

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM:

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

W.P.No.14167 of 2017

State Bank of Mysore,
RASMECCC Branch,
231, 2nd Floor N.S.C.Bose Road,
Chennai - 600 001,
Rep. by its Chief Manager. Petitioner

vs.

1. The District Magistrate / District Collector,
Office of the Collectorate,
Thiruvallur.
2. The District Magistrate / District Collector,
Office of the Collectorate,
Kanyakumari Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondent No.1 and No.2 to take necessary action under Section -14, of the SARFAESI Act within its specified period on the basis of the petition filed on 30.06.2016 and March 2016 and hand over possession of the properties.

For Petitioner : Mr.N.Sivabalan

For Respondents : Mr.V.Jayaprakash Narayan
Spl. Govt. Pleader (W) - for R1 & R2

ORDER

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

Material on record discloses that seeking assistance for taking possession, two petitions have been submitted by the authorised officer, State Bank of Mysore, RASMECCC Branch, Chennai to the District Magistrate / District Collector, Tiruvallur, 1st respondent and District Magistrate / District

Collector, Kanyakumar District, Nagercoil, the 2nd respondent, respectively.

2. Contending inter alia that the said petitions, have not been disposed of, despite request being made to the concerned District Magistrate / District Collector, State Bank of Mysore, RASMECCC Branch, Chennai, petitioner herein, has sought for a mandamus, to the above said authorities to pass orders.

3. Material on record discloses that responding to the request, District Collector, Kanyakumari District, Nagercoil has addressed a letter dated 28.06.2016, to the Authorised officer, State Bank of Mysore Branch, RASMECCC Branch, Chennai as hereunder.

"Roc.C4/16690/2016

Dated 28.06.2016

Sir,

Sub: SARFAESI Act 2002 - petition filed by the Authorized Officer, State Bank of Mysore to invoke provision u/s.14(1) for taking possession of mortgaged property - regarding.

Ref: Petition filed by the Authorized Officer, State Bank of India, Mysore, RASMECCO Branch, Chennai against M/s.Falean Automotive India Pvt. Ltd.

I invite attention to the reference cited and request you to produce the original documents of M/s.Falean Automotive India Pvt. Limited., rep. by its Directors N.Venukumar (M.D) and Natarajan (Director & Guarantor) on 12.07.16 at 11.00 am for verification under SARFAESI Act 2002 and also to bring this original letter at the time of verification. Further, I request you to state whether any DRT/Writ Petition is pending in any Court."

4. District Magistrate / District Collector, Tiruvallur District, has sent a letter dated 06.09.2016 to the Authorised officer, State Bank of Mysore, Chennai, as hereunder.

"Rc.No.14688/2016/M2

dated:

09.2016

Sir,

Sub: SARFAESI Act 2002 - Securitisation and Reconstruction of financial Assets and Enforcement of Security Interest Act, 2002 - Petition filed M/s.State Bank of Mysore, Loan granted to M/s.Sri Falcon Automotive India Pvt Ltd., and others - Defaultment on repayment of

loan - taking possession of the secured assets -
Preliminary Report - Requested - Reg.

Ref: Application from Authorized Officer, State Bank
of Mysore, dated 08.07.2016.

I invite attention to the reference cited and
request you kindly to furnish the following documents /
information to this office immediately.

1. Whether the secured assets was mortgaged by the
loanee to the secured creditor (Bank).

2. Whether any case is pending before the Hon'ble
High Court (or) any other Court.

3. It may also be clarified whether the borrowed
property details not clearly mentioned in your
affidavit.

4. It may also be clarified whether hypothecated
plant & machinery, equipment comes under the
jurisdiction of Tiruvallur District.

5. It may also be clarified whether the borrowed
property is still in the physical possession of the
bank.

6. Further it was requested to submit property
details clearly in affidavit."

5. Added further, Mr.N.Sivabalan, learned counsel for the
petitioner bank submitted that reply dated 31.10.2016, has been
sent to the District Magistrate / District Collector, Tiruvallur
District, 1st respondent and reply dated 07.11.2016, has been
sent to the District Magistrate / District Collector,
Kanyakumari District, Nagercoil. Details of the reply letters
stated supra, are extracted hereunder.

Ref: Falcon/PP/

Date:31.10.2016

To
The District Collector,
Tiruvallur District,
Tiruvallur.

Sir,

Sub: SARFAESI Act 2002, Securitisation and
Reconstruction of Financial Assets and Enforcement
of Security Interest Act, 2002 - Petition Filed

M/s.State Bank of Mysore, Loan granted to M/s.Sri Falcon Automotive India Pvt. Ltd., and others - Defaultment on repayment of loan - taking possession of the secured assets - Preliminary Report - Requested Reg.

Ref: 1. Application from Authorised Officer, State Bank of Mysore, dated 08.07.2016.
2. Rc.No.14688/2016/M2 dated 06.09.2016.

