BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 02.09.2016
DELIVERED ON : 09.08.2017
CORAM

THE HONOURABLE MR.JUSTICE NOOTY. RAMAMOHANA RAO

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD)No.12612 of 2016

and

W.M.P.(MD) No.9531 of 2016

M.Jayaraman ... Petitioner

Vs.

Bank of Baroda,
Represented by its Chief Manager,
Namakkal Branch,
Namakkal. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Declaration, to declare that the respondent is not entitled to invoke the provisions of SARFAESI Act insofar as the property comprised in Survey Nos. 245/3(0.33 1/4 acre), 250/7 (1.64 1/2 acre), 250/14 (1.07 1/2 acre), 250/22 (0.51 3/4 acre), 250/24 (0.07 1/2 acre), 250/29 (0.26 acre), 250/36 (0.21 1/2 acre), 250/37 (0.01 1/4 acre), 250/40 (0.28 1/4 acre), 250/47 (0.26 acre), 245/5B2 (0.46 1/2 acre), 240/43 (0.08 1/2 acre) situated at Marappanaickenpatty Village within Joint I Sub-Registration District, Namakkal Taluk and in Survey No.151/2 (2.07½ acres) in Singilipatti Village, Velagoundenpatti Sub Registration District, Namakkal Registration District, totalling to 7.1275 acres, covered by the notice issued by the respondent bank alleging to exercise rights under Section 13(2) dated 07.01.2016.

For Petitioner : Mr.S.R.Rajagopal
for Mr.R.M.Renganath

For Respondent : Mr.Pala Ramasamy

ORDER

The above Writ Petition is filed for issuance of a Writ of Declaration to declare that the respondent is not entitled to invoke the provisions of SARFAESI Act, 2002, insofar as the named properties of the petitioner, situated at Mathappanayakkanpatti Village and Singilipatti Village nearly measuring an extent of 7.1275 acres, specified in the notice issued by the respondent bank under Section 13(2) of SARFAESI Act.

2. The petitioner applied for a demand loan from the respondent bank and the respondent bank sanctioned and granted a sum of Rs.50,00,000/- on 25.10.2013. It is the contention of the petitioner that the petitioner's sister offered her agricultural land as security, by way of deposit of title deeds in respect of the lands and stood as guarantor. It is the specific case of the petitioner that the lands, which were offered as security are agricultural land and shown as Punja land as per revenue records and under cultivation as per the Adangal extracts. Though the petitioner has committed default in payment of certain installments, it is contended that the assets cannot be classified as non-performing asset as per the Reserve Bank of India Rules. It is contended that the respondent bank, using the power available under SARFAESI Act, issued notice under Section 13(2) of the Act. The main contention of the petitioner is that the provisions of SARFAESI Act, is not applicable in respect of agricultural lands, by virtue of Section 31 of SARFAESI Act.

3. Since the bank has set the law in motion, by issuing the notice under Section 13(2) of SARFAESI Act and threatened to proceed further, in respect of the property which are admittedly agricultural lands as on the date of creation of equitable mortgage, the petitioner stated that he was constrained to file the Writ Petition.

4.Sum and substance, the submission of the learned counsel for the petitioner was two fold. The first submission is that by virtue of Section 31(i) of the SARFAESI Act, the agricultural lands are exempted. In other words, by creating security interest over agricultural land, the respondent bank cannot proceed against the property under the provisions of the SARFAESI Act. Secondly, there was no subjective satisfaction of the Bank as to whether the account of the petitioner has become non performing asset and whether the power under Section 13 of the Securitisation Act can be invoked.

5.The respondent bank filed a counter inter alia contending that the prayer in the Writ Petition is not maintainable under law. It is the case of the respondent that the security interest created on the date of mortgage is only a barren land, which is not an agricultural land. It was not utilized as an agricultural land for the past ten years. Since there was no agricultural operation over about ten years, the bank is entitled to invoke proceeding under SARFAESI Act. It was contended that the property mentioned in the notice did not belong to the petitioner and that therefore the petitioner is not an aggrieved person.

6. It is further submitted that the bank has received the entire due amount in the demand loan Account No.09530600008236 vide the demand draft dated 20.06.2016, for a sum of Rs.26,00,132/- and upon further payment of a sum of Rs.1,10,000/- on 04.08.2016. It was also stated that the loan account is closed. In view of the discharge of loan by making full payment the bank stated that it will not proceed with the impugned notice dated 07.01.2016 issued under section 13(2) of the SARFEASI Act.

7.Earlier by a notice dated 07.01.2016, issued to the petitioner's sister, Mrs.Santhi, it was stated that the addressee who stood as a guarantor is liable to pay the outstanding amount to the tune of Rs.25,38,694/- to the bank and that therefore the bank invoked the gurantee and called upon the guarantor to pay the amount due within 60 days from the date of receipt of the notice. In the said notice it was further stated that the addressee has created a mortgage in respect of some of the properties named in the notice to secure guarantee obligation. It is pointed out that when the principal borrower expressed his willingness to settle the entire amount which is due and sought redemption of the properties offered as security by the guarantor, the bank came up with the reply stating that Mrs.Santhi, who had given her properties as security was also a guarantor to the loan account of one M/s.CMS Educational Trust and that therefore under section 171 of the Indian Contract Act, the bank has a general lien against the properties even for securing the loan amount of M/s.CMS Educational Trust.

8. It was in the said context the writ petition was filed for a declaration to declare that the respondent is not entitled to invoke the provisions of SARFEASI Act, in so far as the properties which were offered by the guarantor as a security for the loan transaction. Though the petitioner as well as the respondent bank raised several factual issues, one of the main contentions in the writ petition is that the mortgaged properties are agricultural lands and that therefore in terms of Section 31 of SARFEASI Act, the respondent bank cannot invoke the provisions of SARFEASI Act to the properties which are only agricultural lands. However, during the pendency of this Writ Petition, this Court directed the Bank to receive money as and when deposited by the petitioner. Now it is reported that the entire loan is discharged. Having regard to the fact that the entire loan amount is settled in full and the respondent bank has conceded that there is no necessity to initiate proceedings under the provisions of the SARFEASI act, this Writ Petition has become infructuous.

9. The writ petition is therefore dimissed as infructuous. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

Bank of Baroda,
Represented by its Chief Manager,
Namakkal Branch,
Namakkal.

W.P.(MD)No.12612 of 2016
and
W.M.P.(MD) No.9531 of 2016
09.08.2017

cmr/dsk/gk
JM/SV MMS/SAR 2/12.09.2017/4P/2C