IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.11.2017
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.29304 of 2017
and WMP Nos.31553 & 31554 of 2017

Dr.E.D.Charles ... Petitioner

vs.

1. The Chief Manager /
Authorized Officer,
Syndicate Bank,
Chennai Aminjikarai Branch,
No.6, Govindan Street,
Ayyavu Kallani, Amaindhakarai,
Chennai - 600 029.

2. P.S.Sivaperumal

3. D.Arulraj

4. Rev.D.Abraham Doss

5. M.Muthusamy

6. R.Vayanaperumal

7.R.Ponnumani

8. M.Rajkumar

9. M/s. 7 Eleven Shipping Private Limited,
Rep. by its Authorized Representative,
7, First Floor, Narayanappan Street,
Mannadi, Chennai - 600 001.

10. R.Kumar S/o.Ramanathan
Director,
"7 Eleven Shipping Private Limited"
No.7 First Floor Narayanappan Street,
Mannadi, Chennai-600 001

11.S.Kirubhakaran, S/o.K.Soundharajan,
Director,
"7 Eleven Shipping Private Limited"
No.7, First Floor, Narayanappan Street,
Mannadi, Chennai-600 001

12. Tamil Evangelical Lutheran Church,
Rep. by its Administrator
Tranquebar House, Melaputhur,
Tiruchirapallai - 620 001. ... Respondents

Prayer:WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified Mandamus, calling for the records of impugned possession notice dated 07.10.2017 issued by the 1st respondent herein and quash the same, consequently forbear the1st respondent from initiating any proceedings under the SARFAESI Act or under any other Banking Laws against the property of 12th Respondent in S.No.124 (TR.2236/2013-14), measuring an extent of 441.5 sq.meter (4753 sq.ft.) situated at Door No.11, Abirami Street, Purasaivakkam Village, Purasaivakkam Taluk, Chennai District.

For Petitioner : Mr.N.L.Rajah, Sr. Counsel for M/s.K.Balu

ORDER

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

Claiming himself to be the Former Secretary and Member of Tamil Evangelical Lutheran Church, petitioner has sought for a writ of certiorarified mandamus, to quash the possession notice dated 07.10.2017 issued under Section 13(4) of the SARFAESI Act, 2002, by Syndicate Bank, Chennai. Consequently, the petitioner has sought for a direction to Chief Manager / Authorized Officer, Syndicate Bank, Chennai, forbearing from initiating any proceedings under the SARFAESI Act, 2002 or any other Banking Laws against the Tamil Evangelical Lutheran Church, represented by its Administrator, Thiruchirapalli.

2. According to the petitioner, Tamil Evangelical Lutheran Church, was founded on 09.07.1706 and registered with Tamil Societies Registration Act, 1975. Church has many members and constituent bodies. Church has educational, health and other institutions. High Court, Madras, has appointed the Hon'ble Justice Mr.J.Kanagaraj (Retired Judge of High Court, Madras), as Administrator, to administer Tamil Evangelical Lutheran Church.

The Hon'ble Judge has resigned and as Former Secretary of Tamil Evangelical Lutheran Church and member, instant writ petition has been filed to protect the rights and properties of the church from illegal acts and fraud committed by respondents 1 to 11.

3. The petitioner has contended that subject matter of the property under possession notice dated 07.10.2017, is owned by Tamil Evangelical Lutheran Church and that M/s.Rethna Stores is in possession and enjoyment of the said property as a tenant and paying regular monthly rent to the church.

4. While that be so, in order to grab the subject property D.Arul Raj, son of Dhivyanathan, 3rd respondent claiming himself to be the Secretary and Chief Property Officer of "Kremmer Sandegren Foundation", with an intention to sell the property, on 17.04.2015, appointed one A.Pugazhendi, son of Arumugam as power agent of the "Kremmer Sandegren Foundation" and that a power deed has been executed and registered on the file of North Sub Registrar Office No.1, as Doc.No.219 of 2015.

