



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.14253 of 2017 and
W.M.P.(MD).Nos.11166 to 11168 of 2017

M/s.Sabari Realtors Private Limited,
Rep. by its Authorised Signatory,
Old No.28, New No.30, 6th Main Road,
Raja Annamalai Puram, Chennai 600 028.

... Petitioner

Vs.

Housing Development Financial Corporation Ltd.,
Rep. by its Authorised Officer,
2nd floor, ITC Centre, 760, Anna Salai,
Chennai 600 002.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent comprised in the proceedings of the respondent dated 12.05.2017 and 27.07.2017, quash the same as arbitrary, illegal, unconstitutional, ultra-vires under the provisions of the SARFAESI Act and consequently direct the respondent to permit the petitioner to submit reasonable settlement proposal as contained in the letter dated 27.07.2017 for consideration within a time framed to be fixed by this Court.

For petitioner : Mr.C.V.Subramaniam

O R D E R

[Order of the Court was made by K.K.SASIDHARAN, J.]

The challenge in this Writ Petition is to the notice dated 12.05.2017 and the communication dated 27.07.2017, whereby and whereunder, the respondent informed the petitioner that they would take possession of the secured asset at 10.00 AM, on 03.08.2017. The bank also informed the petitioner that it would not be possible to entertain the request for payment in installments.

2. The learned counsel appearing for the petitioner contended that the petitioner has made substantial payments and even requested the bank to sanction one time settlement. According to the learned counsel on account of adverse market conditions, the petitioner is not in a position to sell the flats and repay the amount to the bank.



3. There is no dispute that the bank initiated proceedings under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, [hereinafter referred to as "the SARFAESI Act"], way back on 17.03.2016. It was followed by the possession notice dated 28.01.2017. The petitioner appears to have approached this Court in W.P.(MD).No.2906 of 2017, challenging the possession notice issued under Section 13(4) of the SARFAESI Act. This Court, by order dated 02.03.2017, permitted the petitioner to submit a representation to the bank. The bank was directed to consider the representation on merits. It is a matter of record that the representation submitted by the petitioner was ultimately rejected. It was only thereafter, the bank issued the possession notice intimating that symbolic possession of the property would be taken on 03.08.2017.

4. There is a statutory bar for challenging the reply given by the bank, pursuant to the notice issued under Section 13(2) of the SARFAESI Act. Though there is a statutory requirement to consider the representation submitted by the borrower to the notice issued by the bank under Section 13(2) of the SARFAESI Act, the statue is very clear, which provides that the reply given by the bank would not give any right to the borrower to challenge the proceedings before the Debts Recovery Tribunal. Such being the factual position, we are not in a position to entertain the Writ Petition filed by the petitioner challenging the possession notice, on the ground that the bank was not correct in rejecting the proposal for one time settlement. It is always open to the petitioner to approach the statutory authority in accordance with the provisions of the SARFAESI Act.

5. In the upshot, we dismiss the Writ Petition. We make it clear that this order would not stand in the way of the petitioner from submitting a revised proposal to the bank, as indicated in the communication dated 27.07.2017. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar AD-II()

/True Copy/

Sub Assistant Registrar

+ 1 CC TO Mr.C.V.SUBRAMANIAN, ADVOCATE IN SR No. 69070

NB/KM

TE/GT/SAR-II : 16/08/2017 : 2P/2C