

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM:

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

W.P.No.14838 of 2017
and WMP No.16084 of 2017

Mrs.Shanthi ... Petitioner

Vs.

1.The District Collector,
Thiruvallur District,
Thiruvallur.

2.The Manager,
HDFC Bank,
Thiruvallur.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, forbearing the respondents from proceeding with the memorandum in R.C.No.3869/2017/M2, dated 22.03.2007 passed by the 1st respondent.

For Petitioner : Mr.R.Karunakaran

For Respondents : Mr.K.V.Dhanapalan (for R1)

Spl. Govt. Pleader

No Appearance (for R2)

ORDER

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

Borrower has committed default in payment. Hence, the bank has issued a demand notice dated 12.01.2017 under Section 13(2) of the SARFAESI Act, 2002, demanding a sum of Rs.1,61,315/- as on 12.01.2017. Thereafter, the authorised officer of the bank has filed an application under Section 14 of the Act before the District Magistrate-cum-Collector, Tiruvallur, seeking assistance.

2. According to the petitioner, S.A.No.----/2017 has been filed before the Debts Recovery Tribunal-I, Chennai, to set aside the possession notice dated 22.03.2017 issued under Section 13(4) of the SARFAESI Act, 2002 on the grounds inter alia that no notice under Section 13(2) of the Act, has been served on the borrower.

3. Material on record discloses that on the application filed under Section 14 of the SARFAESI Act, 2002, the District Magistrate-cum-Collector, Tiruvallur, has issued a memorandum in RC No.3869/2017/M2 dated 22.03.2017, to the Tahsildar, Tiruvallur to thoroughly check the facts submitted by the bank, physically verify all the original records by summoning the bank, to produce the relevant records and to submit a detailed report, after inspection of the site, alongwith the proforma enclosed with the memorandum dated 22.03.2017.

4. Challenging the memorandum, issued to the Tahsildar, borrower seemed to have filed SA Sr.No.4037 of 2017, before the DRT-III, Chennai. Registry has returned the same, to clarify as to how, an appeal against a memorandum of the District Magistrate cum collector is maintainable.

5. Learned counsel for the appellant therein/borrower is also stated to have represented the SA in SR No.4037 of 2017 stating that the appellant therein has not received notice under Sections 13(2) and 13(4) of the SARFAESI Act, 2002, but received only the memorandum of the District Magistrate-cum-Collector, Tiruvallur.

6. Learned counsel for the appellant therein has requested the Registry to post the matter before the Presiding Officer for maintainability. Onceagain, Registry has returned SA.SR No.4037 of 2017 stating that an inter office memorandum between the administration is not appealable order, as contemplated under the SARFAESI Act, 2002. Registry has stated that only an order of the Executive Magistrate/District Collector is appealable, and there is no cause of auction, to maintain the appeal by the appellant. While returning the SASR, Registry has granted three weeks time.

7. Thereafter, petitioner has sought for a writ of mandamus, forbearing the respondents from proceeding with memorandum dated 22.03.2017 of the District Magistrate-cum-Collector, Tiruvallur.

8. Record of proceedings shows that on 14.06.2017 a Hon'ble Division Bench of this Court, while ordering notice of motion returnable in three weeks, has granted status quo, for a further period of four weeks and directed to list W.P.No.14838 of 2017 on 28.06.2017. Interim order has been extended upto 12.07.2017. Thus, the instant writ petition is listed before us.

9. Heard Mr.R.Karunagaran, learned counsel for the writ petitioner, who reiterated that notice under Sections 13(2) and 13(4) of the SARFAESI Act, 2002 have not been served on the writ petitioner and thus, there is cause of auction, to seek for a mandamus restraining respondents from proceeding with memorandum dated 22.02.2016 issued by the District Magistrate-cum-Collector, Tiruvallur,

10. During the course of hearing Mr.R.Karunagaran, learned counsel for the petitioner fairly submitted that though, S.A.---/2017 challenging the possession notice dated 22.03.2017 issued under Section 13(4) of the SARFAESI Act, 2002, is filed before the Debts Recovery Tribunal-I, Chennai, the same is yet to be numbered.

11. When the petitioner has chosen to file S.A.----/2017, challenging possession notice, on the above said grounds, it is not open to him to file the instant writ petition seeking for a mandamus, on the very same grounds, which in our opinion is nothing but forum shopping, which has been deprecated by the Hon'ble Supreme Court in *Roxann Sharma vs. Arun Sharma* reported in (2015) 8 SCC 318, wherein at paragraph No.19, the Hon'ble Apex Court, observed that Forum shopping or court shopping requires to be firmly dealt with.

