

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.6.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.35874 of 2016

M/s. Marg Realities Limited
rep. by its Authorised Representative
Rabindra Kumar Samal
Regd. Office at Sri Sai Subhodaya Apartments
No.57/2B, East Coast Road
Thiruvanmiyur
Chennai 600 041.

.. Petitioner

Vs.

1. Authorised Officer
Edelweiss Asset Reconstruction Company Ltd.
rep. by its Director Rasheeshchandrakant Shah
Edelweiss House, Off. CST Road
Kalina, Mumbai 400 098.

2. Edelweiss Financial Services India Limited
rep. by its Chairman and CEO
Rasheeshchandrakant Shah
Edelweiss House
Off. CST Road
Kalina, Mumbai 400 098.

.. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records from the file of the 1st respondent relating to the possession notice under Section 13(4) of SARFAESI Act dated 01.7.2016 and quash the same.

For Petitioner : Mr.Muralikumaran
For M/s. Akhil R Bhansali
For Respondent-1 : Mr.M.S.Krishnan, S.C.
For Ms.S.Indumathi Ravi
For Respondent-2 : Not ready

ORDER

(Made by Huluvadi G.Ramesh,J)

The petitioner seeks a writ of Certiorari calling for the records from the file of the 1st respondent relating to the possession notice under Section 13(4) of SARFAESI Act dated 01.7.2016 and to quash the same.

2. Heard Mr.Muralikumaran, learned counsel appearing for the petitioner and Mr.M.S.Krishnan, learned senior counsel appearing for the first respondent.

3. The petitioner is the owner of the schedule property. The petitioner availed loan by creating a charge over the property and remitting the rent received from the schedule property towards repayment of loan availed by it. Thereafter, the petitioner stood as a guarantor for the loan borrowed by Marg Ltd, which is its sister concern, by mortgaging the scheduled property as collateral creating a second charge upon the said property. On 01.7.2016, the first respondent issued possession notice under Section 13(4) of the

SARFAESI Act, without issuing notice under Section 13(2). Though the petitioner submitted its objection on 25.7.2016 and requested to provide a copy of the demand notice, the first respondent did not furnish the same stating that they had already served a copy. Therefore, contending that the action of the first respondent to attach the schedule property, by issuing of notice under Section 13(4) of the SARFAESI Act, without issuing notice under Section 13(2), is in violation of the Rules, has come up with the above writ petition.

4. It appears that the petitioner has filed a suit before the civil Court and obtained an order of injunction and that when the order of injunction is in force, the schedule property has been entrusted to the first respondent by invoking the provisions of Section 13(4) of the Act, without serving notice under Section 13(2) of the Act, which is non-est in law.

5. We are, therefore, of the considered view that the petitioner ought to have approached either the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal, as the case may be, as the writ petition is not maintainable. Therefore, liberty is given to the petitioner to challenge the wilful act/illegality committed by the first respondent, if any, before the appropriate forum, within four weeks from the date of receipt of a copy of this order.

HULUVADI G.RAMESH,J,
and
RMT. TEEKAA RAMAN,J

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6. The writ petition is disposed of accordingly. There shall be no order as to costs. Consequently, WMP No.30813 of 2016 is closed.

Index : Yes/No
Internet: Yes/No

(H.G.R.J.) (T.K.R.J.)
22.6.2017

kpl

W.P.No.35874 of 2016.

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