

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL

AND

THE HON'BLE MS.JUSTICE P.T.ASHA

W.P.No.20779 of 2018

Standard Chartered Bank
having its Branch Office at
No.19, Rajaji Salai,
Chennai - 600 001

.... Petitioner

Vs.

The District Collector,
Coimbatore District

.... Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the Respondent to pass order in Section 14 Petition / Application bearing Na.Ka.No.494 of 2017 at the earliest to enable the Petitioner to proceed further with steps in taking possession of the schedule property.

For Petitioner : Mr.M.S.Murali for
M/s R & P Partners

For Respondent : Mr.J.Pothiraj
Special Government Pleader

O R D E R

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

The Petitioner has filed the instant Writ Petition praying for passing of an order by this Court in directing the Respondent to pass an order in Section 14 of the SARFAESI Act, 2002 in an Application bearing Na.Ka.No.494 of 2017 at the earliest so as to enable him to proceed further in regard to the steps to be taken for taking possession of the schedule property.

2. Heard both sides.

3. The Learned Counsel for the Petitioner submits that as per SARFAESI Act, 2002, the Petitioner / Bank has projected an Application / Petition in terms of ingredients of Section 14 of the Act before the Respondent / the District Collector, Coimbatore District for taking symbolic possession of the schedule mentioned property. As a matter of fact, the Respondent / District Collector, Coimbatore had directed the Revenue Inspector to inspect the schedule property and produce the report before the District Collector for proceeding further. Indeed, the Revenue Inspector inspected the scheduled property and filed the report on the physical possession of the scheduled property. The grievance of the Petitioner is that no positive steps have been taken by the District Collector, Coimbatore in disposing of the Application / Petition dated 28.12.2016 filed under Section 14 of the SARFEASI Act.

4. The Learned Counsel for the Petitioner brings it to the notice of this Court that the pendency of the Second Appeal No.137 of 2015 on the file of the Debts Recovery Tribunal, Coimbatore has no relevance with Petition / Application filed by the Petitioner / Bank under Section 14 of the Act bearing Na.Ka.No.494 of 2017, as the Interim Conditional Stay obtained by the borrowers against the auction sale stands vacated for non compliance of the order dated 21.12.2015. In fact, the Petitioner / Bank has liberty to proceed with the sale immediately. Apart from that, I.A.No.334 of 2016 filed by the borrowers for modification of Interim Stay on confirmation of the Auction sale was rightly dismissed by the Debts Recovery Tribunal, Coimbatore, as per order dated 23.01.2017.

5. At this juncture, Mr.Pothiraj, Learned Special Government Pleader informs this Court that the Respondent / District Collector, Coimbatore will pass orders on the Application / Petition filed by the Petitioner dated 28.12.2016 within two weeks from the date of receipt of a copy of this Order.

6. It is to be pointed out that the Tahsildar, Coimbatore North had addressed a report dated 07.04.2017 to the Respondent / District Collector, Coimbatore in Ref.No.494/2017/m3 for the Latter's Official Memorandum in Reference No.25987/2016/c3 dated 10.01.2017 in regard to the taking possession of the properties belonging to M/s Lingam & Co., and 4 Institutions for nonpayment of loan amount availed by them from the Petitioner / Bank.

7. By virtue of Section 14 of the SARFAESI Act, 2002, the Concerned Magistrate has the option of calling upon the Bank itself to furnish a relevant details and to issue Notice to the Borrower for verification of existence of any fact, which is required to be verified by him.

8. As per Section 14 of the SARFAESI Act, 2002, it is only when the possession of an Asset is required to be taken by the secured creditor or the same is required to be sold or transferred by secured creditor under the provisions of the Act, 2002, an Application can be filed.

9. It is to be remembered that when the 'Principles of Natural Justice' is followed by the Procedure under Section 13 of the SARFAESI Act, 2002, no further Notice is needed under Section 14 of the Act, 2002.

10. It must be borne in mind that Section 14 of the SARFAESI Act, 2002 does not visualise any judicial process or work. As a matter of fact, no adjudicatory process is involved, of course, it is an assistance provided by a Lawful Authority by means of non-Adjudicatory process under Section 14 of the Act.

