IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/2/2017

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

Writ Petition No.38415 of 2015

M.A.Dhanasekaran ... Petitioner

Vs

1. The Regional Manager,
   The Reserve Bank of India
   Rajaji Salai
   Chennai 1.

2. The Authorised Officer
   Sundaram BNP Paribas Home Finance Ltd
   Sundaram Towers
   No.46 Whites Road
   Royapettah
   Chennai 14.

3. The Revenue Divisional Officer
   Cheyyar,Tiruvannamalai District. ... Respondents

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 relating to the impugned notice, dated 4/11/2015, issued by the second respondent and quash the same.

For petitioner ... Mr.C.Prakasam

For respondents ... Mr.K.J.Parthasarathy for R.2.

Mr.TM.Pappaiah, Special Government Pleader for R.3

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O R D E R

(Order of the Court was made by M.Govindaraj,J)

Aggrieved against the impugned notice, dated 4/11/2015, the petitioner has filed the instant writ petition.

2. Son of the writ petitioner had borrowed a huge amount from the second respondent/Sundaram BNP Paribas Home Finance Ltd, Chennai. The petitioner stood as a guarantor to his son. The second respondent has initiated SARFAESI proceedings against the son of the petitioner. Since the properties of the son were sealed, he could not mobilise funds. The second respondent, vide proceeding, dated 4/11/2015, has initiated SARFAESI proceedings against the petitioner.

3. The action of the second respondent was resisted by the petitioner, on the ground that the second respondent is not a financial Institution, notified under the Reserve Bank of India Regulations. The judgment reported in 2011 (2) CTC - 474, lease under Section 31 E, in which no security has been created would not be covered under the SARFAESI Act.

4. According to the respondent/Bank, the ground raised in the instant writ petition is that the second respondent is not a notified financial institution is not correct. On the other hand, it has been duly notified in the Government gazette and the same has been upheld by this Court in W.P.No.21049 of 2015, by its order, dated 14/3/2016 and review filed against the same was also dismissed, on 22/4/2016, in R.A.No.45 of 2016. Therefore, the writ petition has to be dismissed.

5. Heard the learned counsel for the parties.

6. Primary contention of the writ petitioner is that the second respondent is not a financial institution, notified under Reserve Bank of India regulations and therefore, they cannot take any action under the SARFAESI proceedings. On the other hand, it is seen from the records that this Court, as stated supra, in a writ petition filed against the second respondent, the very same point was dealt with and in paragraph Nos. 5 and 6, it was held as under:-

> "5. Clause (m) of Section 2 (1) of the SARFAESI Act defines "Financial institution", including under sub-clause (ii), any institution as specified by the Central Government under sub-clause (ii) of clause (h) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

6. The Central Government, vide notification dated 10th November 2003, exercising its power under sub-clause (iv) of clause (m) of sub-Section (1) of Section 2 of the SARFAESI Act, notified the Sundaram Home Finance Limited, Chennai, as the financial institution under the name of the Housing Company. Thereafter, the nomenclature of the said company was changed under the Certificate of Registration issued by the National Housing Bank, dated 10th January, 2008, which was duly notified, as aforestated by the Government of India, Ministry of Finance, (Department of Financial Services) and published in the Gazette of India on 24th March, 2008. It appears that necessary amendment could not be carried out, which was clarified subsequently by the Central Registry of Securitisation Asset Reconstruction and Security Interest of India, in response to the letter of the second respondent dated 12th February 2016 that the name of the institution has been amended long back."

7. The remedy of the aggrieved party as against the notice issued under Section 13 (4) of the SARFAESI Act is to approach the appropriate Tribunal. The same position was succinctly stated by the Hon'ble Supreme Court in TRANSCORE Vs. UNION OF INDIA {2006 (5) CTC - 753}.

8. In the light of the above decision, this Court is of the considered view that without exhausting the alternative remedy, the relief sought for by the petitioners by invoking the discretionary remedy under Article 226 of the Constitution of India, cannot be granted. Moreover, the arguments of the learned counsel appearing for the second respondent has more force and the prayer sought for by the writ petitioner cannot be sustained.

9. Accordingly, this writ petition is dismissed. No costs. It is open to the writ petitioner, to work out his remedy, in the manner known to law and in accordance with law. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

mvs.

To

1. The Regional Manager,
   The Reserve Bank of India, Rajaji Salai, Chennai 1.

2 The Revenue Divisional Officer
   Cheyyar,Tiruvannamalai District.

+1cc to Mr.K.J.Parthasarathy,Advocate sr.9086

+1cc to Mr.C.Prakasam,Advocate sr.9414

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rsy(co)
ss(7/4/2017)