

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2/2/2018

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
A N D
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.2037 of 2018
a n d
W.M.P.Nos.2547 and 2548 of 2018

Vasan Medical Centre India Pvt Ltd
rep. By its Chairman & MD
Dr.A.M.Arun
No.15 A Main Road, 1st Cross
Thillai Nagar
Trichy 18.

...Petitioner

Vs

1. The Authorised officer
Canara Bank
No.524 Anna Salai
Teynampet
Chennai 18.
2. Canara Bank
rep. By its Branch Manager
No.524 Anna Salai
Teynampet
Chennai 18.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent, quash its possession notice, dated 14/11/2017, direct the respondents to receive amounts needed to regularise the account bearing current A/c.No.0416773000065 having in respondent Bank in the name of Vasan Health Care Pvt Ltd and restore the same to its original status.

For petitioner ... Mr.I.Arockia Selvaraj

O R D E R

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

Possession notice, dated 14/11/2017, issued under Section 13 (4) of the SARFAESI Act, 2002, impugned in the instant writ petition, is extracted hereunder:-

"Whereas the undersigned being the Authorised Officer of the Canara Bank, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act 54 of 2002) and in exercise of powers conferred under Section 13 (12) read with Rule 3 of the Security Interest (Enforcement) Rules, 2002 issued a Demand Notice dated 21/7/2017 calling upon the borrower - 1. M/s. Vaasan Medical Center (India) Private Limited, having its Registered Office No.15 A Main Road, Thillai Nagar, Trichy 620 018, offices at b. No.70 West Minister, 4th Floor, Dr.R.K.Salai, Mylapore, Chennai 600 004 (c) . No.383 Anna Salai, Saidapet, Chennai 600 015, rep. By its Director Dr.A.M.Arun (S/o. Mr.A.R.Murugaiah), (Mortgagor/Guarantor) residing at No.99, St. Mary's Road, Alwarpet, Chennai 600 018, (2). Mrs.Mera Arun (W/o Dr.AM Arun), (Director/Guarantor) residing at No.99, St. Mary's Road, Alwarpet, Chennai 600 018 (3). Mr.V.Dwaraganathan (S/o Mr.Veeraiah Pillai), (Mortgagor/Guarantor), Glazebrooke Estate, Keeraikad Post, Yercaud 636 601 (4). Mrs.D.Nirmala (W/o. Mr.V.Dwaraganathan), Glazebrooke Estate, Keeraikad Post, Yercaud 636 001 to repay the amount mentioned in the notice being of Rs.31,86,38,000.00 (Rupees Thirty One Crore eighty six lakhs and thirty eight thousand only) as on 30/6/2017 together with interest thereon within 60 days from the date of receipt of the said notice.

The borrower/Guarantor having failed to repay the amount, notice is hereby given to the borrower/guarantor and the public in general that the undersigned has taken possession of the property described herein below in exercise of powers conferred on him under Section 13 (4) of the said Act, read with Rule 8 of the Security Interest

Enforcement Rules, 2002 on this day of 14th November of year 2017.

The borrowers attention is invited to provisions of sub-section (8) of Section 13 of the Act, in respect of time available, to redeem the secured assets.

The borrower/Guarantor in particular and the public in general are hereby cautioned not to deal with the property and any dealings with the property will be subject to the charge of Canara Bank, for an amount of Rs.33,55,00,000/- (Rupees Thirty three crore fifty five lakhs only) and further interest thereon from 20/10/2017."

2. In support of the prayer sought for, learned counsel for the petitioner placed reliance on an interim order, made in W.P.No.18588 of 2017, dated 20/10/2017. Added further, he submitted that declaration of N.P.A, on 21/4/2017, was not intimated and in the abovesaid circumstances, instant writ petition filed against the possession notice, dated 14/11/2017, can be entertained.

3. Heard Mr.I.Arockia Selvaraj, learned counsel for the petitioner and perused the materials available on record.

4. Firstly, interim order made in W.P.No.18588 of 2017 is not a binding precedent. In W.P.No.18588 of 2017, we have taken note of the fact that son of the deceased, who has come forward to discharge the entire loan amount and in the abovesaid circumstances, orders were passed. Present case is entirely different.

5. Secondly, the contention that declaration of NPA, on 21/4/2017, was not intimated and therefore, writ petition should be entertained, is purely a question of fact. Possession notice, dated 14/11/2012, issued under Section 13 (4) of the SARFAESI Act, 2002, can be challenged by the borrower, under Section 17 (1) of the SARFAESI Act, 2002.

6. Statute provides for an alternative remedy. Further, Courts have consistently held that when there is an effective and alternative remedy, writ is not maintainable. We deem it fit to consider the following decisions.

