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.28748 of 2016

Sheela Suganthi Metild ... Petitioner

Vs

1. The Authorised Officer
   CITI Bank
   Club House Road
   Anna Salai
   Chennai 600 002.

2. The Reserve Bank of India
   Fort Glacis
   16 Rajaji Salai
   Chennai 600 001. ... 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 first respondent in issuance of the notice dated 18/6/2016 with regard to the petitioner's residential property situated at Plot No.12 A in land measuring an extent of 1224 sq.feet, situated at Ramani Nagar layout, comprised in Survey Nos.1473/1, 1474/5 & 1474/9 and New Survey No.1473/1A1A6 of Madhavaram Village as per Patta No.4030 and quash the same.

For petitioner ... Mr.A.Kalaivanan
For respondents ... Mr.Arunachalam
for R.1.

O R D E R

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

Petitioner/Borrower has challenged the possession notice, issued under Sub-Section 4 of Section 13 of the SARFAESI Act, dated 18/6/2016, by the Authorised Officer of Citi Bank.

2. Facts disclose that the petitioner, owner of a residential building, at Plot No.12 A, measuring an extent of 1224 Sq.feet, situated at Ramani Nagar layout, comprised in S.Nos.1473/1, 1474/5 & 1474/9 and New Survey No.1473/1A1A6 of Madhavaram Village, as per Patta No.4030, has availed home loan facility by mortgaging the above said residential property with Citi Bank, Annasalai, Chennai.

3. CITI Bank, Chennai, vide letter, dated 15/3/2004, sanctioned the loan, for a sum of Rs.3,50,000/-. According to the petitioner, loan was repayable in 144 equal instalments at Rs.3,789/- including interest at the rate of 8%. The petitioner was prompt in making payments. Out of 144, agreed equal instalments, 138 monthly instalments have already been paid. A sum of Rs.22,734/- alone was due towards the outstanding loan account No.410608. The first respondent, issued a notice under Section 13 (2) of the SARFAESI Act, 2002 dated 18/2/2016, stating that loan Account No.410608 has been declared as Non Performing Asset (NPA), as on 31/1/2016 and the Bank had called upon the writ petitioner to pay a sum of Rs.2,53,456/- as total outstanding due, as on 29/2/2016.

4. In response to the notice issued under Section 13 (2) of the SARFAESI Act, the petitioner sent a reply, through their counsel, on 21/4/2016, stating that the petitioner had already paid 138 instalments out of 144, therefore covering 95% of the amount due, i.e., Rs.5,22,882/-. In reply, dated 21/4/2016, writ petitioner has also requested the first respondent, to furnish statement of accounts as to how such a huge amount of Rs.2,53,456/- was arrived at.

5. Responding to the above, the Bank had sent a reply, dated 3/5/2016, through their counsel, stating that during the pendency of the sanctioned loan, there was a change of rate of interest and therefore, the writ petitioner is liable to pay 229 instalments, instead of 144 instalments, as agreed to upon. Bank has also stated that 92 instalments were due and payable.

6. Responding to the same, the writ petitioner sent a rejoinder, dated 9/6/2016 to the Bank stating that rate of interest has been revised, without the knowledge and consent. On the above facts and circumstances, instant writ petition has been filed.

7. Though Mr.A.Kalaivanan, learned counsel for the writ petitioner, reiterated the above said grounds and prayed to set aside the notice, issued under Sub-Section 4 of Section 13 of the SARFAESI Act, 2002, this Court is not inclined to accept the

said contentions and issue any certiorari, as prayed for. Repeatedly, the Hon'ble Supreme Court has held that when there is an efficacious and alternate remedy, under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act or Securitisation And Reconstructions of Financial Assets Act, 2002, as the case may be, writ petition is not maintainable. We deem it fit to consider the following decisions.

(i) In Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW 86, this Court held as follows:

> "This Court has repeatedly held in a number of decisions right from the decision in Division Electronics Ltd. v. Indian Bank (DB) Markandey Katju, C.J., (2005 (3) C.T.C., 513), that the remedy of the aggrieved party as against the notice issued under Section 13(4) of SARFAESI Act is to approach the appropriate Tribunal and the writ petition is not maintainable. The same position has been succinctly stated by the Hon'ble the Supreme Court in Transcore v. Union Of India (2006 (5) C.T.C. 753) in paragraph No. 26 wherein the Supreme Court has held as under: —
>
> "The Tribunal under the DRT Act is also the Tribunal under the NPA Act. Under Section 19 of the DRT Act read with Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (1993 Rules), the applicant bank or FI has to pay fees for filing such application to DRT under the DRT Act and, similarly, a borrower, aggrieved by an action under Section 13(4) of NPA Act was entitled to prefer an Application to the DRT under Section 17 of NPA." (Emphasis added) "

(ii) In Union Bank of India v. Satyawati Tondon, reported in 2010 (5) LW 193 (SC), the Hon'ble Apex Court has held as follows:

> "16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos. 1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs. 50,000/- was paid by respondent No. 1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not

honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section 13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No. 1.