5. Writ petitioner has further submitted that on the basis of the document dated 17.04.2015 the said A.Pugazhendi, as power agent of "Kremmer Sandegren Foundation", has executed a sale deed in favour of M.Muthusamy, the 5th respondent, for a sale consideration of Rs.6 Lakhs, registered as Document No.2039 of 2015 on 24.04.2015 on the file of the Sub Registrar Office, Purasaivakkam.

6. Writ petitioner has further submitted that on 05.11.2015, D.Arulraj, the 3rd respondent, and the said A.Pugazendhi have executed Power Cancellation Deed, by cancelling the registration of General Power Deed Document No.219 of 2015 dated 17.04.2015 and that the cancellation deed has been duly registered as Document No.5033 of 2015 on the file of North Sub Registrar Office No.1, Chennai.

7. The petitioner has further contended that P.S.Sivaperumal, the 2nd respondent and M.Muthusamy, the 5th respondent, have executed a sale cancellation deed, by cancelling the sale deed No.2039 of 2015 and that, cancellation has been registered as Document No.5010 of 2015, on the file of the Sub Registrar Office, Purasaiwakkam.

8. In the capacity of General Power Agent of "Kremmer Sandegren Foundation", A.Pugazhendi has borrowed a sum of Rs.3,00,000/- from R.Vayanaperumal, the 6th respondent and R.Ponnumani, the 7th respondent, by executing a deed of simple mortgage in their favour and that the said document has been registered as Doc.No.2042 of 2015 on the file of Sub Registrar Office, Purasaiwakkam. Writ petitioner has contended that thus,

from 2015 onwards, by colluding with each other, respondents 3 to 6 have created forged documents, one after another, in respect of the property, belonging to Tamil Evangelical Lutheran Church.

9. Writ petitioner has further contended that D.Arulraj, 3rd respondent through M.Rajkumar, 8th respondent, the alleged power agent of "Kremmer Sandegren Foundation", has sold the property on 11.12.2015, for a sum of Rs.2.90 Crores, in favour of '7 Eleven Shipping Private Limited' the 9th respondent, represented by its Directors/respondents 10 & 11 respectively and that the sale deed has been registered as Document No.5463 of 2015 on the file of the Sub Registrar Office, Purasaiwakkam, Chennai.

10. Writ petitioner has contended that all the respondents 3 to 11 have colluded with each other, committed criminal conspiracy and forged several deeds as stated supra. When the matter stood thus, on 08.10.2017, officials of Syndicate Bank, Chennai have affixed possession notice dated 07.10.2017 on the property belonging to Tamil Evangelical Lutheran Church. On enquiry, petitioner came to know that the 9th respondent / M/s. 7 Eleven Shipping Private Limited and its Directors/respondents 10 and 11, have borrowed huge loan from Syndicate Bank and since committed default. Syndicate Bank has issued possession notice directing them to pay Rs.2,47,73,087/-

11. According to the petitioner, the property belongs to Tamil Evangelical Lutheran Church and 8th respondent M.Rajkumar, has no right to sell the same to '7 Eleven Shipping Private Limited', the 9th respondent.

12. On the above averments and supporting the prayer sought for Mr.N.L.Rajah, learned senior counsel submitted that when Tamil Evangelical Lutheran Church, is the absolute owner, and is in possession of the property, rented to M/s.Rethna Stores, Purasaiwakkam, respondents 2 to 11, by indulging in collusive actions, stated supra, the 8th respondent has sold the property to respondents 9 to 11 and that the bank without verifying the title and documents, has blindly sanctioned huge amounts to respondents 9 to 11.

13. Learned senior counsel further submitted that when serious acts of forgery and other offences were committed, writ petitioner has lodged the complaint with the Inspector of Police, Central Crime Branch, Vepery, Chennai and when action was not taken, petitioner was constrained to file Crl.O.P.No.22834 of 2017, and this Court on 27.10.2017, issued directions to the Inspector of Police, Central Crime Branch, Vepery, Chennai.

