

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.36525 of 2015
and M.P.No.1 of 2015

M/s.Arasi Traders,
rep. by its Proprietor,
Mr.S.H.Durai

... Petitioner

versus

1. M/s.Lakshmi Vilas Bank,
rep. by its Authorized Officer,
Mr.J.Kirubakaran.

2. Debts Recovery Tribunal - I,
rep. by its Registrar,
VI-Floor "Spencer Tower",
No.770-A, Anna Salai,
Chennai - 600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified mandamus, to call for the records of SA.SR.No.3325 of 2015 filed by the petitioner under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), from the 2nd respondent and quash the order dated 02.11.2015 passed in SA Sr.No.3325 of 2015 and consequently, direct the 2nd respondent to allot a S.A.Number and dispose SA.Sr.No.3325 of 2015 on merits in accordance with law.

For Petitioner : Mr.S.Rajamuthupandian

For Respondents : Mr.A.Arun Babu (for R1)

ORDER

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

Order impugned in this writ petition is as follows:

"ORDER

1. SA SR 3325/2015, is filed by the applicant to call for the records pertaining to the proceedings and break open order made in Cr.M.P.No.3753/2015 in CrI.M.P.No.7244/2014 dated 16.7.2015 and subsequently call for records pertaining to the proceeding initiated under Sec.14 of the SARFAESI Act and possession order made in CrI.M.P.No.7244/2014 dated 6.11.2014 pending before the Hon'ble Chief Metropolitan Magistrate, Egmore and set aside the same.

2. Point for consideration.

Whether the application SASR No.3325/2015 is maintainable?

3. Point:

4. Heard the Ld. Counsel for the applicant.

5. It is held by the Hon'ble High Court of Madras in the case of 'Dr.Zubida Begum & Others Vs. Indian Bank reported in 2012 (5) CTC 369' that Section 5 of the Limitation Act will not be applicable in the case of an application filed under the provisions of Sec.17 of the SARFAESI Act.

5. Further decided that the SA application filed under Sec.17 is a suit and it is not an appeal. Therefore, the Limitation Act is no applicable to Sec.17 SARFAESI application.

6. Further, Section 17(1) of the SARFAESI Act reads as follows:

"17 Right to appeal - (1): Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorized officer under this Chapter, (may make an application along with such fee, as may be prescribed) to the Debts Recovery Tribunal having

jurisdiction in the matter within forty-five days from the date on which such measures had been taken"

7. Further, the applicant referred citation i.e, '2015(4)CTC 809 in the case of Baleshwar Dayal Jaiswal Vs. Bank of India & Others' is not applicable to condone the delay in filing Sec.17 application. Hence this application is not maintainable.

8. In the result, SASR No.3325/2015 is rejected as barred by limitation.

9. Communicate a copy of the order to the parties concerned in terms of Rule 16 read with Rule 2(c) of DRT (Procedure) Rules, 1993."

2. On 19.11.2015, notice has been ordered returnable in two weeks. On 10.12.2015, on the request of the learned counsel for the petitioner, matter has been adjourned, so as to enable the respondents to file counter affidavit. On 04.01.2017, when the matter came up for further hearing, we passed the following orders.

"On this day, when the matter came up for hearing, Mr.A.Arun Babu, learned counsel appearing for M/s.Lakshmi Vilas Bank, Chennai, first respondent herein, submitted that, what is challenged in S.A.SR No.3325/2015, before the Debts Recovery Tribunal - I at Chennai, is an order of break open the premises, made in Cr.M.P.No.3753/2015 in CrI.M.P.No.7244/2014 dated 16.07.2015. After adjudication, SASR No.3325/2015 has been rejected as barred by limitation.

2. Learned counsel for the bank further submitted that, subsequently, the District Collector cum District Magistrate, passed orders under Section 14 of the SARFAESI Act, seeking assistance for taking possession and accordingly, possession has been taken. Order of the District Collector cum District Magistrate has been challenged in S.A.No.42/2015 on the file of Debts Recovery Tribunal - I, Chennai. He further submitted that arguments in S.A.No.42/2015 has been heard and the matter is adjourned.

3. In the light of the above, challenge in the instant writ petition has become infructuous.

4. On the above, Mr.C.S.K.Sathish, learned counsel for the petitioner, seeks time to get suitable instructions from his client.

Post the matter on 06.01.2017."

3. Mr.Raja Muthupandian, learned counsel for the petitioner fairly admitted that though, the order made in

Cr.M.P.No.3753/2015 in CrI.M.P.No.7244/2014 dated 16.07.2015, was impugned in this writ petition, subsequently, the District Collector Cum District Munsif, has passed orders under Section 14 of the SARFAESI Act, 2002 and that possession has also been taken. He has also acknowledged the submission of the respondent bank that the order under Section 14 of the Act has been challenged in S.A.No.42 of 2015 on the file of the Debts Recovery Tribunal-I, Chennai.

4. Added further he submitted that during the course of hearing of S.A.No.42 of 2015, it was observed by the tribunal that restoration of possession would not be permissible unless and until the order impugned before us is set aside.

5. On the above submission, no orders have been passed by the Debts Recovery Tribunal-I, Chennai in S.A.No.42 of 2015 and therefore, we are not inclined to make any observation.

6. In the light of the subsequent developments, we are of the view that challenge in the instant writ petition, has become infructuous. Interim order made in Cr.M.P.No.3753/2015 in CrI.M.P.No.7244/2014, impugned in this writ petition has merged into a final order passed under Section 14 of the Act, which is also challenged. On the issue of merger, we would like to add few decisions.

(i) In South Eastern Coalfields Ltd v. State of MP and Others reported in (2003) 8 SCC 648, the Hon'ble Supreme Court held as follows:

"The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it."

(ii) In Prem Chandra Agarwal and Another v. Uttar Pradesh Financial Corporation and Others reported in (2009) 11 SCC 479, the Hon'ble Supreme Court held that once a final order is passed, all the earlier interim orders merge into the final order, the interim orders cease to exist.

(iii) In State of West Bengal and Others Vs Banibrata Ghosh and Others reported in (2009) 3 SCC 250, the Hon'ble Apex Court

held that the Interim Order does not decide the fate of the parties to the litigation finally, it is always subject to and merges with the final order passed in the proceedings.

(iv) The Hon'ble Supreme Court in Amarjeet Singh and Others v. Devi Ratan and Others reported in (2010) 1 SCC 417, held that no person can suffer from the act of the Court and in case an interim order has been passed and the Petitioner takes advantage thereof and ultimately the Petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised.

7. In the light of the above discussions and decisions, the instant writ petition is dismissed as infructuous. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Registrar,
Debts Recovery Tribunal - I,
VI-Floor "Spencer Tower",
No.770-A, Anna Salai,
Chennai - 600 002.

+1cc to M/S.A.Arun Babu, Advocate Sr.1419

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and M.P.No.1 of 2015

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