

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.25931 of 2016

and

W.M.P.Nos.22173 & 22174 of 2016

R.Murugan

.. Petitioner

versus

1. The Authorised Officer,
Indian Overseas Bank (IOB),
Tiruchengode Branch,
No.56, 57 - Theppakulam Street,
Sankari Road,
Tiruchengode - 637 211
Nammakal District.

2. M/s.Sri Dhivyasowmya Paper Boards
Rep by its Managing Partner
MKR Mill Compound

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari, calling for the records of the first respondent in issuance of the notice dated 05.07.2016 and quash the notice dated 05.07.2016 with regard to the petitioner's Residential Property situated at Old No.8/1 and New No.313/8/1 having land measuring to an extent of 3920 sq ft of land (0.09 cents) comprised in SF No.346/9 and RSF No.346/9A Ward G, Block 37, TSLR No.70/1A and 70/2, Tiruchengode Village and Taluk, Nammakal District.

For Petitioner : Mr.A.Kalaivanan

For Respondents : Mrs.Ananda Gomathy (for R1)

ORDER

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

M/s. Sri Dhivyasowmya Paper Boards has availed loan of Rs.215 Lakhs from Indian Overseas Bank, Thiruchengode Branch by offering the undermentioned prime and collateral securities.

Sl.No	Nature of Security (Mortgage / Hypothecation)	Particulars of securities
1.	Prime Security	Machinery for term loans Stocks and book debts for cash credit
2.	Collateral security - Mortgage of land and house property	I. Factory land - 19.98 acres and building thereon of 10100 sq.ft. - at SF No.123/3, 123, 125/2,4, Lathivadi Village, Tiruchengode, Namakkal Dist in the name of the firm. The details are: 1. S.No.123/3 - 4.71 acres 2. S.No.124 - 9.52 acres with a well and a building 3. S.No.125/4 - 1.99 acres 4. S.No.125/2 - 3.76 acres. II. Residential property - 3920 sq.ft. of land (0.09 cents) with a building bearing Door No.Old.8/1 and new No.313/8/1 at SF No.346/9 and RSF No.346/9A, Ward G, Block 37, TSLR No.70/1A & 70/2, Tiruchengode village and taluk, Registration District, Namakkal and sub-regn dist Tiruchengode in the name of Sri R.Murugan (Partner) Boundaries are: South to: the property consisting in S.No.348 North to: the property consisting in S.No.346/9A East to: the property consisting in S.No.346/7 West to: 45' breadth of south north passage

2. Mr.R.Murugan, petitioner and one of the partners of the firm /guarantor has offered the abovesaid residential property as collateral security.

3. M/s. Sri Dhivyasowmyaa Paper Board, has committed default. Hence, bank has issued notice under sub-Section (2) of Section 13 of SARFAESI Act, 2002, to the writ petitioner demanding payment of Rs.62,89,137.50p together with further interest @ contractual rate + 2% as overdue interest p.a., with monthly rest along with other charges thereon, to be made within sixty days from the date of notice i.e., 01.04.2016.

4. In the said notice, bank has also communicated that residential property has been offered as security. Thereafter, on 27.05.2016, on behalf of Sri Dhivyasowmyaa Paper Boards, a letter has been sent to the Assistant General Manager, Indian Overseas Bank, Thiruchengode Branch, to grant three months time to repay the loan amount. Vide letter dated 05.07.2016, bank has sent a letter to Mr.R.Murugan/writ petitioner/one of the partners of the firm, enclosing copies of possession notices issued for, (1) Factory building in the name of the firm, (2) Residential building in the name of the Guarantor Shri R.Murugan and (3) Machinerics hypothecated to the Bank. Thus, three possession notices dated 05.07.2016, have been issued and the same are extracted hereunder

1. Possession notice in respect of the residential property of the writ petitioner / guarantor:

Indian Overseas Bank,
56, 57 Theppakulam Street,
Sankari Road, Tiruchengode 637 211
Namakkal District.

POSSESSION NOTICE

Whereas, The undersigned being the Authorised Officer of the Indian Overseas Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and in exercise of powers conferred under Section 13(12) read with rule 3 of the Security Interest (Enforcement) Rules, 2002 issued demand notice dated 01.04.2016 calling upon the borrower M/s.Sri Dhivyasowmyaa Paper Boards and Guarantor Shri R. Murugan to repay the amount mentioned in the notice being Rs.62,89,137.50 (Rupees Sixty Two lakhs eighty nine thousand one hundred thirty seven and paise fifty only) within 60 days from the date of receipt of the said notice.

