IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/7/2017

C O R A M

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

Writ Petition No.19098 of 2017
and
WMP.No.20608 of 2017

R. Bharathiraja ...Petitioner

Vs

The LIC Housing Finance Corporation Ltd
rep. by its Regional Manager
Regional Office, Chennai ...Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of mandamus forbearing the respondent from initiating any action against the petitioner under the SARFAESI Act, in the light of the representation dated 28/3/2015.

For Petitioner : Mr.V.Singan

O R D E R

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

Contending inter alia that there is no collateral security in the project, for which an agreement has been entered into between the parties, which is yet to commence, petitioner is stated to have sent a representation, dated 28/3/2015, to the LIC Housing Finance Corporation Ltd., Recovery cell, Chennai, not to issue any threatening letter, to pay the loan availed, or to publish in the newspaper and thus, forcing the petitioner, to vacate the house. On behalf of LIC Housing Finance Corporation Limited, Chennai, a reply, dated 8/6/2015, has been issued to the petitioner, stating that despite reminders, repayment of Rs.22,00,099/-, has not been made.

2. On the above grounds inter alia, the petitioner has sought for a writ of mandamus, forbearing the LIC Housing Finance Corporation Limited, Chennai, from initiating any

action, as against the petitioner, under the SARFAESI Act, 2002, in the light of the representation, dated 28/3/2015.

3. Heard Mr.V.Singan, learned counsel for the petitioner and perused the materials available on record.

4. From the averments and material on record, it is clear that LIC Housing Finance Corporation Limited, Chennai, has not taken any steps, under the provisions of the SARFAESI Act, 2002. Averments do not disclose that the Bank has any notice under Section 13 (2) of the SARFAESI Act, 2002. If any notice under Section 13 (2) is issued, then as per Section 13 (3-A) of the said Act, if 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 fifteen days) of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower.

5. Bank or any financial institution is empowered to initiate action under the SARFAESI Act, 2002, writ of mandamus cannot be issued, to restrain the financial institutions from initiating proceeding for recovery. If any action under the provisions of the SARFAESI Act, 2002 is taken, remedy is always available to the borrower/guarantor, as the case may be.

6. In the light of the discussion, we are of the view that the instant writ petition, is not maintainable and accordingly, the same is dismissed connected WMP. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Regional Manager
LIC Housing Finance Corporation Ltd
Regional Office, Chennai.

+ 1 cc to Mr.V. Singan, Advocate SR.52882

Writ Petition No.19098 of 2017

MN(CO)
Eu 18.08.17