

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.18452 of 2013 and  
M.P.No.2 of 2013

M/s.Grace Structural Blocks,  
rep by its Proprietor T.P.Ponnusamy  
No.441/3, Karpagam Engineering College Road,  
Ottakalmandapam Road,  
Coimbatore - 641 032. ... Petitioner

Vs.

1.The Authorized Officer,  
Corporation Bank,  
P.N.Palayam, Coimbatore - 37.

2.The Registrar,  
Debt Recovery Appellate Tribunal,  
Ethiraj Salai, Chennai.

3.The Registrar,  
The Debts Recovery Tribunal,  
Cauvery Complex,  
Trichy Road, Coimbatore.

4.N.Jeganathan ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari calling for the records and quash the impugned order dated 08.05.2013 passed in appeal in R.A.(SA).No.2 of 2013 by the 2<sup>nd</sup> respondent Tribunal and the final order dated 13.01.2012 passed in S.A.No.100 of 2011 by the 3<sup>rd</sup> respondent Tribunal and the proceedings initiated by the 1<sup>st</sup> respondent - Bank in respect of the said property under the SARFAESI Act starting from the demand notice dated 13.02.2010 issued under Section 13(2) of the SARFAESI Act culminating in the sale certificate dated 20.07.2011 issued by the 1<sup>st</sup> respondent - Bank in favour of the 4<sup>th</sup> respondent.

For Petitioner : Mr.R.Gowthamanarayanan

For Respondents : Mr.S.Sethuraman (R1)

R2 & R3 - Tribunal

Mrs.Anandha Gomathy (R4)

O R D E R

(Order of the Court made by M.DURAISWAMY,J.)

The above Writ Petition has been filed by the petitioner to issue a Writ of certiorari to call for the records and to quash the impugned order dated 08.05.2013 passed in appeal in R.A.(SA).No.2 of 2013 on the file of the Debt Recovery Appellate Tribunal, Chennai and the final order dated 13.01.2012 passed in S.A.No.100 of 2011 on the file of the Debts Recovery Tribunal, Coimbatore and the proceedings initiated by the 1<sup>st</sup> respondent - Bank in respect of the property under the SARFAESI Act starting from the demand notice dated 13.02.2010 issued under Section 13(2) of the SARFAESI Act culminating in the sale certificate dated 20.07.2011 issued by the 1<sup>st</sup> respondent - Bank in favour of the 4<sup>th</sup> respondent.

2.It is the case of the petitioner that they had availed a loan of Rs.10 lakhs in the year 2006. Since the petitioner had committed default in repaying the loan amount, the 1<sup>st</sup> respondent - Bank issued notice under Section 13(2) of the SARFAESI Act and subsequently, issued possession notice under Section 13(4) of the Act. Thereafter, the property was brought to sale and the 4<sup>th</sup> respondent purchased the property in the auction held on 18.07.2011. Challenging the auction dated 18.07.2011, the petitioner preferred an appeal in S.A.No.100 of 2011 before the Debts Recovery Tribunal, Coimbatore. The Debts Recovery Tribunal, by order dated 13.01.2012, dismissed the appeal. Aggrieved over the same, the petitioner preferred an appeal in R.A.(SA).No.2 of 2013 before the Debt Recovery Appellate Tribunal, Chennai. By order dated 08.05.2013, the Debt Recovery Appellate Tribunal dismissed the appeal and confirmed the order passed by the Debts Recovery Tribunal. Challenging the same, the petitioner has filed the Writ Petition.

3.The two submissions made by the learned counsel appearing for the petitioner is that the mortgaged land is an agricultural land, therefore, the same is exempted under Section 31(i) of the SARFAESI Act and that no notice under Section 13(2) was served on the petitioner.

4.It is pertinent to note that the petitioner also filed an application in I.A.No.154 of 2012 in R.A.(SA).No.2 of 2013 to raise additional grounds with regard to Section 31(i) of the SARFAESI Act. The Debt Recovery Appellate Tribunal dismissed the application finding that in the Valuation Report dated 02.02.2011, after inspecting the property on 02.02.2011, in the presence of the petitioner, the Branch Manager and the Chief Manager of the Bank found that the property is a land with industrial building. Therefore, it is clear that the land was not put into agricultural use and therefore, the same

cannot be construed as an agricultural land. That apart, the petitioner has not made any averment before the Debts Recovery Tribunal that the mortgaged land is a agricultural land. For the first time before the Debt Recovery Appellate Tribunal, this issue has been raised by the petitioner, which was rightly rejected by the Appellate Tribunal.

5. So far as the issuance of Section 13(2) notice is concerned, admittedly, the petitioner received Section 13(4) notice dated 02.02.2011 and inspite of the same, the petitioner chose not to challenge the same on the ground that they did not receive Section 13(2) notice. When the petitioner had every opportunity to challenge the Section 13(4) notice, they chose not to challenge the same. Now, only when the sale notice is challenged in S.A.No.100 of 2011, the petitioner has raised the issue that no notice was served under Section 13(2). Since the petitioner has not established that the mortgaged land is an agricultural land, the contention raised by the learned counsel for the petitioner cannot be accepted. Similarly, when the petitioner has not challenged the Section 13(4) notice and raised an issue with regard to the non-service of Section 13(2) notice, the said contention is also liable to be rejected.

6. In these circumstances, we do not find any ground to interfere with the concurrent orders passed by the Debt Recovery Appellate Tribunal and Debts Recovery Tribunal. The Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

va

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

To

1. The Authorized Officer,  
Corporation Bank, P.N.Palayam, Coimbatore - 37.

2. The Registrar,  
Debt Recovery Appellate Tribunal,  
Ethiraj Salai, Chennai.

3. The Registrar,  
The Debts Recovery Tribunal,  
Cauvery Complex, Trichy Road, Coimbatore.

+1cc to Mr.S.Sethuraman , Advocate SR.No. 84386

+1cc to Mrs.Anandha Gomathy , Advocate SR.No. 85153

+1cc to Mr.R.Gowthamanarayanan, Advocate SR.8475(8/2/19)

W.P. No.18452 of 2013 and

M.P.No.2 of 2013

ASK(07/01/2019)