(i) In Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW 86, a Hon'ble Division Bench of this Court has held as follows:

"This Court has repeatedly held in a number of decisions right from the decision in Division Electronics Ltd. v. Indian Bank (DB) Markandey Katju, C.J., (2005 (3) C.T.C., 513), that the remedy of the aggrieved party as against the notice issued under Section 13(4) of SARFAESI Act is to approach the appropriate Tribunal and the writ petition is not maintainable. The same position has been succinctly stated by the Hon'ble the Supreme Court in Transcore v. Union Of India (2006 (5) C.T.C. 753) in paragraph No. 26 wherein the Supreme Court has held as under:

—

"The Tribunal under the DRT Act is also the Tribunal under the NPA Act. Under Section 19 of the DRT Act read with Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (1993 Rules), the applicant bank or FI has to pay fees for filing such application to DRT under the DRT Act and, similarly, a borrower, aggrieved by an action under Section 13(4) of NPA Act was entitled to prefer an Application to the DRT under Section 17 of NPA." (Emphasis added) "

(ii) In Union Bank of India v. Satyawati Tondon, reported in 2010 (5) LW 193 (SC), the Hon'ble Apex Court at paragraph Nos.16 to 18 and 27 to 29, held as follows:

"16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos. 1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs. 50,000/- was paid by respondent No. 1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section 13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No. 1.

17. There is another reason why the impugned order should be set aside. If respondent No. 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section

14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is

true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for re-dressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1=1999-2-L.W. 200 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act."

(iii) In *Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India*, reported in (2010) 5 LW 560, a Hon'ble Division Bench of this Court has held as follows:

"The petitioner has filed this writ petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the possession notice dated 16.09.2004 issued by the respondent under the SARFAESI Act and consequently direct the respondent to effect the settlement in accordance with the SBI OTS-SME 2010 Scheme as contained in its letter dated 18.03.2010 and unconditionally restore physical possession of the six rooms taken physical possession by it at No. 29, Sarojini Street, T. Nagar, Chennai - 17 with such damages.

... When a specific forum has been created which enables the borrower to challenge the action of the financial institution by filing necessary petition under Section 17, the petitioner is not entitled to invoke the writ jurisdiction of this Court. What could not be achieved by the petitioner by filing a petition before the appropriate Forum, which is at present barred by period of limitation, could not be permitted to be achieved by extending the jurisdiction conferred to this Court under Article 226 of The Constitution of India. Above all, since the petitioner has violated the terms and conditions of the loan by transferring the property in favour of her son, this Court is not inclined to entertain the petition...."

7. In the light of the above discussion and decisions stated supra, we are not inclined to entertain the writ petition.

8. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

mvs.

To

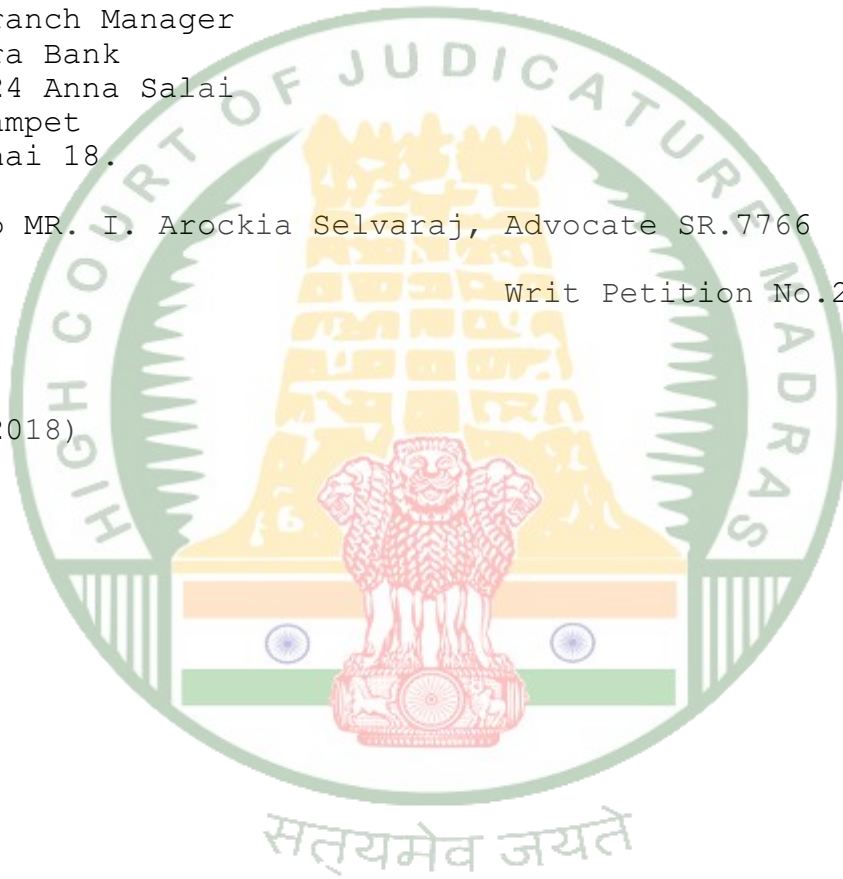
1. The Authorised officer
Canara Bank
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2. The Branch Manager
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+ 2 ccs to MR. I. Arockia Selvaraj, Advocate SR.7766

Writ Petition No.2037 of 2018

SS(CO)
EU(26/02/2018)



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