

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM

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

W.P.NO.28408 OF 2016
AND CONNECTED MISCELLANEOUS PETITIONS

Mukesh Infoserve Pvt. Ltd.,
Having office at No.4,
Venkatarathinam Nagar Extension,
1st Street, Adyar,
Chennai - 600 020.
Rep. by its Director V.S.Varadarajan ... Petitioner

VS.

- 1.IDBI Bank Limited
Rep. By its Deputy General Manager
Merupo Vijayasekar Babu
Specialised Corporate Branch
No.7, Chevaliar Sivaji Ganesan Road,
T.Nagar, Chennai - 600 017.
- 2.The Chief Metropolitan Magistrate
Allikulam,
Chennai - 600 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records pertaining to the orders passed by the 2nd respondent the learned Chief Metropolitan Magistrate, Allikulam, Chennai in CrI.M.P.No.1814 of 2016 dated 30.03.2016 and quash the same as illegal.

For Petitioner : Mr.T.Surendran
For Respondent-1 : Mr.Shivakumar

O R D E R
(ORDER OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the order dated 30.03.2016, passed in CrI.M.P.No.1814 of 2010, by the learned Chief Metropolitan

Magistrate, Allikulam, Chennai, the second respondent herein, the petitioner has come up with the present writ petition.

2. The writ petitioner company availed loan facilities from the first respondent Bank and has failed in repayment. Therefore, the first respondent Bank has issued a demand notice dated 30.11.2015 under Section 13(2) of the SARFAESI Act calling upon the writ petitioner to pay a sum of Rs.15,85,43,965.46/- to which, the petitioner company has made a representation dated 26.12.2015, and another letter dated 29.01.2016. According to the writ petitioner, the said representations were not considered. Without passing orders on the representations, possession notice under Section 13(4) of the SARFAESI Act was issued on 08.02.2016 for three properties respectively and the same was also published in the newspapers in both languages.

3. The writ petitioner, aggrieved by the possession notice, issued under Section 13(4) of the SARFAESI Act, filed an appeal before the Debts Recovery Tribunal - II, Chennai, in S.A.No.33 of 2016 and an order of status-quo was granted on condition to pay 15% of the due amount on or before 01.04.2016 and the matter was posted for hearing on 04.04.2016. However, the conditional order could not be complied with due to various intervening factors.

4. In the meantime, the first respondent Bank has taken steps to take forcible possession of the properties by filing an application under Section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate, the second respondent herein. The second respondent, without considering the factual matrix of the case, has ordered forcible possession of the secured assets and to break open the lock by appointing an Advocate Commissioner and further directed the Station House Officer, Adyar Police Station to assist the Advocate Commissioner to evict the occupants. Challenging the said order, the present writ petition has been filed, on various grounds.

5. The writ petitioner has filed a Criminal Revision Case in CrI.R.C.No.739 of 2016 before this Court for setting aside the order dated 30.03.2016 passed in CrI.M.P.No.1814 of 2016 by the second respondent and has subsequently, withdrawn the same on 08.06.2016. Thereafter, the petitioner has filed the present writ petition on 03.08.2016 for the very same relief.

6. Record of proceedings would show that when the matter was posted for admission on 16.08.2016, this Court has granted an interim order of status-quo, on a condition to comply with the undertaking given by the writ petitioner to pay Rs.1 Crore or if possible to the extent of Rs.2 Crores and the matter was directed to be listed on 23.08.2016. The interim order was

further extended on 23.08.2016 till the next date of hearing.

7. When the matter is taken up for hearing today, the learned counsel appearing for the first respondent Bank would submit that the interim order granted by this Court was not complied with till date and the writ petitioner has failed to honour the undertaking given before this Court. Further, the petitioner has suppressed the fact that he has already filed a Criminal Revision Case before this Court challenging the very same order. He would further submit that the writ petitioner is indulging in forum shopping.

8. In support of his contention, the learned counsel for the first respondent Bank has relied on a judgment of the Hon'ble Supreme Court in KANAIYALAL LALCHAND SACHDEV AND OTHERS VS. STATE OF MAHARASHTRA AND OTHERS [2011 (2) SCC 782] and a Division Bench judgment of this Court in M.R.MOTOR COMPANY VS. THE FEDERAL BANK LTD., AND OTHERS [W.P.No.40445 of 2016 decided on 18.11.2016] wherein one of us (S.Manikumar, J) has passed an order following the judgment of the Supreme Court cited supra.

9. In M.R.MOTOR COMPANY's case (cited supra) it is clearly mentioned that the action under Section 14 of the SARFAESI Act constitutes an action after the stage of 13(4) and therefore, the same would fall within the ambit of Section 17(1) of the SARFAESI Act. It has also been held that when there is an efficacious remedy available under the Act, without exhausting the remedy, the writ petition is not maintainable. Further, the Supreme Court has categorically held that the litigants cannot be permitted to bypass the statutory remedy available under the SARFAESI Act and take recourse to the proceedings under Article 226 of the Constitution of India. Therefore, the writ petitioner must have exhausted the alternative remedy.

10. Further, the petitioner has failed to comply with the undertaking given before this Court to make payment of Rs.1 Crore to the first respondent Bank to show its bonafides and so also has challenged the very same order in Crl.R.C.No.739 of 2016 and has withdrawn it without any liberty on 08.06.2016 and has suppressed the factum before this Court. Therefore, it is very clear that the writ petitioner, without exhausting the remedy available under the statutes, has indulged in dilatory tactics. We consider this attitude of the writ petitioner, is nothing but an attempt to protract the proceedings and thereby defeating the object of the very Act itself. Moreover, the suppression of material facts of approaching various judicial forum for redressal of grievance on the very same cause of action is nothing but forum shopping and abuse of due process of law. Hence, we are of the view that the writ petition is not maintainable for suppression of facts and forum shopping.

11. Considering the factual background of the case as mentioned above and in view of the judgment of the Hon'ble Supreme Court cited supra, we are of the considered view that the writ petition is not maintainable for non exhaustion of alternative remedy and also for other reasons expressed above.

12. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

sd/
Assistant Registrar(CS III)

/true copy/

Sub Assistant Registrar

TK
To

1.The Chief Metropolitan Magistrate
Allikulam, Chennai - 600 003.

+1cc to Mr.Shivakumar & Suresh, Advocate SR.No.7232
+1cc to MR.T.Surendran, Advocate SR.No.7090.

W.P.NO.28408 OF 2016

RSI (CO)
GN(17/02/2017)

सत्यमेव जयते
WEB COPY