BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.19445 of 2017

M/s.HDFC Bank Limited,
Rep. by its Authorized Officer,
No.110, Ceebros Buildings,
4th Floor, Nelson Manickam Road,
Aminjikarai,
Chennai - 600 029. ... Petitioner

Vs.

The District Collector,
Madurai Collectorate,
Madurai. ... Respondent

Prayer:-Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondent herein to pass necessary order in the application, dated 24.02.2017 filed by the petitioner under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, within a time frame fixed by this Court.

For Petitioner : Mr.D.Sathyaraj
For Respondent : Mr.M.Murugan,
Government Advocate.

ORDER

(Order of the Court was made by
V.BHAVANI SUBBAROYAN,J.)

This Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondent to pass necessary order in the application, dated 24.02.2017 filed by the petitioner under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, within a time frame fixed by this Court.

2.The case of the petitioner is that Krishnaveni, Lakshmi and Radhakrishnan, who availed loan from the petitioner – Bank, had failed to adhere to the terms and conditions of the Loan Agreement, dated 30.03.2015 and hence, the petitioner - Bank classified their loan account as a 'non-performing asset' and thereafter, as a secured creditor, the petitioner - Bank had issued a demand notice, dated 21.06.2016, under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to the aforesaid borrowers. Since they failed to discharge their liability in full within the period stipulated in the demand notice, dated 21.06.2016, as a secured creditor, the petitioner – Bank, according to them, is entitled to take measures for taking possession of the secured asset from the borrower under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Thereafter, the petitioner - Bank took the symbolic possession of the secured asset from the borrowers on 19.06.2016 and affixed the possession notice on the wall of the secured asset and also published the said notice, on 25.09.2016, in the daily newspaper, namely, The Hindu in English and Tamil. For taking physical possession of the secured asset, Mr.P.Kasi Viswanathan, who is the authorised officer of the petitioner – Bank, filed a petition, before the respondent - District Collector-cum-Magistrate at Madurai, on 24.02.2017, under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, since the said property is lying within the jurisdiction of the respondent. Since no action had been taken by the respondent, the petitioner has filed the present writ petition seeking the above mentioned relief.

3.The materials placed on record would go to show that the respondent - District Collector, on responding to the request made by the petitioner – Bank, has addressed a letter, dated 10.04.2017, to its Authorised Officer, seeking certain particulars to take action, which reads as follows:-

> "I invite attention to the reference cited and request you kindly to furnish the following documents/information to this office immediately.
>
> 1.Whether the secured assets was mortgaged by the loanee to the secured creditor (Bank)
>
> 2.Whether any case is pending before the High Court or any other Court.
>
> 3.Whether the borrower has leased out the mortgaged property to any other person or left on rent or to anybody without the knowledge of Bank authorities, details may be furnished.
>
> 4.Upto date encumbrance certificate.
>
> 5.It may also be clarified whether the borrowed property is still in the symbolic possession of the Bank.
>
> 6.Whether the acknowledgment for the receipt of notice under Section 13(2) has been received, if it was sent by RPAD."

4.In respect of the aforesaid letter sent by the respondent – District Collector, according to the learned counsel for the petitioner – Bank, the authorised officer of the Bank has sent a reply to the respondent – District Collector, which was not produced before this Court.

5.It is pertinent to mention that sub-clause (1) of Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, provides that where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor in accordance with the provisions of the proposed legislation, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured assets or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him possession of such assets and documents relating thereto and forward such assets and documents to the secured creditor.

6.Further, Sub-clause (2) provides that the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary for the purpose of securing compliance with the provisions of sub-clause (1).

7.Sub-clause (3) provides that no act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this clause shall be called in question in any Court or before any authority.

8.From the above reading of Sub-clause (1) to (3) of Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, it clearly empowers the District Collector to take necessary steps in respect of the property involved in the matter.

9.In view of the above fact, without expressing any opinion on the merits of the case, we direct the respondent - District Collector to take up the matter, if not disposed of earlier and decide the same on merits and in accordance with law as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order. Further, the respondent - District Collector is directed to verify as to whether there is any tenancy or lease in respect of the secured asset and if it is so, the same has to be decided in the light of the recent decision of the Honourable Supreme Court in Vishal N.Kalsaria Vs. Bank of India and others reported in (2016) 3 SCC 762, wherein, it is stated that it is a settled position of law that once tenancy is created, the tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act and the tenant cannot arbitrarily be evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant.

10.With the above directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The District Collector,
Madurai Collectorate,
Madurai.

+1cc to M/S.D.SATHYARAJ, Advocate SR.No.85223.
+1cc to Special Government Pleader in SR.No.85409.

W.P(MD)No.19445 of 2017
03.11.2017

ps
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