkam).

Boundaries

North : Plot No.106.
South : Plot No.105.
East : Sy.No.114
West : 30 feet Road.

4. After issuance of the demand notice dated 15.07.2016 under Section 13(2) of the SARFAESI Act, 2002, bank has filed an application under Section 14 of the SARFAESI Act, 2002 to the District Magistrate cum District Collector, Thiruvallur District, seeking assistance.

5. Responding to the above, the District Magistrate cum District Collector, Thiruvallur vide memorandum Rc.No.8953/17/M2 dated 19.04.2017 has requested the Tahsildar, Ambattur to thoroughly check the facts submitted by the bank and to physically verify all original

records by summoning the bank to produce the relevant records and thereafter, after inspection of the site, submit a detailed report as per the proforma.

6. District Magistrate cum District Collector, Thiruvallur has further directed the Tahsildar, Ambattur, to complete the exercise within a week from the date of receipt of a copy of the memorandum dated 19.04.2017.

7. While directing the Tahsildar, Ambattur to submit a detailed report, as stated supra, the District Magistrate cum District Collector, Thiruvallur, has sent a copy of the abovesaid memorandum dated 19.04.2017, to M/s.Catholic Syrian Bank, Chennai, applicant therein, to Mr.T.K.Santhosh, borrower, and to Mrs.T.K.Mini and Mr.Muthuraman/ Guarantors.

8. Perusal of the memorandum dated 19.04.2017, indicates that Mr.T.K.Santhosh, Mrs.T.K.Mini and Mr.G.Muthuraman, have been referred to, as owners of the Property, Plot No.104 in Sy.No.111, Layout Plan No.197/74, at Brindavan Nagar, 1st Main Road,

Valasaravakkam Village, Ambattur Taluk, Tiurvallur District,(More fully described in schedule of the Sale Deed Reg.No.5517/2007 of SRO, Virugambakkam), and mortgaged with the bank.

9. Though, the abovesaid communication is impugned in the instant writ petition, on the grounds inter alia that respondents 1 and 2, have failed to take steps for recovery, as against the borrower, 3rd respondent herein, instead taken steps, as against the property offered, by the guarantors, as security and mortgaged, and therefore, a certiorarified mandamus has to be issued to quash the memorandum dated 19.04.2017, with a further direction to the respondents 5 and 6 herein, not to interfere with the peaceful possession and enjoyment of the petitioner/guarantor, this Court is not inclined to accept the said contentions for the reason that the petitioner is a guarantor, who had mortgaged the above mentioned property, as secured asset, with the bank.

10. Secured asset is defined, as follows under Section 2(zc) of SARFAESI Act.

"secured asset" means the property on which security interest is created.

11. Secondly, Section 13(4) of the SARFAESI Act, 2002, reads thus.

"In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

PROVIDED that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

PROVIDED FURTHER that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

12. Thirdly, Section 14 of the SARFAESI Act, 2002, which deals with Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset, reads thus.

*"**14.**(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, 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 situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the 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."

13. As per the proviso to Section 14 of the SARFAESI Act, 2002 when an application is filed under Section 14 of the SARFAESI Act, 2002, on receipt of an affidavit from the authorised officer of the Bank, the District Magistrate or the learned Chief Metropolitan Magistrate, as the case may be, shall after, satisfying with the contents of the affidavit, pass suitable orders, for the purpose of taking possession of the secured assets within a period of thirty days, from the date of application, for the reasons to be recorded in writing. For any reason, such order could not be passed, within a period of thirty days, the same can be done, as per the 2nd provisio to Section 14 of the SARFAESI Act, 2002.

14. On the facts and circumstances of the case, we are of the view that on receipt of an application under Section 14 of the SARFAESI Act, 2002, from M/s.Catholic Syrian Bank Limited, the District Magistrate cum District Collector, Thiruvallur, has only acted in terms of the provisions of Section 14 of the Act. While doing so, he has also sent a copy of the memorandum dated 19.04.2017, to the guarantor. Measures taken by Catholic Syrian Bank Limited, Chennai, at any stretch of imagination, cannot be said to be contrary to the provisions of the SARFAESI Act, 2002.

15. Under the terms and conditions of the contract and the provisions of the Contract Act, Bank is at liberty to initiate recovery proceedings, jointly and severally, against the borrower or the guarantor, as the case may be. Provisions of the SARFAESI Act, 2002, do not prohibit the bank from bringing the property, offered as security, for the sale, and that the statute enables the secured creditor to seek for the assistance of the District Magistrate cum District Collector, for taking possession of either the property of the borrower for the guarantor, as the case may be. Contentions made in the supporting affidavit, are untenable. Writ petition is wholly misconceived, and for the reasons stated supra, writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

(S.M.K., J.) (V.B.S., J.)
20.09.2017

S.MANIKUMAR, J.
AND
V.BHAVANI SUBBAROYAN, J.

ars/skm

W.P.No.13060 of 2017
and WMP No.13938 of 2017

20.09.2017