

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

Writ Petition No.44146 of 2016

WMP No.37980 of 2016

R.K.Rajkumar
Proprietor
M/s.Koghima Garments
14, Bashyam Street
Vetri Nagar
Chennai 600 082

... Petitioner

vs.

1.The Registrar
Debts Recovery Tribunal - III
Spencer Towers
Chennai 600 002

2.The Authorised Officer
State Bank of Hyderabad
Regional Office
No.4, Santhome High Road
Mylapore, Chennai 600 004

3.State Bank of Hyderabad
Rep. by its Branch Manager
56/12 S.R.P. Koil Street
Opposite to bus depot
T.V.K.Nagar
Chennai 600 082

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the respondents particularly that of the 1st respondent in S.A. SR No.5001 of 2016 dated 02.11.2016 and 07.12.2016, quash the same and consequently direct the 1st

respondent to receive and file the above S.A. SR No.5001 of 2016 and decide the same on merits.

For Petitioners : Mr.T.S.Rajamohan
For Respondents : Mr.M.L.Ganesh for R3

ORDER
(delivered by S.MANIKUMAR, J)

On 23.12.2016, we passed the following order:

"Earlier when the writ petitioner challenged notice under Section 13(2) of the SARFAESI Act, 2002, a Hon'ble Division Bench of this Court vide order in W.P.No.25722 of 2016 dated 18.08.2016, directed the writ petitioner to approach the Debts Recovery Tribunal-III, Chennai, within fifteen days from the date of receipt of a copy of this order and raise all their contentions before the DRT. This Court further directed that until a decision is taken by the DRT, parties were directed to maintain status quo as on the date of the order.

2. Subsequently, when the writ petitioner filed the appeal S.A.Sr.No.5001 of 2016, against the demand notice dated 05.05.2016, issued under Section 13(2) of the SARFAESI Act, 2002, Registry of the tribunal vide proceedings dated 02.11.2016, has returned the same stating that notice issued under Section 13(2) of the SARFAESI Act, 2002, would not give rise to a cause to file the appeal and that the same is not maintainable. While doing so, the tribunal has also held that the purported appeal is returned as receiving the same would result in transgressing the statutory powers entrusted to the tribunal by the legislature.

3. Contention of the petitioner is that subsequently, the State Bank of Hyderabad, Thiru Vi Ka Nagar Branch, the 3rd respondent herein has issued a notice under Section 13(4) of the SARFAESI Act, 2002 dated 02.11.2016 and that the returned SA.Sr.No.5001 of 2016 was represented on 15.11.2016, making an amendment to the prayer as hereunder "to declare the notice dated 02.11.2016, issued under Section 13(4) of the SARFAESI Act, 2002 as illegal and null and void. Registry of the tribunal has returned the papers represented by the writ petitioner stating that "Hon'ble Presiding Officer, has already disposed of this SA by returning it vide order dated 02.11.2016."

4. Being aggrieved by the return, instant writ petition has been filed for a direction to the Registrar, DRT-III, Chennai to receive and file S.A.Sr.No.5001 of 2016 and to contest the same on merits. Added further Mr.T.S.Rajamohan, learned counsel for the petitioner submitted that the tribunal had only returned the papers in S.A.Sr.No.5001 of 2016, filing challenging the notice issued under Section 13(2) of the SARFAESI Act, 2002 and when the appeal papers were represented, challenging the notice issued under Section 13(4) of the SARFAESI Act, 2002, dated 02.11.2016, Registry ought to have taken the same on record and processed the same. According to him, registry was not right in onceagain returning the paper.

5. During the course of hearing, Mr.T.S.Rajamohan, learned counsel for the petitioner also produced the represented appeal papers, which contains the amended prayer, challenging notice issued under Section 13(4) of the SARFAESI Act, 2002.

6. We have perused the proceedings dated 02.11.2016. When appeal challenging the notice issued under Section 13(2) of the SARFAESI Act, 2002 dated 05.05.2016, is made, Registry of the tribunal has only returned the papers stating that appeal is not maintainable. Return of the appeal papers is justified in the light of the judgment of the Hon'ble Supreme Court in Mardia Chemicals v. Union of India, reported in AIR 2004 SC 2371 : 2004 (4) SCC 311, which with due respect, might have been taken note of by the Hon'ble Division Bench of this Court. However, if the appeal papers are represented with an amended prayer challenging the notice issued under 13(4) of the SARFAESI Act, the same ought to have been processed. In that view of the matter, we are inclined to issue notice to the the State Bank of Hyderabad, Thiru Vi Ka Nagar Branch, the 3rd respondent herein, through Court and Privately, returnable by 02.01.2017.

7. Though, Mr.T.S.Rajamohan, learned counsel for the petitioner prayed for interim order based on the order made in W.P.No.25722 of 2016, in view of the judgment of the Hon'ble Supreme Court in Mardia Chemicals, with due respect, we are not inclined to do so.

8. Post on 02.01.2017."

2. Counter affidavit has been filed by the third respondent, namely, State Bank of Hyderabad, setting out the details of loan borrowed, default and the events leading to issuance of notice under Section 13(4) of the SARFAESI Act, 2002.

3. As observed in the foregoing paragraphs of the order of this court dated 23.12.2016, Tribunal has only returned the application filed. Had it been a case of rejection, this court would have sustained the same. Inasmuch as papers have only been returned, writ petitioner, can always re-present the same with an amended prayer challenging Section 13(4) notice and it is for the Registry of the Debts Recovery Tribunal to process to the same, in accordance with the statutory provisions and the procedural rules. Mr.M.L.Ganesh, learned counsel for the bank has fairly consented for the above said order being passed.

4. Proceedings dated 07.02.2016 is set aside. Petitioner, is permitted to re-present the returned S.A.SR No.5001/2016, within one week from the date of receipt of a copy of this order. On such re-presentation, Registry of the Debts Recovery Tribunal - III, Chennai is directed to process the same in accordance with the provisions of SARFAESI Act, 2002 and the Rules made thereunder.

Writ petition is disposed of accordingly. However, there shall be no order as to cost. Consequently, the connected miscellaneous petitions closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Debts Recovery Tribunal - III
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2.The Authorised Officer
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Chennai 600 082

+2cc to Mr.T.S. Rajamohan, Advocate, S.R.No.3893,3843

vsn (CO)
md(08/02/2017)

W.P.No.44146 of 2016



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