

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 2/1/2017

C O R A M

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

Writ Petition No. 25167 of 2016
& WMP No. 21571 of 2016

1. M/s. Supreme Cot-Spin Mills
(India) Private Ltd
rep. By its Managing Director
R. Gopalswamy
No. 419-1A, 1 C, Vadugapalayam Road
Thekkalur Post
Avinashi 641 654
Tirupur District.
 2. R. Gopalswamy
 3. G. Jegahambal
 4. M/s. Supreme Sizing Industries
rep. By its Prop Mr. R. Gopalswamy
No. 419-1A, 1 C, Vadugapalayam Road
Thekkalur Post
Avinashi 641 654
Tirupur District. ...
- Petitioners

Vs

The Authorised Officer and
Assistant General Manager
Stressed Assets Management Branch
SBI
No. 1112 Raja Plaza
Avinashi Road
Coimbatore 641 037. ...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the respondent under Ref. CB/AMT3/SCSMIPL/2015-16/252 dated 22/12/2015 issued under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and quash the same.

For petitioner

... Mr.S.Mukunth
for Mr.U.Vishal Kumar

- - - - -

O R D E R

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

M/s.Supreme Cot-Spin Mills (India) Private Ltd., represented by its Managing Director and three others, have joined together and challenged the notice, dated 22/12/2015, issued under Section 13 (2) of the SARFAESI Act, 2002, on the grounds inter alia that the subject property mortgaged is an agricultural property.

2. Writ petition filed on 14/7/2016 is yet to be admitted. However, on this day, Mr.S.Mukunth for Mr.U.Vishal Kumar, learned counsel for the petitioner submitted that though subsequently the Bank has issued a notice under Sub-section 4 of Section 13 of the SARFAESI Act, 2002 in as much as the subject property mortgaged is an agricultural property no action under the SARFAESI Act, 2002 can be taken, instant writ petition is filed challenging the very initiation itself.

3. Notice issued under Sub-Section 13 (4) of the SARFAESI Act, 2002, dated 18/6/2016 can be challenged under Section 17 (1) of the SARFAESI Act. It is a matter of evidence as to whether the subject property mortgaged is an agricultural property or not.

4. 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(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.

5. In the light of the above decision and statutory provision, writ of certiorari, cannot be issued to quash the

notice under Section 13(2) of the SARFAESI Act 2002. Leaving it open to the petitioner to take appropriate remedy to challenge the notice under Sub-Section 3 of Section 14 of the said Act, on all the grounds available to the petitioners, including the one that the subject property is an agricultural property, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

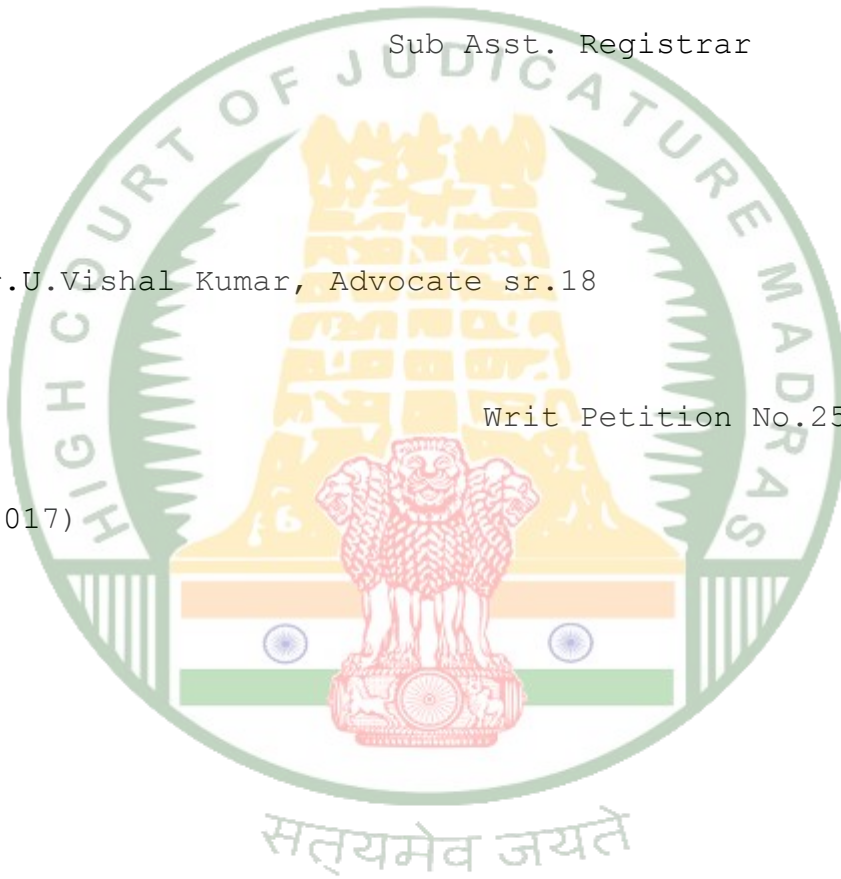
mvs.

To

+1cc to Mr.U.Vishal Kumar, Advocate sr.18

Writ Petition No.25167 of 2016

gjII(co)
ss(27/01/2017)



WEB COPY