14. Learned senior counsel further submitted that coming to

know that M/s.Rethna Stores, Pursaiwakkam, is in occupation of the premises, as a tenant, a letter dated 07.11.2017 has been issued by Syndicate Bank, Aminjikarai Branch, Chennai to M/s.Rethna Stores to produce proof of tenancy and such other documents. M/s.Rethna Stores, Pursaiwakkam has also been informed that the bank has proposed to bring the property for sale as per the provisions of SARFAESI Act.

15. Learned senior counsel submitted that by the above fraudulent actions, property of Tamil Evangelical Lutheran Church has been sold, loan has been availed and for the default, symbolic possession notice, has been issued under Section 13(4) of the SARFAESI Act, 2002 and in the abovesaid circumstances, when the possession notice itself is non est in law and therefore, writ petition can be entertained, without resorting to alternate remedy provided under the SARFAESI Act, 2002, for which reliance has been placed on a decision in P.Vinmani Vs. The General Manager, State Bank of India, SAM Branch, Anna Salai, Chennai-2, reported in 2011 (2) CTC 260 : AIR 2011 Mad 220.

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

17. Possession notice dated 07.10.2017 impugned in this writ petition is extracted hereunder.

POSSESSION NOTICE
[Under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 - rule -8(1)]

> Whereas, the undersigned being the authorised officer of the Syndicate Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and in exercise of powers conferred under section 13(2) read with rule 3 of the Security Interest (Enforcement) Rules, 2002 issued a demand notice dated 01.07.2017 calling upon the borrower M/s.7 Eleven Shipping Pvt Ltd and its Directors Mr.R.Kumar, Mr.S.Kirubakaran, sureties and owner of the Property to repay the amount mentioned in the notice being Rs.2,47,73,087.51 (Rupees Two Crore Forty-seven lakh Seventy-three Thousand Eighty-seven and Paise Fifty-one only) within 60 days from the date of the said notice.
>
> The borrower / surety / owner of property having failed to repay the amount, notice is hereby given to the owner of property and the public in general that the undersigned has taken possession of the property described herein below in exercise of powers conferred on him / her under Section 13(4) of the said Act read

with rule 8 of the said rules on this 7th Day of October of the year 2017.

The borrower / surety / owner of property in particular and the public in general are hereby cautioned not to deal with the property and any dealings with the property will be subject to the charge of the Syndicate Bank, Chennai Aminjikarai Branch for an amount of Rs.2,55,83,782.23 (Rupees Two Crore Fifty Five lakh Eighty Three Thousand Seven Hundred Eighty Two and Paise Twenty Three only) and interest thereon, costs etc.

Description of the immovable Property

All that piece and parcel of land and structure comprised in Door No.11 in S.No.124 (TR 2236/2013-14), Abirami Street, Purasawalkam, Chennai 600 007 in Purasawalkam Taluk, Purasawalkam Village. Land totally measuring an extent of 441.50 sq. Mtrs or 4753 sq.ft. or thereabouts with the very old superstructure build thereon with all the amenities, easements, watercourses, ways and other facilities and appurtenances attached thereto and situated within the jurisdiction of the Purasawalkam Sub Registrar Office and the District Registrar Office, Chennai Central owned by 7 Eleven Shipping Pvt. Ltd., and bounded

On the North by Survey No.123, Private property,
On the South by Survey No.125, Private Property,
On the East by Survey No.134, Abirami Street,
On the West by Survey No.121/1, 121/2 Private Property.

