BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.[MD].No.18862 of 2015
and
M.P.[MD]No.1 of 2015

S.Chinna Kannan : Petitioner

Vs.

1.The District Collector,
Tirunelveli District, Tirunelveli.

2.State Bank of India,
Through its Branch Manager,
Tirunelveli Branch,
No.25,25A, Swami Nellaiappar High Road,
Tirunelveli-627 001.

3.The Authorized Officer,
Chief Manager,
State Bank of India, Tirunelveli.

4.S.S.Shine. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the demand notice dated 07.05.2015 as well as the consequential possession notice dated 21.09.2015 on the file of the 3rd respondent and quash the same and consequently directing the 2nd respondent Bank to return the entire original document No.2906/1955 dated 27.10.1955 relating to the property comprised in survey No.524 part, Keelanatham Village, bearing Door No.3/4, Yadava Street, Keelanatham Melur, Tirunelveli District which were deposited in the 2nd respondent Bank under the Memorandum of Agreement relating to deposit of title deeds dated 01.03.2013 registered as Document No.1097/13 on the file of Sub-Registrar Office, Palayamkottai.

For Petitioner : Mr.M.P.Senthil

For R1 : Mr.V.Muruganantham,
Additional Government Pleader.

For R2	:	Mr.S.Sethuraman, Standing Counsel
For R3	:	No Appearance
For R4	:	Mr.R.Murugan.

O R D E R

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[Order of the Court was made by T.S.SIVAGNANAM, J.]

Heard Mr.M.P.Senthil, learned counsel appearing for the petitioner, Mr.V.Muruganantham, learned Additional Government Pleader, appearing for the 1st respondent, Mr.S.Sethuraman,learned Standing Counsel appearing for the 2nd respondent and Mr.R.Murugan, learned counsel appearing for the 4th respondent.

2.The petitioner is a borrower of the loan from the State Bank of India, Tirunelveli Branch and challenge, in this Writ Petition, is to a notice issued under Section 13(2) of Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

3.Mr.S.Sethuraman, learned Standing Counsel appearing for the respondent/bank raised a preliminary objection with regard to the maintainability of the Writ Petition contending that the proceedings, which have been challenged is only a notice issued under Section 13(2) of SARFAESI Act, 2002 and if the petitioner/borrower is aggrieved by any of the “measures” initiated by the Bank, he may be permitted to approach the Debt Recovery Tribunal to consider his preliminary objection.

4.We have elaborately heard the learned counsel for the parties including the 4th respondent, who is the Chief Manager, presently working as Deputy Manager of the respondent/bank in the Overseas Branch at Kochi, Ernakulam, who has been impleaded in the personal capacity.

5.The case of the petitioner is that the entire loan amount initially borrowed is Rs.9,00,000/- (Rupees Nine Lakhs Only) and the same has been fully settled and the receipt for redemption of mortgage/on discharge of the loan has been executed by the Chief Manager dated 27.10.2014, registered as document No.4769 of 2014 on the file of the Sub-Registrar, Tirunelveli. It is not in dispute that the petitioner had availed cash credit facility of Rs.9,00,000/- and to secure the said transaction, two properties were mortgaged; one property standing with the mother of the petitioner bearing Door No.131/A and another property standing in the name of the petitioner. A proposal was given to reduce the cash credit limit to Rs.5,00,000/-(Rupees Five Lakhs Only). The respondent/bank released one of the properties vide note dated 16.10.2014, which was signed by the 4th respondent on the said date recommending the proposal, which was approved by the Chief Manager, V.G.Venkitachalam on 17.10.2014. Subsequently, another representation was made by the petitioner to increase the cash credit limit to Rs.9,00,000/- vide representation dated 19.10.2014. Subsequently, a legal notice was issued by the petitioner to the Chief Manager of the respondent/bank on 23.05.2015 wherein, claimed that the entire loan, which was availed earlier has been cleared and in support of the same, reliance was placed on the discharge receipt dated 27.10.2014 signed by the bank officials before the Sub-Registrar of Registration. A reply notice has been sent by the bank, wherein there is reference to some understanding between the borrower and the bank by which a discharge had to be executed to be followed by deposit of title deeds for increasing cash credit limit.

6.In our considered view, the respondent/bank being a nationalized bank, there cannot be any "understanding" between the bank and the borrower. If that had really happened, the question would be as to whether the bank officials were involved on such "understanding" apart from discharging their duties and responsibilities. Secondly, whether the discharge receipt, which was registered as Document No.4769 of 2014 is a genuine receipt for discharging the entire loan outstanding amount or executed for certain other purposes is also a matter, which is a serious disputed question of fact. Thus, the respondent/bank cannot examine the present case as a pure lender-borrower dispute as it appears that certain officials of the bank, who are also part of the transaction entered into certain "understanding" with the borrower.

7.Therefore, we are of the firm view that the impugned notice issued under Section 13(2) of the SARFAESI Act cannot be enforced as on date. The petitioner cannot be relegated to the Debt Recovery Tribunal, which would have no jurisdiction to adjudicate the present dispute. Therefore, we direct the respondent/bank to keep the notice issued under the SARFAESI Act for taking possession under abeyance and direct the concerned official of the bank to lodge a compliant before the District Crime Branch, Tirunelveli, placing all particulars, who shall take the complaint on file and enquire into the same and if *prima facie* criminal offence is made out, then the case can be registered and proceeded in accordance with law. Since the District Crime Branch, Tirunelveli is not a party to the proceedings, the Registry is directed to communicate a copy of this order to the Inspector of Police, the District Crime Branch, Tirunelveli for necessary action. The bank shall lodge the complaint within a period of two weeks from the date of receipt of a copy of this order. It is made clear that the Inspector of Police, the District Crime Branch shall enquire into the matter thoroughly and consider the stand taken by the petitioner/borrower, the bank as well as the 4th respondent.

8.With this observation, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The District Collector,
Tirunelveli District, Tirunelveli.

2.The Branch Manager,
State Bank of India,
Tirunelveli Branch,
No.25,25A, Swami Nellaiappar High Road,
Tirunelveli-627 001.

3.The Authorized Officer,
Chief Manager,
State Bank of India, Tirunelveli.

4.The Inspector of Police,
District Crime Branch,
Tirunelveli

+One cc to The Special Government Pleader, SR.No.58832
+One cc to Mr.S.Sethuraman, Advocate, SR.No.58784
+One cc to Mr.R.Murugan, Advocate, SR.No.59045
+One cc to Mr.M.P.Senthil, Advocate, SR.No.58789

MYR/ls
RL/9C/4P/JC/SAR1/16/6/2017

ORDER MADE IN
W.P.[MD].No.18862 of 2015
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