

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2/8/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR

and

The Honourable Ms.JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No.19773 of 2017

a n d

W.M.P.Nos.21345 and 21346 of 2017

A.P.Paulose

...

Petitioner

Vs

1. The Chief Manager/Authorised Officer
Regional office
South Indian Bank
Trichy Road
Sungam
Coimbatore 18.

2. The Branch Manager
South Indian Bank
Coonoor Branch
Coonoor
The Nilgiris District.

...

Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of ceriorari to call for the records relating to the impugned order passed by the first respondent in his proceedings CBE/RO/SARFAESI/299/17-18, dated 19/5/2017 and quash the same.

For Petitioner

...

Mr.Badrinathan

for Mr.C.Prakasam

सत्यमेव जयते

- - - - -

O R D E R

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

What is impugned in the instant writ petition is only a reply, dated 19/5/2017, of South Indian Bank/first respondent, issued under Section 13 (3-A) of the SARFAESI Act, 2002.

2. Notice under Section 13(2) is only a demand made by the Bank and the Hon'ble Supreme Court in Mardia Chemicals v. Union of India reported in AIR 2004 SC 2371 : 2004(4) SCC 311 has held that notice under Section 13(2) would not give rise to a cause to challenge. However, as per Section 13(3-A) 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.

3. In the light of the decision made in Mardia Chemicals v. Union of India reported in AIR 2004 SC 2371 : 2004(4) SCC 311, writ petition challenging a reply under Section 13 (3-A) of the SARFAESI Act, is not maintainable.

4. If Bank takes recourse to any of the measures under Section 13 (4) of the SARFAESI Act, 2002, it is always open to the petitioner to challenge the same under Section 17 (1) of the said Act, before the competent forum.

5. In the light of the above decision and the statutory provision, writ of certiorari, cannot be issued to quash the reply issued, under Section 13(3-A) of the SARFAESI Act 2002, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mvs

To

1. The Chief Manager/Authorised Officer
Regional office
South Indian Bank
Trichy Road
Sungam
Coimbatore 18.
2. The Branch Manager
South Indian Bank
Coonoor Branch
Coonoor
The Nilgiris District.

+1 cc to Mr.C.Prakasam Advocate sr 55806

W.P.No.19773 of 2017

kji(co)
aa23/08/2017



WEB COPY