11. Moreover, the powers that are exercised by the District Magistrate or Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act are purely executory in character. To put it precisely, Section 14 of the Act provides for rendering of an assistance to a secured creditor by the authority specified in the provision for the purpose of taking the possession of 'Secured Assets' by the 'Secured Creditor', as per decision Bharatbhai Ramniklal Sata V. Collector and District Magistrate reported in AIR 2010 Gujarat at Page 72.

12. Considering the submission of the Learned Special Government Pleader appearing on behalf of the Respondent / District Collector, Coimbatore, praying for two weeks time to pass necessary orders by the Respondent on the Application of the Petitioner / Bank dated 28.12.2016, this Court, at this stage, in the interest of justice grants two weeks time to the Respondent / District Collector, Coimbatore to pass necessary orders on the Application of the Petitioner dated 28.12.2016 from the date of receipt of a copy of this Order. It cannot be gainsaid that the Respondent / District Collector, Coimbatore shall pass a reasoned speaking order [explaining the reasons for the delay in not passing the order in time] after applying his judicial thinking mind, on merits in a fair, free, just, unbiased and dispassionate manner, of course, after providing necessary opportunity to the Petitioner / Bank, if the Bank so desires / advised.

With the aforesaid observations and directions, the Writ
Petition is disposed of. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

ssd

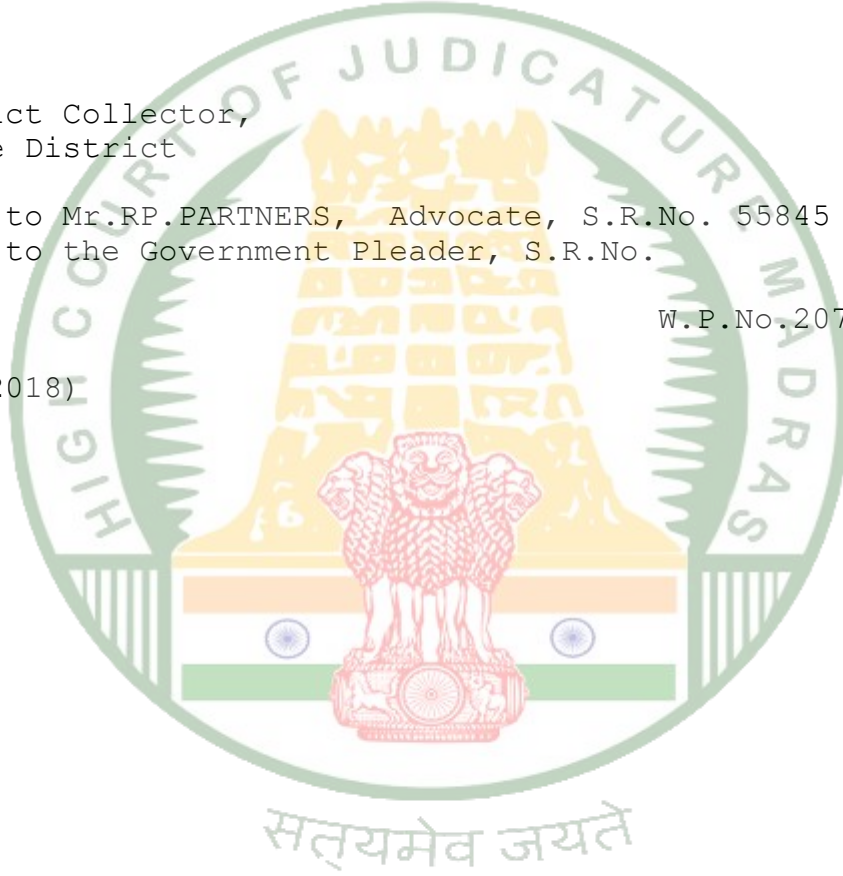
To

The District Collector,
Coimbatore District

+1cc to Mr.RP.PARTNERS, Advocate, S.R.No. 55845
+1cc to the Government Pleader, S.R.No.

W.P.No.20779 of 2018

TR(24/08/2018)



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