IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/11/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.29457 of 2017

R.Premnath ... Petitioner

Vs

The Chief Manager & Authorised Officer
Andhra Bank
Salem Branch
Narasu's Arcade
No.53/24, II Agraharam
Salem 636 001. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the entire records in relating to the notice issued by the respondent under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (Act 54 of 2002) dated 4/9/2017 which was published in the daily newspaper namely, The Indian Express on 29/9/2017 and quash the same.

For petitioner ... Mr.C.Munusamy

O R D E R

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

Demand notice, dated 4/9/2017, issued under Section 13 (2) of the SARFAESI Act, 2002 is challenged in the instant writ petition.

2. Mr.C.Munusamy, learned counsel for the petitioner submitted that action taken by the Bank in issuing the Demand Notice is arbitrary. Substantial amount has also been paid.

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

4. As on today, no action is taken under sub-Section 4 of Section 13 of the SARFAESI Act, 2002. Contention that the petitioner has made substantial payments, can be urged, if any, action is taken by the Bank, under sub-Section 4 of Section 13 of the SARFAESI Act, 2002.

5. 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. Demand Notice, cannot be said to be arbitrary.

6. In the light of the above discussion and decision, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

+1cc to Mr.C.Munusamy, Advocate in sr.no.81621

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NR 08/12/2017