12. In *Tamil Nadu Mercantile Bank Shareholders Welfare Association vs. S.C.Sekar & Ors.* reported in 2009 (2) SCC 784, at paragraph No.51, the Hon'ble Apex Court, held as follows:

"51. The superior courts of this country must discourage forum shopping. A person seeking equity must do equity. A party cannot take recourse to a machination which amounts to abuse of process of court."

13. In *Chetak Construction Ltd. vs. Om Prakash and others* reported in (1998) 4 SCC 577, at paragraph No.16, the Hon'ble Apex Court observed as follows:

"We certainly, cannot approve of any attempt on the part of any litigant to go "forum shopping". A litigant cannot be permitted 'choice' of the 'forum' and every attempt at "forum shopping" must be crushed with a heavy hand."

14. As regards inter communication between the departments, a writ petition is not maintainable. In *Sethi Auto Service Station Vs. Delhi Development Authority*, reported in 2009 (1) SCC 180, the Hon'ble Apex Court held that internal notings and departmental communications between Government Agencies do not have the sanction of law to be an effective order, unless it culminates into an executable order, by communication to the person concerned, affecting his right or conferring any legal right. Reliance can also be made to the decision of the Hon'ble Supreme Court in *Union of India and others Vs. Vartak Labour Union* (2), reported in (2011) 4 SCC 200.

15. In the light of the decisions and the discussion, writ petition seeking for writ of mandamus, forbearing the respondents from proceeding with the memorandum in R.C.No.3869/2017/M2, dated 22.03.2007 passed by the 1st

respondent, is not maintainable and the Writ Petition is dismissed. No Costs. Interim order granted on 14.06.2017 is vacated and WMP No.16084 of 2017, is dismissed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

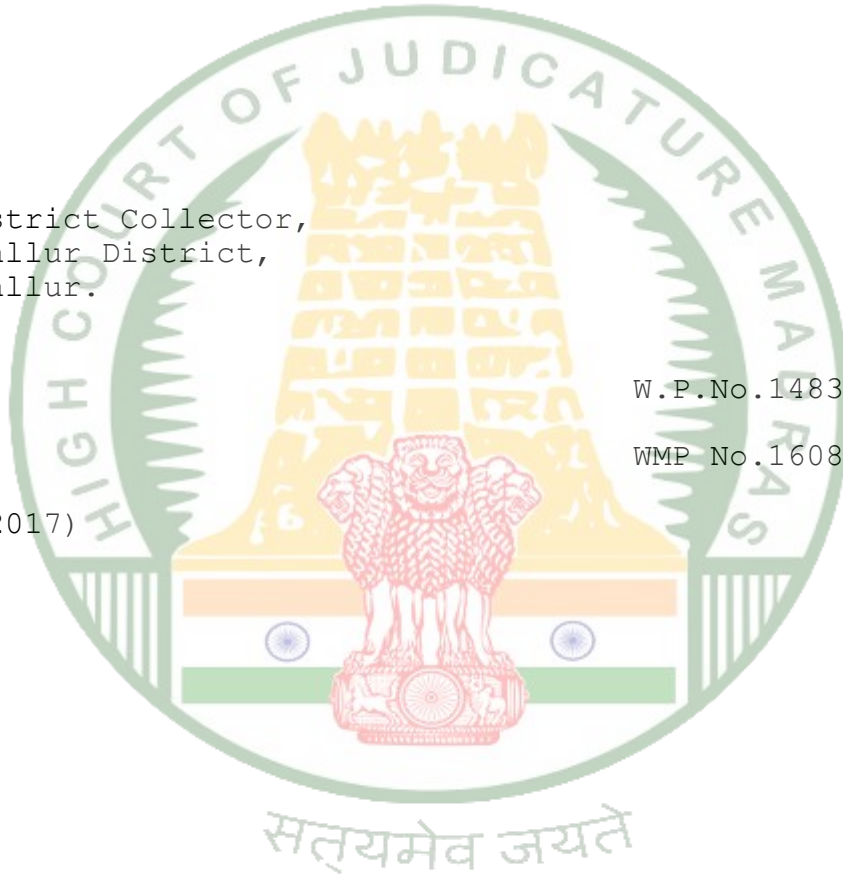
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To

1. The District Collector,
Thiruvallur District,
Thiruvallur.

W.P.No.14838 of 2017
and
WMP No.16084 of 2017

SP (07/08/2017)



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