The borrower / guarantor / mortgagor having failed to repay the amount, notice is hereby given to the borrower / guarantor / mortgagor and the public in general that the undersigned has taken possession of the property described herein below in exercise of powers conferred on him under Section 13(4) of the said Act read with rule 8 of the said rules on this 5th day of July 2016.

The borrower / guarantor / mortgagor in

particular and the public in general is hereby cautioned not to deal with the property and any dealing with the property will be subject to the charge of the Indian Overseas Bank, Tiruchengode branch for an amount of Rs.62,89,137.50 (Rupees Sixty Two lakhs eighty nine thousand one hundred thirty seven and paise fifty only) as on 29.02.2016 for 2 term loan account and as on 21.03.2016 for cc account plus interest and other charges thereon.

DESCRIPTION OF THE IMMOVABLE PROPERTY:

I. Residential property - 3920 sq.ft. of land (0.09 cents) with a building bearing Door No.Old-8/1 and New No.313/8/1 at SF No.346/9 and RSF No.346/9A, Ward G, Block 37, TSLR No.70/1A & 70/2, Tiruchengode village and taluk, Registration district Namakkal and sub-regn dist Tiruchengode in the name of Sri R. Murugan (Partner).

Boundaries are:

South to: the property consisting in S.No.348

North to: the property consisting in S.No.346/9A

East to: the property consisting in S.No.346/7

West to: 45' breadth of south north passage

PLACE : Tiruchengode

AUTHORISED OFFICER

DATE: 05.07.2016

Indian

Overseas Bank

2. Possession notice in respect of Machinerries of the FIRM
Indian Overseas Bank,
56, 57 Theppakulam Street,
Sankari Road, Tiruchengode 637 211
Namakkal District.

POSSESSION NOTICE

Whereas, The undersigned being the Authorised Officer of the Indian Overseas Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and in exercise of powers conferred under Section 13(12) read with rule 3 of the Security Interest (Enforcement) Rules, 2002 issued demand notice dated 01.04.2016 calling upon the borrower M/s.Sri Dhivyasowmyaa Paper Boards and Guarantor Shri R. Murugan to repay the amount mentioned in the notice being Rs.62,89,137.50 (Rupees Sixty Two lakhs eighty nine thousand one hundred thirty seven and paise fifty only) within 60 days from the date of receipt of the said notice.

The borrower / guarantor / mortgagor having failed to repay the amount, notice is hereby given to the borrower / guarantor / mortgagor and the public in general that the undersigned has taken possession of the property described herein below in exercise of

powers conferred on him under Section 13(4) of the said Act read with rule 8 of the said rules on this 5th day of July 2016.

The borrower / guarantor / mortgagor in particular and the public in general is hereby cautioned not to deal with the machinery property and any dealing with such machinery property will be subject to the charge of the Indian Overseas Bank, Tiruchengode branch for an amount of Rs.62,89,137.50 (Rupees Sixty Two lakhs eighty nine thousand one hundred thirty seven and paise fifty only) as on 29.02.2016 for 2 term loan account and as on 21.03.2016 for cc account plus interest and other charges thereon.

DESCRIPTION OF THE MACHINERIES:

Machinery kept at the factor (Sri Dhivyasowmyaa Paper Boards) located at

MKR Mill Compound

No.1, Sooriyampalayam Street No.1

Sooriyampalayam Post

Tiruchengode 637 209.

PLACE : Tiruchengode

DATE: 05.07.2016

AUTHORISED OFFICER

Indian

Overseas Bank

3. Possession notice in respect of Factory Land of the FIRM

Indian Overseas Bank,
56, 57 Theppakulam Street,
Sankari Road, Tiruchengode 637 211
Namakkal District.

POSSESSION NOTICE

Whereas, The undersigned being the Authorised Officer of the Indian Overseas Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and in exercise of powers conferred under Section 13(12) read with rule 3 of the Security Interest (Enforcement) Rules, 2002 issued demand notice dated 01.04.2016 calling upon the borrower M/s.Sri Dhivyasowmyaa Paper Boards and Guarantor Shri R. Murugan to repay the amount mentioned in the notice being Rs.62,89,137.50 (Rupees Sixty Two lakhs eighty nine thousand one hundred thirty seven and paise fifty only) within 60 days from the date of receipt of the said notice.

The borrower / guarantor / mortgagor having failed to repay the amount, notice is hereby given to the borrower / guarantor / mortgagor and the public in general that the undersigned has taken possession of the property described herein below in exercise of

powers conferred on him under Section 13(4) of the said Act read with rule 8 of the said rules on this 5th day of July 2016.

