IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.02.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.3189 of 2018
and
WMP No.3903 of 2018

Sri.A.Mohammed Ibrahim ... Petitioner

vs.

The Authorised Officer,
Repco Bank,
"Repco Bank" No.33, North Usman Road,
T.Nagar,
Chennai - 600 017 ... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondent bank o consider objection raised by the petitioner letter dated 25th January 2018.

For Petitioner : Mr.D.Durairaj

ORDER

(Order of the Court was delivered by S.MANIKUMAR, J)

On 19.10.2017, REPCO Bank, by Registered Post with Acknowledgment Due has sent a notice under Section 13(2) of the SARFAESI Act, 2002 to Mr.A.Mohamed Ibrahim, Chennai, the petitioner herein and two others viz., Smt.M.Rahmath W/o. A.Mohamed Ibrahim and Mr.S.Sathish Babu, Chennai. Perusal of the notice dated 19.10.2017 shows that both husband and wife, have secured loan of Rs.2 Crores. Mr.Mohamed Ibrahim is the principal debtor/borrower/mortgagor, Smt.M.Rahmath, W/o. Mr.A.Mohamed Ibrahim, is the Co-borrower / mortgagor and Mr.S.Sathish Babu, Chennai is the guarantor. As per the notice dated 19.10.2017, sent by RPAD, as on 30.09.2017, a sum of Rs.2,46,70,913/- was due and payable by the borrower. As the borrowers, have defaulted in payment of their liabilities, account has been classified as NPA with effect from 30.11.2016, as per RBI Norms.

2. By notice dated 19.10.2017, bank has called upon the borrowers and guarantors to discharge their full liabilities within 60 days from the date of receipt of Section 13(2) notice,

failing which, bank would invoke the powers under Section 13 of the SARFAESI Act, 2002, which includes, (i) power to take possession of the Secured Assets of the borrowers including the rights to transfer by way of lease, assignment or sale for realizing secured asset, (ii) Take over the management of the secured asset including the rights to transfer by way of lease, assignment or sale and realize the secured asset, and any transfer of secured asset by the bank would vest in the transferee all rights, or in relation to the secured asset transferred as if the transfer had been made by borrowers/guarantors. Bank has also stated that contractual interest from 01.10.2017 would be levied, till the date of actual realisation.

3. According to the petitioner, he has received the notice under Section 13 (2) dated 19.10.2017, directly from the bank in December 2017 and thereafter, sent objections dated 25.01.2018, under Section 13(A) of the SARFAESI Act, 2002 to the authorised officer, REPCO Bank, Chennai, respondent herein. In his objections/representation, he has sought for regularisation of the loan amount till completion of instalment period. Contending inter alia that the said representation/objection dated 25.01.2018, sent under Section 13(A) of the SARFAESI Act, 2002, has not been answered, instant writ petition has been filed for a mandamus, directing the bank to consider the objection dated 25.01.2018 and to pass orders.

4. Heard Mr.D.Durai Raj, learned counsel for the petitioner and perused the materials available on record.

5. As per Section 13(2), SARFAESI Act, 2002, where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under subsection (4).

6. As per Section 13(3A), SARFAESI Act, 2002, if, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

PROVIDED that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

7. Though, no specific time has been given under Section 13 (3A) for submission of any objection/representation, in response to the notice issued under Section 13(2) of the SARFAESI Act, 2002, reading of Section 13(2) makes it clear that bank has to provide 60 days notice, in writing to the borrower to discharge in full his liabilities to the secured creditor from the date of the said notice and in the event of any failure by the borrower / guarantor to discharge the liability in full, the secured creditor is entitled to exercise all or any of the rights under Sub section 4 of Section 13 of the Act.

8. Though, Mr.D.Durairaj, learned counsel for the petitioner submitted that in the month of December 2017, petitioner directly obtained the notice under Section 13(2) of the Act and responded to the same by sending a representation/objection dated 25.01.2018, and that the bank did not send Section 13(2) notice to the petitioner, we are not inclined to accept the said contention. Sixty days notice is required to be given by the bank to the borrower, to discharge the dues in full and that therefore, any representation / objection under Section 13(3A) of the Act, should be sent within the said 60 days.

9. In the light of the above discussion and observation, we are not inclined to issue any direction to the bank. Considering the material on record, we are of the view that it is for the bank to consider the objection/representation dated 25.01.2018, or not? With the above observation, the writ petition is disposed of. No costs. consequently the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ars

W.P.No.3189 of 2018
and
WMP No.3903 of 2018

rj(co)
aa01/03/2018