

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2017

CORAM

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

W.P.NO.26150 OF 2014
AND M.P.NO.1 OF 2014

N.G.Krishna ... Petitioner

VS.

1.The City Union Bank Limited
Represented by its Authorised Officer
No.24-B, Gandhi Nagar,
Kumbakonam - 612 001.

2.City Union Bank Limited
Erode Branch
Represented by its Branch Manager
907, Pannerselvam Park,
Brough Road, Erode. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the respondents pertaining to the possession notice dated 20.08.2014 issued by them and quash the same and further direct the respondents to adhere to the due process of law.

For Petitioner : Mr.Murali
for M/s.A.M.Packianathan Easter

For Respondents : Mr.R.S.Varadharajan

O R D E R

(ORDER OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the possession notice dated 20.08.2014 issued by the first respondent, the petitioner has come up with the present writ petition.

2. The writ petitioner has availed loan and credit facilities from the respondent Bank under Loan Account No.059012001770285 on 02.07.2012. Originally, the Term Loan was Rs.25,00,000/- and thereafter, the writ petitioner has availed a further loan of Rs.3,00,000/- on 31.12.2013. The writ petitioner was paying the dues promptly. But in the process of taking over of the Bank by the Reliance Finance Corporation, the loan amount was declared as NPA (Non Performing Assets) and a legal notice was issued by the Bank on 09.04.2014. The writ petitioner has given valuable security by creating equitable mortgage of deposit of title deeds, and has expressed his willingness to clear the dues within a period of eight months. However, the respondent Bank has affixed a possession dated 20.08.2014 and had failed to consider the representation given by the petitioner. Therefore, the writ petitioner has come up with the present writ petition.

3. The respondents filed a counter affidavit controverting the factual averments. It is stated in the counter that the writ petitioner was failed to pay the dues properly and committed default for 3 consecutive months from 01.12.2013 to 08.03.2014. Therefore, as per the Reserve Bank of India Master Circular dated 01.07.2013, the loan accounts were declared as NPA (Non Performing Assets). Thereafter, a demand notice under Section 13 (2) of the SARFAESI Act was issued to the writ petitioner. Due to the failure on the part of the writ petitioner in repaying the debts due to the Bank, even after demand, the Bank had issued possession notice under Section 13(4) of the SARFAESI Act. The declaration of the loan account on the default committed by the writ petitioner as NPA is very much legal and the procedures of issuing demand notice under Section 13(2) and possession notice under Section 13(4) of the SARFAESI Act are duly followed. The writ petitioner, instead of filing an appeal before the Debts Recovery Appellate Tribunal, has approached this Court, without exhausting the alternative remedy available under the statute.

4. It is well settled that after introduction of SARFAESI Act, remedy against the notices issued under Sections 13(2) and 13(4) of the SARFAESI Act is available before the Debts Recovery Appellate Tribunal. In this regard, it is relevant to extract Section 18 of the SARFAESI Act, which is as follows:

"18. Appeal to Appellate Tribunal: - (1)
Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the

order of Debts Recovery Tribunal: PROVIDED that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower: PROVIDED FURTHER that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less: PROVIDED ALSO that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso. (2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder. "

5. Further, the Hon'ble Supreme Court in KANAIYALAL LALCHAND SACHDEV AND OTHERS VS. STATE OF MAHARASHTRA AND OTHERS [2011 (2) SCC 782] and UNITED BANK OF INDIA VS. SATYAWATI TANDON AND OTHERS [Civil Appeal No. Nil of 2010 SLP (C) No.10145 of 2010 - decided on 26.07.2010] has categorically held that exercise of power under Article 226 of the Constitution of India is not available without exhausting the appeal remedy provided under Section 18 of the SARFAESI Act.

6. In this regard, it is relevant to note that the Supreme Court in Satyawati Tandon's case (cited supra) has held as follows:

"30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."

7. Further, a Division Bench of this Court in M.R.MOTOR COMPANY VS. THE FEDERAL BANK LTD., AND OTHERS [W.P.No.40445 of 2016 decided on 18.11.2016] wherein one of us Hon'ble Mr.Justice S.Manikumar, has passed an order following the judgment of the Supreme Court in KANAIYALAL LALCHAND's case cited supra, wherein it is clearly mentioned that the action under Section 14 of the SARFAESI Act constitutes an action after the stage of 13(4) and therefore, the same would fall within the ambit of Section 17(1) of the SARFAESI Act. It has also been held that when there is an efficacious remedy available under the Act, without exhausting the remedy, the writ petition is not maintainable. Further, the Supreme Court has categorically held that the litigants cannot be permitted to bypass the statutory remedy available under the SARFAESI Act and take recourse to the proceedings under Article 226 of the Constitution of India. Therefore, the writ petitioner must have exhausted the alternative remedy.

8. It is also mandated that the writ petitions without exhausting the appeal remedy are not maintainable under Article 226 of the Constitution of India in view of the judgments cited supra. Therefore, the writ petition deserves to be dismissed.

9. In fine, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. However, it is open to the writ petitioner to work out his remedy in the manner known to law.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

TK

To

1.The Authorised Officer
City Union Bank Limited
No.24-B, Gandhi Nagar,
Kumbakonam - 612 001.

2.The Branch Manager
City Union Bank Limited
Erode Branch
907, Pannerselvam Park,
Brough Road, Erode.

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