Place: Chennai Sd/-
Date: 07/10/2017 Authorized Officer
(Syndicate Bank)

18. Possession notice reads that M/s.7 Eleven Shipping Private Limited and Directors viz., Mr.R.Kumar and Mr.S.Kriubhakaran, respondents 9 to 11 have borrowed loan from Syndicate Bank and failed to pay the same, bank in exercise of powers conferred under Section 13(2) of the SARFAESI Act, 2002, read with rule 3 of the Security Interest (Enforcement) Rules, 2002, has issued a demand notice dated 01.07.2017, calling upon the borrowers and the surety to pay a sum of Rs.2,47,73,087/-, within 60 days from the date of notice. As borrower / surety / alleged owner of the property having failed to repay the amount, bank has issued possession notice under Section 13(4) of the SARFAESI Act, 2002, read with rule 8 (1) and the Security Interest (Enforcement) Rules, 2002.

19. Coming to know that M/s.Rethna Stores, Purasaiwakkam, is in occupation of the premises at Door No.199, Purasawakkam High Road, Purasawakkam, Chennai -7, as a tenant, in the property, mortgaged, Syndicate Bank, Chennai, in its letter dated

07.11.2017, has requested M/s.Rethna Stores, Purasawakkam to furnish the following documents.

> "1. To produce proof of your tenancy (copy of lease deed) for your verification and further action.
> 2. To pay the rent payable by you to the borrower/owner to us directly for the period from the date of our symbolic possession and we will be giving you a valid discharge for the said amount under the Act.
> 3. That we propose to bring the property for sale asper the provisions of the Securitisation Act, if you are interested in purchasing the said property, you may indicate your readiness and willingness for the same in writing to us immediately and you can participate in the sale process by submitting your bid and taking part in the auction.
>
> 4. That if you are not the successful bidder in the proposed sale process, you should vacate the premises and surrender the same to us within 30 days from the date of the sale. You should give a written commitment to this extent in your letter to us.
> 5. That if you are not interested in participating in the process, you shall vacate and surrender the premises within 30 days from now.
> 6. That you have to settle any other financial matter like rent deposit / advance money etc directly with the owner and bank is not liable / responsible for the same.
>
> 7. That if you fail to hand over the vacant position as mentioned above under points 3 & 4 we will be taking steps for getting actual position as provided under the Act. Hence, you are requested to cooperate with the Bank and to avoid any embarrassment/unpleasant.

20. The petitioner has lodged a complaint with Inspector of Police, Central Crime Branch, Vepery, Chennai and vide order in Crl.OP.No.22834 of 2017 dated 27.10.2017, this Court has issued directions as follows:

> "5. In the result, the petitioner is directed to give a copy of the complaint dated 17.10.2010 to the Station Housing Officer having territorial jurisdiction over the issue. On receipt of the said copy of the complaint, the concerned Station House Officer shall adhere to the following directions.
>
> 1)If the information received by the 2nd respondent discloses commission of a cognizable offence, then, the same shall be forthwith registered.

2)If an information received does not disclose a cognizable offence, the 2nd respondent shall conduct a preliminary inquiry to ascertain whether cognizable offence is disclosed therein or not and such inquiry shall be completed within a period of fifteen days from the date of information.

3) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered, if not already registered or closed.

4) If the preliminary inquiry ends in closing the complaint, the disclosure report must be recorded along with the reasonings and a copy of the same shall be furnished to the complainant within one week.

5)All information relating to cognizable offences whether resulting in registration of FIR or leading an inquiry must be reflected in the general diary/station diary/daily diary of the respondent's police station.

21. From the material on record, it could be seen that loan has been borrowed, property has been mortgaged by the respondents 7 to 9 and for the failure, bank has resorted to the provisions of the SARFAESI Act, 2002. Question as to whether, the property owned by Tamil Evangelical Lutheran Church, has been illegally sold to respondents 9 to 11, by creating forged documents by the other respondents, in collusion with the borrowers and thus, availed loan, are all matters, where evidence has to be adduced. Writ Court cannot go into all the above facts by recording evidence, which may require cross examination as well, if necessary, by other respondents, against whom allegations are made.

