IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE V.BHAVANI SUBBARAYAN

Writ Petition No.17014 of 2017

Akshayaa .... Petitioner

vs.

1. The Authorised Officer,
   Indian Bank,
   Assistant General Manager,
   Anna Nagar Branch,
   Chennai 600 040.

2. The Manager,
   Indian Bank,
   Anna Nagar Branch,
   W-100 II Avenue,
   Anna Nagar,
   Chennai 600 040. .... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to re-call the demand notice, dated 04.05.2017, issued under Section 13(2) of the SARFAESI Act, against the petitioner.

For Petitioner : Mr.M.Jaikumar

ORDER

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

Notice under Section 13(2) of the SARFAESI Act, is challenged by the writ petitioner-borrower, on the grounds, inter alia that the Bank has not followed the guidelines of Reserve Bank of India, relating to asset classification.

2. Supporting the above, Mr.M.Jaikumar, learned counsel for the petitioner submitted that declaration of accounts, as Non-Performing Assets, is not on the basis of guidelines of the Reserve Bank of India. Except the above, no other ground is urged.

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

3. Material on record discloses that the borrower has defaulted and the Bank, vide letter, dated 02.02.2017, has addressed Mrs.Lakshmi, Mr.Diwakar and Mr.T.P.Damodaran, Partners of M/s.Akshaya Supermarket, Chennai, classifying their account as NPA and thereafter, notice, dated 04.05.2017, under Section 13(2) of the SARFAESI Act, 2002, has been issued, calling upon the partners to pay

a sum of Rs.1,00,34,012/-, being the outstanding amount, within 60 days, from the said notice. Responding to the above, the borrower is stated to have sent a representation, dated 12.05.2017, under Section 13(3A) of the said Act, requesting for re-calling the notice. The said request has not been accepted and accordingly, a communication, dated 29.05.2017, has been issued to comply with the norms and regulations of SARFAESI Act, 2002 and after the due date, ie., 60 days of notice, the Bank would take possession of the property, under mortgage and proceed for sale. The bank is yet to take action, under Section 13(4) of the SARFAESI Act, 2002. At this juncture, the instant writ petition has been filed, with a prayer, to re-call the demand notice, dated 04.05.2017, issued under Section 13(2) of the SARFAESI Act.

4. The Hon'ble Supreme Court in **Mardia Chemicals v. Union of India** reported in **AIR 2004 SC 2371 : 2004(4) SCC 311** has held that notice under Section 13(2) would not give rise to a cause to challenge. However, as per Section 13(3A) of the SARFAESI Act, 2002, if, on receipt of the notice under sub-section (2), if the borrower makes any representation or raises any objection, the secured creditor

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shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower: PROVIDED that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17 of the Act.

5. In view of the above discussion and decision, this Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

(S.M.K., J.) (V.B.S., J.)
12.07.2017

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