IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/7/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and
The Honourable Ms.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.17342 of 2017
and
W.M.P.No.18854 of 2017

Puneeth Munjal ... Petitioner

Vs

M/s.Cholamandalam Investment
and Finance Company Limited
rep. By its Authorised Officer
Dare House No.21
N S C Road
Chennai 600 001. ... Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of certiorari to call for the records pertaining to impugned order dated 28/4/2017 bearing No.SARFAESI/DN/329/2017 passed by the respondent under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and quash the same.

For Petitioner : Mr.K.Vijayaragavan

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O R D E R

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

Borrower, has challenged the possession notice, dated 28/4/2017, issued under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, contending inter alia that the respondent has invoked arbitration proceedings, by issuing a notice, dated 20/3/2017. Added further, Mr.K.Vijayaragavan, learned counsel for the petitioner submitted that substantial payment has been made towards the loan account.

2. Heard the learned counsel for the petitioner and perused the materials available on record.

3. Notice under Section 13(2) is only a demand made by the Bank, Hon'ble Supreme Court in Mardia Chemicals v. Union of India reported in AIR 2004 SC 2371 : 2004 (4) SCC 311 held that notice under Section 13(2) would not give rise to a cause to challenge. However, as per Section 13(3A) of the SARFAESI Act, 2002, if, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower: PROVIDED that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

4. In the light of the above decision and the statutory provision, writ of certiorari, cannot be issued to quash the notice under Section 13(2) of the SARFAESI Act 2002.

5. In the light of the above decision, the writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The Authorised Officer
M/s.Cholamandalam Investment and Finance Company Limited
Dare House No.21
N S C Road
Chennai 600 001.

W.P.No.17342 of 2017

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ss(2/8/2017)