IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/12/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.33640 of 2017

1. Mr.V.S.Raghavan
2. Mrs.Indira Raghavan ... Petitioners

Vs

HDFC Ltd
rep. By the Authorised Officer
2nd Floor, ITC Center
760 Anna Salai
Chennai 600 002. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, to direct the respondent to dispose of the petitioner's representation dated 8/11/2017.

For petitioners ... Mr.G.Poonkundran

O R D E R
(Order of the Court was made by S.MANIKUMAR, J)

Petitioners are not the borrowers, but parents of the borrower, who had availed loan and mortgaged her property.

2. Material on record discloses that the petitioner's daughter Harini, availed loan and mortgaged her flat, as security asset. She died on 27/3/2016. HDFC Ltd., respondent is stated to have sent a demand notice, dated 28/3/2017, to the petitioners, intimating that their daughter Ms.Harini (since deceased), during her life time, was granted a loan of Rs.21,60,000/-, as per the terms and conditions contained in the loan agreement. By observing that the petitioners have failed and neglected to regularise the account, Bank in its letter, dated 28/3/2017, stated that it has no option, but to call back the entire loan, together with all its related outstanding dues. In the said letter, Bank has also requested the petitioners, to pay a sum of Rs.20,87,307/-, within seven days from the date of

receipt of their demand notice, with further interest at the rate of 18% p.a., as applicable till repayment is made, failing which borrower has no option, except to initiate appropriate legal action, including taking steps to sell the property, mortgaged in favour of the Bank, for recovery of dues. Subsequently, Bank has issued a possession notice, dated 12/10/2017, to the petitioners. Thereafter, Bank has issued a letter, dated 23/10/2017, stating that actual possession of the mortgaged property has been taken, on 12/10/2017. Thereafter, Bank has issued a sale notice, dated 24/10/2017, bringing the mortgaged property for auction, on 5/12/2017.

3. Contending inter alia that the petitioners have no knowledge of the transaction of their daughter Harini, with HDFC Bank and the demand notice, dated 28/3/2017, issued under Section 13 (2) of the SARFAESI Act, 2002 has not been served on the petitioners and therefore, the whole proceedings are in violation of the provisions of the SARFAESI Act, 2002, writ petitioners have sent a letter, dated 8/11/2017 to HDFC Ltd., Chennai. As the said petition is stated to be pending, petitioners have sought for a writ of mandamus, directing HDFC to pass orders on the said application.

4. Added further, Mr.G.Poonkundran, learned counsel for the petitioners submitted that the petitioners are neither the borrowers nor the guarantors. He also submitted that even taking for granted that the petitioners have not been served with a notice, under Section 13 (2) of the SARFAESI Act, 2002, representation dated 8/11/2017, has to be construed as a reply to Section 13 (2) notice and unless and until, there is reply communicated in writing, Bank can proceed against the mortgaged property.

5. Heard the learned counsel for the petitioners and perused the materials available on record.

6. Admittedly, loan has been borrowed by Ms.Harini (since deceased) and the flat owned by her has been mortgaged with HDFC Bank. Material on record, housing loan approval, dated 23rd February 2012, enclosed in the typed set of papers shows that the amount approved by HDFC Bank was Rs.21,60,000/-; rate of interest was 10.50% p.a., on a variable rate basis; repayment terms at Rs.22,297/- p.m., in 216 instalments. Though the petitioners contended that they are not aware of the transaction of their daughter Harini (since deceased) with HDFC Bank, we are at loss to understand as to how the petitioners have enclosed the copy of the communication of the approval dated 23rd February 2012. Harini died on 27/3/2016. Notice, dated 28/3/2017, stated to have sent by HDFC Bank and claimed by the petitioners as not received is extracted hereunder:-

"Under the loan agreement entered into by Ms.Harini R (since deceased) (hereinafter referred to as the "said borrower") during his/her lifetime with HDFC the said borrower had been granted a loan of Rs.21,60,000/- on the terms and conditions contained in the said loan agreement and the property described therein stands mortgaged in our favour as security for the repayment of the said loan together will all its related dues. The said borrower agreed to repay the loan with interest as per the amortisation schedule set out in the said loan agreement.

We regret to note that the said borrower during his/her lifetime failed and neglected to pay the EMIs as and when they became due. We also regret to note that you in your capacity as the legal heir (s) failed and neglected to regularise the account.

In the circumstances, we have no option but to call back the entire loan together with all its related outstanding dues.

As on 28th February 2017, there is due and payable by you to HDFC Limited, a total sum of Rs.20,87,307/- as per the following details.:-

Outstanding EMIS	Rs.	1,75,970
Amortised Principal Amount	Rs.	18,98,358
Additional Interest	Rs.	11,530
Incidental expenses	Rs.	1,449
Total outstanding	Rs.	20,87,307

You, in your capacity as the legal heir (s)/legal representative(s) of the said borrower (since deceased) are hereby called upon to pay the said amount of Rs.20,87,307/- within seven days from the receipt hereof, with further interest at the rate at 18% p.a., as applicable, till payment and/or realisation, failing which we shall have no option but to initiate appropriate legal action, including taking steps to sell the property mortgaged in our favour for recovery of our dues."