22. Though by placing reliance at paragraph No.13 of the Hon'ble Division Bench judgment in P.Vinmani Vs. The General Manager, State Bank of India, SAM Branch, Anna Salai, Chennai-2, reported in 2011 (2) CTC 260 : AIR 2011 Mad 220, learned senior counsel has drawn the attention that in the case of a non est decree, this Court had entertained the writ petition, without driving the petitioner therein to approach alternate remedy and that the said judgment can be made applicable to the instant case, as sale deeds are illegal, and thus possession notice is non est, we are not in agreement with the submission of the learned senior counsel for the reason that all the allegations made in the supporting affidavit, require proof, by adducing oral and documentary evidence. For the abovesaid reasons, this Court is not inclined to accept the contention of the learned senior counsel.

23. Further, Courts have consistently held that when there is an effective and alternative remedy, writ is not

maintainable. We deem it fit to consider the following decisions.

(i) In Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW 86, this Court held as follows:

> "This Court has repeatedly held in a number of decisions right from the decision in Division Electronics Ltd. v. Indian Bank (DB) Markandey Katju, C.J., (2005 (3) C.T.C., 513), that the remedy of the aggrieved party as against the notice issued under Section 13(4) of SARFAESI Act is to approach the appropriate Tribunal and the writ petition is not maintainable. The same position has been succinctly stated by the Hon'ble the Supreme Court in Transcore v. Union Of India (2006 (5) C.T.C. 753) in paragraph No. 26 wherein the Supreme Court has held as under: —
>
> "The Tribunal under the DRT Act is also the Tribunal under the NPA Act. Under Section 19 of the DRT Act read with Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (1993 Rules), the applicant bank or FI has to pay fees for filing such application to DRT under the DRT Act and, similarly, a borrower, aggrieved by an action under Section 13(4) of NPA Act was entitled to prefer an Application to the DRT under Section 17 of NPA." (Emphasis added) "

(ii) In Union Bank of India v. Satyawati Tondon, reported in 2010 (5) LW 193 (SC), the Hon'ble Apex Court at paragraph Nos.16 to 18 and 27 to 29, held as follows:

> "16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos. 1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs. 50,000/- was paid by respondent No. 1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section 13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No. 1.
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> 17. There is another reason why the impugned

order should be set aside. If respondent No. 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High

Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for re-dressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1=1999-2-L.W. 200 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

28. Insofar as this case is concerned, we are

convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act.

29. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy."

(iii) In Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India, reported in (2010) 5 LW 560, the Court held as follows:

"The petitioner has filed this writ petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the possession notice dated 16.09.2004 issued by the respondent under the SARFAESI Act and consequently direct the respondent to effect the settlement in accordance with the SBI OTS-SME 2010 Scheme as contained in its letter dated 18.03.2010 and unconditionally restore physical possession of the six rooms taken physical possession by it at No. 29, Sarojini Street, T. Nagar, Chennai - 17 with such damages.

... When a specific forum has been created which enables the borrower to challenge the action of the financial institution by filing necessary petition under Section 17, the petitioner is not entitled to invoke the writ jurisdiction of this Court. What could not be achieved by the petitioner by filing a petition before the appropriate Forum, which is at present barred by period of limitation, could not be permitted to be achieved by extending the jurisdiction conferred to this Court under Article 226 of The Constitution of India. Above all, since the petitioner has violated the terms and conditions of the loan by transferring the property in favour of her son, this Court is not inclined to entertain the petition...."

24. In the light of the above discussion and decisions

stated supra and considered, we are not inclined to entertain the writ petition. Accordingly, the same is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ars
To

The Chief Manager /
Authorized Officer,
Syndicate Bank,
Chennai Aminjikarai Branch,
No.6, Govindan Street,
Ayyavu Kallani, Amaindhakarai,
Chennai - 600 029.

+1 cc to M/s.K.Balu Advocate sr 81393

W.P.No.29304 of 2017
and WMP Nos.31553 & 31554 of 2017

mr(co)
aa06/12/2017