The borrower / guarantor / mortgagor in particular and the public in general is hereby cautioned not to deal with the property and any dealing with the property will be subject to the charge of the Indian Overseas Bank, Tiruchengode branch for an amount of Rs.62,89,137.50 (Rupees Sixty Two lakhs eighty nine thousand one hundred thirty seven and paise fifty only) as on 29.02.2016 for 2 term loan account and as on 21.03.2016 for cc account plus interest and other charges thereon.

DESCRIPTION OF THE IMMOVABLE PROPERTY

I. Factory Land - 19.98 acres and building thereon of 10100 sq.ft. - at SF No.123/3, 124, 125/2, 4, Lathivadi Village, Tiruchengode, Namakkal dist in

the name of the firm. The details are:

1. S.No.123/3 - 4.71 acres
- 2.S.No.124 - 9.52 acres with a well and a building
- 3.S.No.125/4 - 1.99 acres
4. S.No.125/2 - 3.76 acres

PLACE : Tiruchengode

DATE: 05.07.2016

AUTHORISED OFFICER
Indian
Overseas Bank

5. Being aggrieved by the possession notice dated 05.07.2016, issued under sub-section (4) of Section 13 of SARFAESI Act, 2002, in respect of the residential property offered as collateral security for the loan availed, petitioner/guarantor, who had offered the said property, has filed the instant writ petition for a writ of certiorari, to quash the said notice, in so far as the residential property is concerned.

6. Record of proceedings shows that when the matter came up for further hearing, based on the undertaking affidavit dated 14.02.2017, sworn in by the writ petitioner, one of the partners, Mr.A.Kalaivanan, learned counsel for the petitioner submitted that M/s.Sri Dhivyasowmyaa Paper Boards, the 2nd respondent has availed term loans for a sum of Rs.150 Lakhs and Rs.15 Lakhs in loan Account Nos.TL260900006 and TL261000008, respectively. Firm has also availed Rs.50 Lakhs cash credit in A/c.No.OCC3457 and in all a sum of Rs.215 Lakhs was availed as loan under the abovesaid accounts. Mr.A.Kalaivanan, learned counsel for the petitioner further submitted that firm has paid a sum of Rs.152 Lakhs alongwith interest out of Rs.215 Lakhs. According to him, a sum of Rs.62 Lakhs alone is due.

7. Learned counsel for the petitioner further submitted that the remaining amount of Rs.62 Lakhs would be paid by the petitioner to the 1st respondent bank within one month, and prayed that bank be restrained from further proceedings. He further prayed to record the undertaking given by the writ petitioner/one of the partners and to pass an appropriate order.

8. Mrs.Ananda Gomathy, learned counsel appearing for Indian Overseas Bank, Thiruchengode Branch, Namakkal District, submitted that the total loan availed was Rs.215 Lakhs under different accounts. According to her, as per the demand notice issued under Section 13(2) of SARFAESI Act, 2002 dated 01.04.2016, a sum of Rs.62,89,137.50p, was due, as on 29.02.2016 for 2 term loan account and as on 21.03.2016 for cc account plus interest and other charges thereon. Therefore, possession notice was issued for the abovesaid amount with further interest @ contractual rate + 2% as overdue per annum, with monthly rests alongwith charges thereon. She further submitted that interest accrued has not been set out in the affidavit of undertaking.

9. Heard the learned counsel for the parties and perused the materials available on record.

10. Admittedly, a sum of Rs.215 Lakhs has been availed as loan under the abovesaid accounts.

11. Prime security offered is machinery. Collateral security offered is factory land, details of which extracted supra and residential property owned by the writ petitioner / one of the guarantors. Though, e-auction is stated to have been conducted for realisation of the balance of the loan amount, as against machinery and factory land, it was not proceeded further. It is the submission of the learned counsel for both parties that in respect of the residential property, no action was taken, in obedience to an order of interim stay granted by this Court on 26.07.2016 in WMP Nos.22173 & 22174 of 2016 in W.P.No.25931 of 2016.

12. Three properties have been offered as security. one of the partners/writ petitioner, being aggrieved by the possession notice dated 05.07.2016 in respect of the housing property, has filed the writ petition contending that if the bank conducts further auction of the machineries / factory land, it would satisfy the balance amount and therefore prayed that his house property be excluded from SARFAESI Act, 2002.

13. Though, firm has availed a loan of Rs.215 Lakhs, with contractual interest, writ petitioner / guarantor has come forward to pay a sum of Rs.62 Lakhs on his own. Bonafides of the writ petitioner is substantiated.