With reference to your letter, we furnish hereunder the details called for.

Details called for	Our replies
1. Whether the secured assets are mortgaged by the loanee to the secured creditor (Bank)	Yes, the movable machinery as mentioned in the schedule to our application dated 08.07.2016 are hypothecated to our Bank
2. Whether any case is pending before the Hon'ble High Court (or) any other Court	The Bank has filed a case before DRT-II, Chennai on 08.09.2016 vide OA No.750/2015 for recovery of our dues. The Bank has also filed application under Sec.14 of SARFAESI Act before the District Collector / District Magistrate, Kanniyakumari District at Nagercoil, praying for physical possession of mortgaged property situated at Kadiyapattanam Village, Manavalakurichi, Kanyakumari District. There are no other pending cases.

Details called for	Our replies
3. It may also be clarified whether the borrowed property details not clearly mentioned in your affidavit.	We have furnished the details of movable machinery which are required to be taken under physical possession of the Bank in the Schedule to the application which is filed along with the affidavit before your authority.
4. It may also be clarified whether hypothecated plant and machinery, equipment comes under the jurisdiction of Tiruvallur District.	The hypothecated assets are kept in the Premises bearing Old No.L-8, New No.L-45, SIDCO Industrial Estate, Ambattur, Chennai - 600 058, which comes under the jurisdiction of Tiruvallur District.
5. It may also be clarified whether the borrowed property is still in the physical possession of the bank.	The hypothecated machineries are still in the physical possession of the Borrower.
6. Further it was requested to submit property details clearly in affidavit.	We enclose herewith a schedule of hypothecated movable machinery which may be considered as part and parcel of the affidavit already filed.

SCHEDULE

HYPOTHECATED MACHINERIES

Mechanical Power Press, Fitted with stroke counter, High Speed, pneumatic clutch cap: 63 MT Model JH 21 63 Make Yangli, China SL No.120099 year 2010 - 1 Machine.

Mechanical Power Press, Fitted with stroke counter, High Speed, pneumatic clutch cap: 80 MT Model JH 21 80 Make Yangli, China SL No.130081 and 130083 year 2010 - 2 Machines.

Mechanical Power Press, Fitted with stroke counter, High Speed, pneumatic clutch cap: 110 MT Model JH 21 110 Make Yangli, China SL No.1410128 year 2010 - 1 Machine.

Mechanical Power Press, Fitted with stroke counter, High Speed, pneumatic clutch cap: 160 MT Model JH 21 160 Make Yangli, China SL No.1510145 year 2010 - 1 Machine.

Tool room milling machine size no 2 make Heliomark with digital read out - 2 machines.

Cone pulle type center lather size 300 diaX1.5 M ABC make Accumax - 1 machine.

Center lathe bench model 150 dia X1 M2 machines

Air Compressor cap: 5 HP with integral receiver 1 machine

Air Compressor cap: 10 HP with integral receiver 1 machine

Air Compressor cap : 15 HP with integral receiver 1 machine

Ref: SARFAESI/Falcon/Phy Poss/

Date: 07.11.2016.

To

The District Collector,
Kanniyakumari District
at Nagercoil.

Respected Sir,

Sub: SARFAESI Act 2002 - Petition filed by us to
invoke provision u/s.14(1) for taking possession
of mortgaged property - regarding - A/c:
M/s.Falcon Automotive India Pvt. Ltd.,

With reference to the above, we write to submit that there is no stay from any Court or DRT with regard to the account of M/s.Falcon Automotive India Private Limited."

6. Today, when the writ petition is listed for further hearing, Mr.N.Sivabalan, one of the learned counsel on record submitted that even today, applications filed by State Bank of Mysore, RASMECCC Branch, Chennai to the abovesaid authorities have not been disposed of.

7. In view of the above, without expressing any opinion on the merits of the case, we direct the respondents 1 and 2 to take up the matter, if not disposed of earlier, and decide the same in accordance with law, and on its own merits, as expeditiously as possible, preferably, within a period of four months from the date of receipt of a copy of this order.

Respondents 1 and 2 are also directed to verify as to whether there is any tenancy or lease in respect of the secured asset and if it is so, the same has to be considered in the light of the recent judgment of the Hon'ble Supreme Court in Vishal N.Kalsaria Vs. Bank of India and Others, reported in (2016) 3 SCC 762.

8. writ petition stands disposed of with the above directions. No costs.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

ars

To

1. The District Magistrate / District Collector,
Office of the Collectorate,
Thiruvallur.
2. The District Magistrate / District Collector,
Office of the Collectorate,
Kanyakumari.

+1cc to Mr.S.Sathuraman, Advocate Sr. 67090

सत्यमेव जयते

W.P.No.14167 of 2017

SVI (CO)
VR(11/10/2017)

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