

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.15297 of 2017
and WMP No.16581 of 2017

P.Kirubakaran

.. Petitioner

versus

1. The District Collector,
Thiruvallur District,
Tiruvallur.

2. M/s.Asset Reconstruction Company (India) Ltd.,
Rep. by its Authorised Officer,
Mr.P.Thiyagarajan.

3. The Manager,
ICICI Bank,
Thiruvallur.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondent from proceeding with the hearing notice in Spl. Reg.No.09/2015/M2, dated 27.01.2017 passed by the 1st respondent.

For petitioner : Mr.R.Karunakaran

ORDER

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

Impugned Notice dated 27.01.2017 issued by the District Collector-cum-District Magistrate, Thiruvallur, reads as follows:

Spl.Reg.No.09/2015/M2 Office of the District Magistrate/
Dated : 27.01.2017 District Collector, Tiruvallur

HEARING NOTICE

Sub: SARFAESI Act 2002 - Securitization and
Reconstruction of Financial Assets and Enforcement of
Security interest Act 2002 - Petition Filed by M/s.Asset

Reconstruction Company limited, No.715C, 7th Floor, Spencer Plaza Space-II, No.769, Anna Salai, Chennai - 2 to pass orders on the secured assets of land property in Tiruvallur Taluk, Ikkadu Village, S.No.680 & 681, Extent; 982 sq.ft. - Loan granted to the P.Kirubakaran, S/o. Palayam, Plot No.12 A, Teachers Colony, Ikkadu Village, Tiruvallur Taluk and District - Defaultment on repayment of loan - taking possession of the secured assets - Preliminary Report - Requested - Reg.

Ref: 1. Application received from M/s. Asset Reconstruction Company Limited, No.715 C, 7th Floor, Spencer Plaza, Space-II, No.769, Anna Salai, Chennai - 2 dated: 02.02.2015. 2. This office Spl.Reg.No.09/2015/M2 dated 05.02.2015. 3. W.P.No.38499/2015 filed by M/s.Asset Reconstruction Company Limited, Annasalai, Chennai-2 4. Special Government Pleader, Government Pleader's Office, High Court, Chennai, letter dated: Nil. M/s.Asset Reconstruction Company Limited, No.715C, 7th Floor, Spencer Plaza, Space-II, No.769, Anna Salai, Chennai-2 have approached the District Magistrate praying the District Administration to take possession of the scheduled mentioned Property under Securitisation and Reconstruction of Financial Asset's and Enforcement of Security Interest Act, 2002.

Hence, in this connection, you are directed to appear in person or through your counsel (with all the documentary evidences and written statements if any, further documents if any) for enquiry on 02.02.2017 (Thursday) at 4.00 pm., to be conducted by the District Collector, Tiruvallur, at Collector's Chambers (First Floor) Collectorate, Tiruvallur without fail. If you fail to do so, orders will be passed in your absence.

Sd/- M.Karuppaiah
for District Magistrate,
District Collector,
Tiruvallur.

// By Order //

Huzur Sarishtadar (Magisterial)

To

1. M/s.Asset Reconstruction Company Limited, No.715C, 7th Floor, Spencer Plaza, Space-II, No.769, Anna Salai, Chennai-2.

2. Thiru.P.Kirubakaran, S/o.Palayam, Plot No.12A, Teachers Colony, Ikkadu Village, Tiruvallur Taluk and District.

Copy to the Tahsildar, Tiruvallur - to submit enquiry report immediately to this office along with the original documents already sent to you.

2. Earlier, vide order dated 19.12.2016, in W.P.No.38499 of 2015, we directed the District Collector-cum-District Magistrate, Thiruvallur to dispose of the petitions dated 08.01.2014, 07.05.2014, 11.09.2014, 24.12.2014 and 31.01.2015, if not done earlier, within a period of one month, from the date of receipt of a copy of the order made in W.P.No.38849 of 2015 and while doing so, District Collector-cum-District Magistrate, Thiruvallur, was directed to act in accordance with Section 14 of the SARFAESI Act, 2002.

3. Though, notice dated 27.01.2017 stated supra, is sought to be assailed by way of an appeal before the DRT-III, Chennai, the SARFAESI appeal in SA.SR.No.4036 of 2017, Assistant Registrar, DRT-III, has returned the same. Learned counsel for the appellant seemed to have represented SA.Sr.No.4036 of 2017, stating that the appellant has not received notice under Sections 13(2) and 13(4) of the SARFAESI Act, 2002 and that only a memo issued by District Collector-cum-District Magistrate, Thiruvallur has been received. Hence, a request has been made to post S.A.SR. for maintainability. The Assistant Registrar, DRT-III, Chennai has returned SA.Sr.No.4036 of 2017, as hereunder.