17. There is another reason why the impugned order should be set aside. If respondent No. 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for re-dressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1=1999-2-L.W. 200 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after

considering all the relevant parameters and public interest, pass appropriate interim order.

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act.

29. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy."

(iii) In Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India, reported in (2010) 5 LW 560, the Court held as follows:

"The petitioner has filed this writ petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the possession notice dated 16.09.2004 issued by the respondent under the SARFAESI Act and consequently direct the respondent to effect the settlement in accordance with the SBI OTS-SME 2010 Scheme as contained in its letter dated 18.03.2010 and unconditionally restore physical possession of the six rooms taken physical possession by it at No. 29, Sarojini Street, T. Nagar, Chennai - 17 with such damages.

... When a specific forum has been created which enables the borrower to challenge the action of the financial institution by filing necessary petition under Section 17, the petitioner is not entitled to invoke the writ jurisdiction of this Court. What could not be achieved by the petitioner by filing a petition before the appropriate Forum, which is at present barred by period of limitation, could not be permitted to be achieved by extending the jurisdiction conferred to this Court under Article 226 of The Constitution of India. Above all, since the petitioner has violated the terms and conditions of the loan by transferring the property in favour of her son, this Court is not inclined to entertain the petition.

7. In this connection, we are fortified by the decision of the Honourable Supreme Court reported in (United Bank of India v. Satyawati Tondon and others) III (2010) BC 495 (SC) = 2010-5-L.W. 193, wherein in para Nos. 17 and 18, it was held thus:—

"17. …Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution

to issue to any person or authority, including in appropriate cases, any Government directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order, (underlining added).

9. In the light of the above decision of the

Honourable Supreme Court, the writ petition filed by the petitioner seeking to set aside the possession notice issued to her long back is legally not sustainable. We are of the considered view that this petition has been filed only to drag on the proceedings and to evade repayment of the loan. That be so, the petitioner has no legal right to compel the bank to accept the one time settlement offer made by her.

13. The present case is identical in nature and it is covered by the judgment of the Supreme Court mentioned supra. In this case, the petitioner has violated the condition of mortgage by transferring the secured asset in favour of her son and therefore, as per clause 1.7 of the OTS Scheme offered by the bank, the petitioner has to be excluded from extending the benefits of the scheme which was rightly done by the bank. In any event, without exhausting the alternative remedy, the relief sought for by the petitioner by invoking the discretionary remedy under Article 226 of The Constitution of India cannot be granted."

8. All the grounds raised in the supporting affidavit to the writ petition, challenging the possession notice, under Sub-Section 4 of Section 13 of the SARFAESI Act, 2002, can be raised by way of an application under Section 17 (1) of the SARFAESI Act, 2002, r/w. Rule 9 of the Security Interest (Enforcement) Rules, framed thereunder.

9. Mr.A.Kalaivanan, learned counsel for the writ petitioner submitted that subsequent to the filing of the instant writ petition, the first respondent Bank has now taken steps, to take actual possession of the residential property mortgaged.

10. Record of proceeding shows that while ordering notice returnable in four weeks, a Division Bench of this Court, vide order dated 18th August 2016 has granted stay for a period of four weeks. Writ petition has not been listed thereafter.

11. In the light of the discussion and the decisions stated supra, writ petition is not maintainable, on the grounds of alternative and efficacious remedy. It is open to the petitioner to challenge the notice, dated 18/6/2016, in the manner known to law. While doing so, the subsequent events can also be brought before the forum for passing necessary interim orders.

12. In the result, this writ petition is dismissed.

Interim order granted already stands vacated. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Authorised Officer
CITI Bank, Club House Road, Anna Salai, Chennai 600 002.

2. The Reserve Bank of India, Fort Glacis, 16 Rajaji Salai
Chennai 600 001.

+1cc to Mr.M. Arunachalam, Advocate, S.R.No.144
+1cc to Mr.A. Kalaivanan, Advocate, S.R.No.502

sr(CO)
md(30/01/2017)

Writ Petition No.28748 of 2016