7. Possession notice, issued on 12th October 2017, has not been denied. In the said notice, Bank has stated that the Authorised Officer of Housing Development Finance Corporation Limited under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in exercise of powers conferred under Section 13 (12) read with Rule 3 of the Security Interest (Enforcement) Rules, 2002, has issued demand notice, dated 19/4/2017, under Section 13 (2) of the said Act, calling upon Mr.Raghavan and Indira, legal heirs of Ms.R.Harini (since deceased), to repay the amount mentioned in the said notice, amounting to Rs.21,06,254/- as on 28th February 2017 within 60 days from the date of the said note together with further interest at the rate of 18& p.a., as mentioned in the said notice, incidental expenses, costs, charges, etc., incurred from 1st March 2017 till the date of payment and/or realisation.

8. When the Authorised Officer HDFC Bank, respondent herein, has reiterated that a demand notice, dated 19/4/2017, had already been issued, and on the failure of repayment, Bank had issued possession notice, dated 12/10/2017, petitioners have not made any representation/objection, denying the receipt of demand notice, dated 19/4/2017.

9. If the bank had not issued any demand notice, dated 19/4/2017, as contended, the petitioners, could have challenged the possession notice, dated 12/10/2017, on the grounds that 13 (2) notice, has not been served. Petitioners have not challenged the possession notice, on any of the grounds available to that including non-service of 13 (2) notice. Subsequently, on 23rd October 2017, HDFC Bank, has issued a notice, under Rule 4 (2-A) of the Security Interest (Enforcement) Rules, 2002.

10. Rule 4 (2) of the Security Interest (Enforcement) Rules, 2002, is extracted hereunder:-

> "After taking possession under sub-rule (1) above, the authorised officer shall make or cause to be made an inventory of the property as nearly as possible in the form given in Appendix II to these rules and deliver or cause to be delivered, a copy of such inventory to the borrower or to any person entitled to receive on behalf of borrower."

11. Rule 4 (2-A) of the Security Interest (Enforcement)

Rules, 2002 is extracted hereunder:-

> "The borrower shall be intimated by a notice, enclosing the panchnama drawn in Appendix I and the inventory made in Appendix II)."

12. Letter, dated 23/10/2017, of HDFC Ltd., reads thus:-

> "The Authorised officer of Housing Development Finance Corporation Limited (hereinafter referred to as "HDFC Ltd"), the secured creditor, had issued demand notice dated 19th April 2017 to you under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the "Act"), calling upon you to repay the entire dues/discharge the loan liability in full within the period stipulated therein. As you failed and/or neglected to comply with the said notice within the period stipulated therein, the Authorised Officer has taken actual possession on 12th October 2017 of the mortgaged property/secured asset as mentioned in the schedule below under Section 13 (4) of the Act read with Rule 8 of Security Interest (Enforcement) Rules, 2002.
>
> We are attaching herewith the copy of the panchanama drawn and inventory made at the time of possession of the mortgaged property/secured asset.
>
> Your attention is invited to the provisions of sub-Section (8) of Section 13 of the Act, in respect of time available to redeem the secured asset/s."

13. Even after receipt of the intimation, in terms of Rule 4 (2-A), of the Security Interest (Enforcement) Rules, 2002, petitioners have not chosen to challenge the possession notice or the actual possession taken on 12/10/2017. Subsequently, Bank has issued sale notice, dated 24/10/2017, to the petitioners, stating that property would be brought for auction and fixed the date of auction on 5th December 2017. Even this sale notice has not been challenged. Petitioners have failed to challenge the action of the Bank in issuing possession notice; taking over actual possession, and issuance of sale notice, as stated supra. Contending inter alia that the representation, dated 8/11/2017, has to be disposed, they have sought for a mandamus, to start from the beginning of SARFAESI proceeding. Petitioners who have

failed to approach the Tribunal, at the appropriate time, is not entitled to seek for a mandamus. The contention that they are neither the borrowers nor the guarantors, cannot be countenanced for the reason that they are the legal heirs of Harini ad bank has issued notices to the petitioners, reminding them of their obligation to discharge the loan and to redeem the property mortgaged, by their daughter.

14. In view of the above discussion, writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

mvs.

To

The Authorised Officer
HDFC Ltd
2nd Floor, ITC Center
760 Anna Salai
Chennai 600 002.

+1cc to Mr.G.Poongundran, Advocate SR.No.92105

W.P.No.33640 of 2017

LRS(CO)
GN(19/01/2018)