

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S. MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No.18403 of 2017

Vijaya Bank,
Rep., by its Chief Manager
and Authorised Officer ... Petitioner

vs.

The District Collector
(District Magistrate),
Coimbatore District,
Coimbatore. ... Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondent to pass appropriate orders, in the petitioner's application, received by him, on December, 2016, under Section 14 of the SARFAESI Act, rendering necessary assistance to the petitioner, in terms of Section 14 of the SARFAESI Act, to take vacant physical possession of the secured asset.

For Petitioner : Mr.Ilaya Rajkumar
for M/s.Ramalingam and Asso.,

For Respondents 1 & 2: Mr.A.Sri Jayanthi,
Spl. Govt. Pleader

ORDER

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

Contending interalia that the District Collector-cum-District Magistrate, Coimbatore, has not passed any orders on the petition filed under Section 14 of the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, Vijaya Bank, Coimbatore has filed the instant writ petition, seeking for a mandamus, directing the said authority to pass appropriate orders.

2. Short facts leading to the writ petition are as follows:

In the year 2015, M/s.Harikumaan Industries, a Partnership Firm, had approached the petitioner-Bank, seeking for a credit facility of Rs.1,25,00,000/-, in the nature of Bank Guarantee. Considering the said request, the petitioner-Bank had sanctioned credit facilities and the firm had executed necessary loan documents, in favour of them. The Guarantor, Mr.K.Murugesan, had created mortgage over the immovable property, owned by him and had deposited the original title deeds, dated 29.05.2015, registered as Document No.6388 of 2015, on the file of the Sub-Registrar Office, Periyanaayakkanpalayam, with the Bank.

3. After availing the said credit facilities, the Borrower/Guarantors had failed to comply with the terms and conditions of the sanction and failed to repay the dues, as agreed in terms of the loan documents. On account of default in repayment of the dues, the account of the borrower was classified as Non-Performing Assets (NPA) on 31.08.2016, in the books of accounts.

4. On 01.09.2016, the Authorised Officer of the petitioner has issued a demand notice, under Section 13(2) of the SARFAESI Act, to both the borrower and guarantors, to repay the outstanding sum of Rs.1,03,05,000/-, within 60 days. Thereafter, possession notice, dated 16.11.2016, under Section 13(4) of the said Act, has been issued. Even after the same, the borrower/guarantors have failed to discharge their liabilities.

5. Therefore, in the month of December' 2016, the petitioner has submitted an application, under Section 14 of the SARFAESI Act, before the District Collector-cum-District Magistrate, Coimbatore, setting out the details and sought for necessary assistance to take physical possession of the secured assets. Thereafter, no action has been taken on the said application. Hence, the present writ petition, for the relief, as stated supra.

Heard the learned counsel appearing for the parties and perused the materials available on record.

6. Section 14 of the SARFAESI Act, 2002 mandates that on receipt of an affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit, pass suitable orders for the purpose of taking possession of the secured assets, within a period of 30 days from the date of application. Proviso to the said Section states that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate, within the said period of thirty days, for the reasons beyond his control, he may after recording

reasons, in writing, for the same, pass the order within such also period but not exceeding in aggregate 60 days.

7. The Principal Secretary to Government, vide, Letter No.19498/Res.II/2014-1, dated 09.07.2014, has issued directions, stating that there should be speedy disposal of the application filed under Section 14 of the SARFAESI Act. The said letter is extracted hereunder:-

"I am to invite your kind attention to the reference cited (copy enclosed) wherein the GM, SLBC, Chennai, has requested to advise the District Collectors (District Magistrates) for speedy disposal of applications filed by banks to assist in taking possession of securities of the defaulters charged to the banks under Section 14 of SARFAESI Act, 2002.

2. In this connection, I am to request you to take necessary action for speedy disposal of the applications filed by the banks in taking possession of securities of the defaulters charged to the banks under Section 14 of SARFAESI Act, 2002, without affecting the image of the administration."

8. Following the said letter, in W.P.No.7813 of 2016, dated 22.04.2016, a Hon'ble Division Bench of this Court, has passed the following order:-

"In the light of the above, we direct the District Collector (District Magistrate), Thanjavur District, to pass orders on the Application dated 18/8/2015 in file Ref.No.34810/2015, filed under Section 14 of the SARFAESI Act, within the period of two months from the date of receipt of a copy of this order. While doing so, procedure set out under Section 14 of the Act should be followed. Mr.B.Kumar, learned Additional Government Pleader is directed to forward the copy of this order to the Principal Secretary to Government, Finance (Res.II), Department, Chennai for appropriate follow up action. 10. Along with the supporting affidavit, to the instant writ petition, the petitioner has also enclosed the copies of the petitions, dated 8/1/2014, 7/5/2014, 11/9/2014, 24/12/2014 and 31/1/2015, filed under Section 14 of the SARFAESI Act, 2002."

9. In view of the directions issued by the Principal Secretary to Government, vide, Letter No.19498/Res.II/2014-1, dated 09.07.2014 and the earlier order of this Court in W.P.No.7813 of 2016, dated 22.04.2016, this Court is inclined to pass following orders,

"The District Collector-cum-District Magistrate, Coimbatore, is directed to dispose of the application filed in December' 2016, if not done earlier, within a

period of one month, from the date of receipt of a copy of this order. While doing so, District Collector-cum-District Magistrate, Coimbatore District, should act in accordance with Section 14 of the SARFAESI Act, 2002."

10. With the above observation and direction, this writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The District Collector
(District Magistrate),
Coimbatore District,
Coimbatore.

+2cc to Mr.Ramalingam & Associates, Advocate, S.R.No.55563

+1cc to Government Pleader, S.R.No.55743

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GN(06/09/2017)

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