



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P. (MD) No.2557 of 2017

and

W.M.P. (MD) . No.2123 & 2124 of 2017

1.S.Chelladurai  
2.B.Jayaraj  
3.K.Ramachandran

... Petitioners

-vs-

1. Punjab National Bank  
No.880/13, Rajeshwari Towers  
Tenkasi Road, Rajapalayam-626 117  
Virudhunagar District  
rep.by its Authorised Officer

2. M/s.Valliammal Spinning Mills  
Private Limited,  
216-A, Kantharam Avenue  
Sankarankovil Road  
Rajapalayam-626 117  
Virudhunagar District  
rep.by its Managing Director

3. M/s.Jayasakthi Mills Private Limited  
4/151, Sriviliputhur - Rajapalayam Main Road  
M.P.Karisalkulam Post  
Rajapalayam-626 110  
Virudhunagar District  
Rep.by its Managing Director

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the impugned notice, dated 11.04.2016, issued by the first respondent under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (hereinafter referred to as the 'Act') as well as the consequential possession notice, dated 01.07.2016 published by the first respondent in English daily on 06.07.2016 and quash the same as illegal insofar as the properties belonging to the third respondent are concerned.



For Petitioner : Mr.M.Ajmal Khan, Senior Counsel  
for Mr.M.E.Elango

For Respondents : Mr.A.R.M.Ramesh for R1  
Mr.S.Mahendrapathy for R2 and R3

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**O R D E R****(Order of the Court by T.S.SIVAGNANAM, J.,)**

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

2. The petitioner has filed this writ petition challenging the notice, dated 11.04.2016, issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter, referred to as "the SARFAESI Act") and the consequential possession notice, dated 01.07.2016, published by the first respondent in English Daily on 06.07.2016.

3. The petitioner's challenge is primarily on the ground that the properties, which were the subject matter of the impugned notice, were the subject matter of attachment in a civil suit pending on the file of the Sub Court, Srivilliputtur, filed by the petitioner herein.

4. On 15.03.2017, when the matter came up for admission, the Court heard the matter in detail and passed the following interim order, which is in force as on date:

*"1. We have heard Mr.M.Ajmal Khan, learned Senior Counsel for Mr.M.E.Elango, learned counsel for the petitioners and M/s.R.Meena Kumari, learned counsel appearing for the first respondent.*

*2. The learned Senior Counsel appearing for the petitioners is aggrieved by the action of the first respondent-Bank in issuing a notice under Section 13(2) of the SARFAESI Act in respect of two items of property mentioned therein, namely serial Nos.1 and 7, which is owned by the third respondent. The petitioners have secured an order of attachment in respect of the said properties and civil suits are also pending before the Sub-Court, Srivilliputhur and the order of attachment is still in force and the panel counsel appearing for the first respondent-Bank while giving his opinion regards the title*



to the property, has noted the attachment orders and opined that the property owned by the third respondent is not free from encumbrance.

3. The question that would arise for consideration is as to whether the first respondent-Bank should be directed to approach the civil Court and seek leave to proceed under the SARFAESI Act. The learned counsel appearing for the first respondent seeks time to get instructions in the matter.

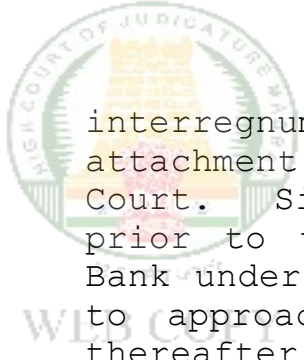
4. It is made clear that the first respondent-Bank shall not in any manner alienate the properties mentioned above, namely serial Nos.1 and 7, without the leave of this Court.

5. List the matter on 27.03.2017. Mr.K.Udhayarajan, Authorised Officer for Punjab National Bank, D.No.448A, Dr.Nanjappa Road, Coimbatore shall be present in the Court on the next hearing date."

5. The respondent - Bank filed counter affidavit and additional counter affidavit. The sum and substance is that the respondent - Bank will sufficiently and lucidly indicate about the Court attachment of the subject property and issue sale notice and whatever the proceedings initiated pursuant to the sale notice will obviously be subject to the attachment. By way of additional counter affidavit, the respondent - Bank has reiterated the said stand stating that the petitioner's right or interest over the property will noway be affected in the sale of the property under the SARFAESI Act and accordingly, the property will be auctioned only subject to the attachment. This procedure will safeguard the interest of the writ petitioners and take care of the interest of the Bank as the borrowers are liable to be pay more than rupees seven crores.

6. The learned counsel for the respondent - Bank would further submit that the impugned proceedings is only a notice under Section 13(2) of the SARFAESI Act and no sale notice has been issued and the writ petition may await such proceedings and appropriate action is taken.

7. After hearing the learned counsel for the parties and perusing the materials placed on record, we are of the view that the stand taken by the respondent - Bank is untenable. Admittedly, the order of attachment has been passed much prior to the Bank even contemplating to take action against the borrower. The Civil Court is now ceased of the matter and in the



interregnum, the respondent - Bank cannot circumvent the order of attachment by availing certain observations / directions from this Court. Since the attachment was made by the Civil Court, much prior to the auction proceedings initiated by the respondent - Bank under the provisions of the SARFAESI Act, the Bank was bound to approach the Civil Court for appropriate relief and only thereafter could proceed further in the matter.

8. We are not agreeable with the suggestion made by the learned counsel for the respondent - Bank in the additional counter affidavit as that would have an effect of diluting or interfering with the order of the Civil Court, which obviously cannot be done.

9. Further, the E-Auction sale notice, which was issued by the respondent - Bank, on 02.02.2017, contains a clause with regard to Civil Court attachment, more particularly, Clause No.14. We have perused the said E-Auction Sale Notice and we have no hesitation to hold that it has not given any the details pertaining to the civil suits. In any event, the E-Auction Sale Notice has worked itself out as the date of E-Auction was on 09.03.2017. Hence, for all the above reasons, we are inclined to interfere with the impugned notice, dated 11.04.2016, and the consequential notice, dated 01.07.2016, issued by the first respondent.

10. In the result, the writ petition is allowed and the impugned notice, dated 11.04.2016, and the consequential notice, dated 01.07.2016, issued by the first respondent are quashed giving liberty to the respondent - Bank to approach the Civil Court for obtaining appropriate orders in the pending civil proceedings in O.S.Nos.252 and 253 of 1999, on the file of the Sub Court, Srivilliputhur. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

+1cc to Mr.M.Ilango, Advocate Sr.No.59942

+1cc to Mr.A.R.M.Ramesh , Advocate Sr.No.60415

KRK/IA

VB/MR/SAR3/27.06.2017/4P/3C

**W.P. (MD) No.2557 of 2017**

**and**

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