14. Though, under Law, bank can take action under sub-Section (4) of Section 13 of the SARFAESI Act, 2002 against one or other properties offered as security, taking note of the submission of the learned counsel for the writ petitioner that because of the default of the firm, guarantor is burdened with payment of the remaining amount of Rs.62 Lakhs and also considering the plea that sale of machinery / factory land and realisation of amount would satisfy the outstanding debt, we are inclined to accept the affidavit of undertaking dated 14.02.2017, and direct the writ petitioner to honour the commitment made before this Court, for making payment of Rs.62 Lakhs, within one month from today.

15. Inasmuch as the affidavit of undertaking dated 14.02.2017 is accepted, possession notice dated 05.07.2016, issued under Section 13(4) of SARFAESI Act, 2002, in respect of the residential property, is set aside.

16. On the contention of Mrs.Ananda Gomathy, learned counsel for the respondent bank that interest from 29.02.2016 for 2 term loan account and from 21.03.2016 for cc account plus interest and other charges thereon, has not been set out in the affidavit of undertaking dated 14.02.2017, we make it clear that if there is any outstanding, the bank may take appropriate action, as against the primary security and collateral security/factory land, for which two separate possession notices dated 05.07.2016, have already been issued and extracted supra.

17. Mrs.Ananda Gomathy, learned counsel for the respondent bank fairly submitted that if there is any outstanding amount to be paid, M/s.Sri Dhivyasowmya Paper Boards, 2nd respondent firm is at liberty to approach the bank for settlement and that the same would be considered.

18. Placing on record the undertaking, possession notice dated 05.07.2016 issued under Section 13(4) of SARFAESI Act in respect of the residential property offered as collateral security by the writ petitioner / guarantor Shri.R.Murugan, is set aside. However, we make it clear that if the writ petitioner / guarantor fails to honour the commitment, bank is at liberty to proceed in accordance with law.

19. The writ petition is disposed of on the above terms. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

TO:

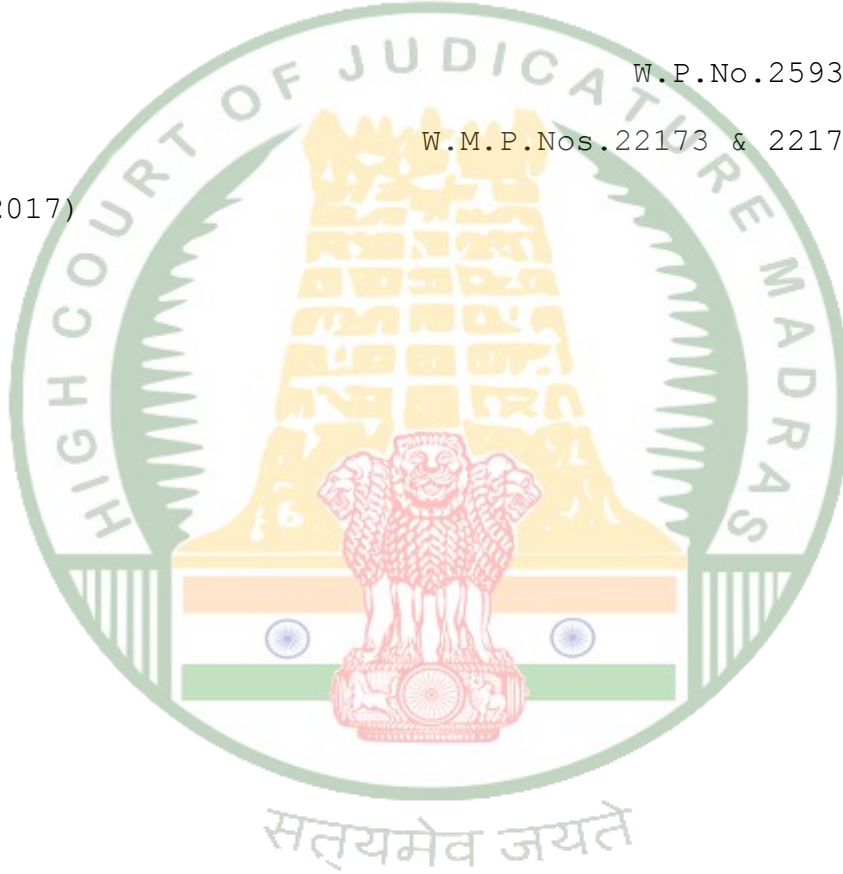
The Authorised Officer,
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No.56, 57 - Theppakulam Street,
Sankari Road,
Tiruchengode - 637 211
Nammakal District.

+1cc to Mr.Kalaivanan, Advocate sr.9447

+1cc to M/s.Ananda Gomathy ,Advocate sr.9478

rk(co)
ss(28/02/2017)

W.P.No.25931 of 2016
and
W.M.P.Nos.22173 & 22174 of 2016



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