IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.2020 of 2018
and
W.M.P.No.2538 of 2018

R.Bharani ... Petitioner

vs.

1.The Branch Manager,
State Bank of India,
Ranipet,
Vellore District.

2.The Assistant Manager,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Building, No.32,
Montieth Road, Chennai-08.

3.The District Collector,
Collector's Office,
Vellore.

4.The Superintendent of Police,
Superintendent Office,
Vellore.

5.A.E.S.Ravi
M/s.Leather Leader Company,
No.4, Villa Masria, 2nd floor,
8th Trust Cross Street,
Mandavelipakkam,
Chennai-28. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents to open the factory situated at Ananthalai Village, Walajapet Taluk, Vellore District in Survey No.699/3A and subsequently not to interfere with peaceful possession and running the factory without following due process of law.

For Petitioner : Mr.R.Singaravelan
Senior Counsel for Mr.I. Abraham
For R3 & R4 : Mr.J.Ramesh
Additional Government Pleader

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

Instant Writ Petition is filed for issuance of a writ of Mandamus, directing the respondents to open the factory, situated at Ananthalai Village, Walajapet Taluk, Vellore District in Survey No.699/3A and not to interfere with the peaceful possession and running of the factory, without following due process of law.

2. Tenancy of the premises is as follows:

> "All that part and parcel of land to the extent of 0.98.0 Hr i.e., 2.42 acres together with RCC shed admeasuring 25,000 sq.ft. Attached to it with 450 H.P. electric connection (LT SC No.54 Pudupet 1). Plant and Machinery (measuring drying, splitting, Staking, polishing, colouring machines, utility machines, Generators, Boilers, compressors etc) of a running Tannery - processing unit situated at S.No.699/3A, No.64, Ananthalai Village, Walajahpet Taluk, Vellore District."

3. As per the supporting affidavit, petitioner has entered into a lease agreement with one A.E.S.Ravi, M/s.Leather Leader Company, Chennai/5th respondent herein. Plant and machineries have been erected. There are raw materials worth about Rs.12.5 crores.

4. Petitioner has further contended that the fifth respondent has hypothecated the abovesaid property, and availed loan. Petitioner has offered to purchase the said property by way of sale to settle the loan availed by respondent No.5. Bank has also agreed for the above proposal. Petitioner has paid a sum of Rs.40 lakhs, to discharge the loan liability of the 5th respondent. Bank has demanded higher sale consideration, than the market value. Bank has retracted their decision.

5. In the abovesaid circumstances, on 21.12.2017, officials of the respondents 1 and 2, have entered into the factory premises, locked the same illegally, and took physical possession.

6. Contending interalia, that the action of the bank has caused hardship to many of the employees, losing their job opportunities and if raw materials are kept inside the factory

premises, it would become rotten, thereby causing monitory loss. Hence, Petitioner has sought for a writ of mandamus, as prayed for.

7. Heard Mr.R.Singaravelan, learned Senior Counsel for the petitioner and perused the materials available on record.

8. From the supporting affidavit, it could be seen that the subject property has been hypothecated by respondent No.5, to State Bank of India, Ranipet, Vellore District for availing loan. It appears that there was a default by respondent No.5 and as per the version of the petitioner, he had offered to purchase the subject property by way of sale, to settle the loan availed by the 5th respondent. Petitioner has contended that a sum of Rs.40 lakhs has been paid, the bank has dishonoured and insisted for higher sale consideration than the market value, and lateron, the petitioner has been dispossessed.

9. As per Section 13(4) of the SARFAESI Act, 2002, in case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely, (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; (b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset, provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt. It is further provided that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt; (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor; and (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

10. Taking physical possession, is one of the measures, in-aid of Section 13(4) of the SARFAESI Act, 2002. If the bank had taken physical possession without resorting to the procedure, prescribed under law, it is always open to the petitioner to challenge the same under Section 17(4-A) of the SARFAESI Act, 2002. Section 17 (4-A) of the SARFAESI Act, 2002 introduced by Act 44 of 2016 dated 01.09.2016, reads thus:-

"Where (i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy--

(a) has expired or stood determined; or

(b) is contrary to section 65-A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act."

11. Section 17(1) of SARFAESI Act, 2002, reads thus:-

"1[Application against measures to recover secured debts].-(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, 2[may make an application alongwith such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]"

12. When the statutory provisions, recognize the right of the tenant, to seek for appropriate orders, from the Debts Recovery Tribunal, it would not appropriate to entertain an writ petition, and issue any mandamus as prayed for. Whether

possession was taken in accordance with law or not, is a matter to be adjudged before the Tribunal.

13. In such circumstances, we are not inclined to entertain the instant writ petition. At this Juncture, relief sought for, cannot be granted.

14. For the above reasons, the Writ Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

dm
To
1.The District Collector,
Collector's Office,
Vellore.

2.The Superintendent of Police,
Superintendent Office,
Vellore.

3. The Branch Manager
State Bank of India, Ranipet,
Vellore District

4.The Assistant Manager,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Building, No.32,
Montieth Road, Chennai-08.

+ 1 cc to MR. I.Abraham, Advocate Sr.7335
+ 1 cc to the Government Pleader Sr.7414

W.P.No.2020 of 2018
and
W.M.P.No.2538 of 2018

RJ(CO)
EU(21/02/2018)