"There is no order passed by the District Collector in this application for the appellant to be challenged before this Tribunal and the earlier cause of action of Possession Notice dated 25.08.2010 is barred by limitation.

Appellant did not mention anything about the time gap between 2010 and 2016 and the notice itself is issued by the 1st Respondent herein.

Therefore the appeal is not maintainable at this stage of the proceedings.

May be returned granting three weeks time."

4. In the abovesaid circumstances, notice dated 27.01.2017 issued by the District Collector-cum-District Magistrate, Thiruvallur, has been challenged in this writ petition on the grounds that no notice has been served under Sections 13(2) & 13(4) of the SARFAESI Act, 2002 and therefore, proceedings under Section 14 of the Act, is untenable.

5. From the material on record, it could be seen that a demand notice has been issued on 15.02.2010 by the authorised officer on behalf of Asset Reconstruction Company (India) Limited, under Section 13(2) of the SARFAESI Act, 2002, calling upon the petitioner to pay Rs.3,80,859.30p, within fifty days from the date of receipt of a copy of this order with further interest thereon.

6. The Asset Reconstruction Company (India) Limited has sent another notice dated 17.02.2014 to the petitioner requesting payment of outstanding i.e. Rs.7,79,919/- as on 17.02.2014. Asset Reconstruction Company (India) Limited has also intimated the date of auction as 17.03.2014. No materials have been placed before this Court as to whether the petitioner has taken any steps to challenge the notices, on the grounds inter alia that they have not been served. It could be seen from the return of the Assistant Registrar, DRT-III, Chennai, that Possession Notice dated 25.08.2010 has been issued.

7. Caption of the notice dated 27.01.2017 reads 'Hearing Notice'. Petitioner has been directed to appear in person or through counsel with all documentary evidence and written submissions, if any, for enquiry on 02.02.2017, to be conducted by the District Collector-cum-District Magistrate, Thiruvallur. Mr.Karunakaran, learned counsel for the petitioner submitted that on receipt of notice on 27.01.2017, petitioner has entered appearance.

8. Now apprehending that the District Collector-cum-District Magistrate, Thiruvallur, would not give any personal hearing, learned counsel for the petitioner seeks for direction. Apparently, notice itself indicates 'Hearing Notice'. Hence, no direction need be given to the District Collector-cum-District Magistrate, Thiruvallur, in this regard.

9. As regards orders under Section 14 of the SARFAESI Act, 2002, is concerned, the District Collector-cum-District Magistrate, Thiruvallur has to act in accordance with Section 14 of the Act and nothing more.

10. Though, Mr.Karunakaran, learned counsel for the petitioner submitted that the petitioner is willing to deposit 50% of the debt with the District Collector-cum-District Magistrate, Thiruvallur, we are afraid that the said the authority has no jurisdiction to entertain such request, except to the extent of passing an order in accordance with the parameters contained in Section 14 of the SARFAESI Act, 2002. At one stage, the petitioner has attempted to challenge notice issued under Section 14 of the Act. Simultaneously, has entered appearance, before the District Collector.

11. Though, an order under Section 14 of SARFAESI Act, 2002 may be challenged by way of an appeal under Section 17(1) of the Act, attitude of the petitioner in challenging the notice issued under Section 14 of the Act, on the grounds stated supra, cannot be appreciated. On the facts and circumstances of this case, we only observe that it is nothing but a dilatory tactics. As pointed out earlier, demand notice under Section

13 (2) of the SARFAESI Act, 2002, has been issued on 15.02.2010, possession notice dated 25.08.2010 has been issued and the Asset Reconstruction Company (India) Limited has attempted to bring the property on auction on 17.03.2014.

12. Though Mr.Karunagaran, learned counsel for the petitioner submitted that in an identical circumstances, a Hon'ble Division Bench of this Court has entertained writ petition by directing the writ petitioner therein to deposit 50% of the debt amount, with due respect, we are of the view that interim orders do not bind a Co-ordinate Bench.

13. There are no merits in the writ petition. Accordingly, dismissed. No Costs. Consequently the connected Writ Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

ars

To

The District Collector,
Thiruvallur District,
Tiruvallur.

+1cc to M/s.R.Karunagaran, Advocate in sr.no.43246

W.P.No.15297 of 2017
and WMP No.16581 of 2017

SAI (CO)
NR 29/06/2017

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