IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.No.20926 of 2018

Corporation Bank
Rep.by its Assistant General Manager,
Oppanakara Street Branch,
Coimbatore. .. Petitioner

vs.

The District Magistrate/District Collector,
Office of the District Collector,
Coimbatore ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondent to dispose of the Miscellaneous Application No.23003/2017, dated 26.09.2017, filed under Section 14 of the SARFAESI Act, within a specified time frame to be fixed by this Court.

For Petitioner : Mr.R.R.Pradheep for
Mr.S.Sethuraman

For Respondent : Mr.J.Pothiraj,Spl.G.P.

ORDER

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

The Petitioner/Bank has focused the instant Writ Petition praying for passing of an Order by this Court in directing the Respondent/District Magistrate/District Collector, Coimbatore, to dispose of the Miscellaneous Application No.23003 of 2017, dated 26.09.2017, filed under Section 14 of the SARFAESI Act, 2002, within a specified time frame to be determined by this Court.

2.Heard Both sides.

3.No counter is filed on behalf of the Respondent.

4.According to the Petitioner/Bank, the Borrower failed to repay the amount and the account is classified as 'Non-Performing Asset'. As a matter of fact, the Petitioner/Bank issued a notice dated 02.11.2015, under Section 13(2) of the SARFAESI Act , to the Borrower/Mortgagors/Guarantors to discharge in full of their liabilities, amounting to Rs.93,84,520.50, to the Bank within 60 days from the date of the said notice. In fact, the Borrower/Mortgagors/Guarantors failed to repay the amount even after expiry of 60 days. Hence, possession notice dated 22.02.2016 was issued under Section 13(4) of the SARFAESI Act, r/w.Rule 8 of the said Rules.

5.The Learned Counsel for the Petitioner submits that the Petitioner/Bank was unable to take possession of the 'Secured Assets', as the Borrower refused to handover possession and resisted the efforts of the Bank in taking possession. The properties are taken as continuing security for credit limits sanctioned to the Mortgagor. The Bank tried to sell the property, but was unable to sell the property for want of possession. Therefore, the Bank had decided to take action under Section 14 of the SARFAESI Act.

6.The grievance of the Petitioner/Bank is that the Respondent/District Magistrate/District Collector, Coimbatore, received the Application and the same was numbered as 23003/2017. No action was taken by the Respondent despite repeated requests and follow up Letters dated 5.6.2018 and 5.7.2018. As per Section 14 of the SARFAESI Act, 2002, the Respondent/District Collector, Coimbatore, has to dispose of the Application within a period of 30 days from the date of Application. Even after a lapse of more than one year, no action has been taken by the Respondent. Hence, the Petitioner has filed the present Writ Petition.

7.At this juncture, the Learned Special Government Pleader for the Respondent/District Collector, Coimbatore, prays for two weeks' time so as to enable the Respondent to pass necessary orders on the Application of the Petitioner/Bank dated 26.09.2017.

8.A reading of the ingredients of Section 14 of the SARFAESI Act, 2002, unerringly points out that 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 Act, an Application/Petition can be projected. That apart, when the 'Principle of Natural Justice' is followed by the procedure under Section 13 of the SARFAESI Act, 2002, no further notice is required under Section 14 of the SARFAESI Act, 2002.

9.It is pertinently pointed out that Section 14 of the SARFAESI Act, 2002, does not specify any judicial process or work. In fact, no adjudicatory process is involved, ofcourse, it is an assistance provided by a Lawful Authority by means of non-adjudicatory process, as per Section 14 of the Act. Section 14 of the SARFAESI Act, 2002, provides for rendering of an assistance to a 'Secured Creditor' by the authority prescribed in the provision for the purpose of taking the possession of 'Secured Assets', by the 'Secured Creditor', vide decision between Bharatbhai Ramniklal Sata v. Collector and District Magistrate, reported in AIR 2010 Gujarat at Page 72.

10.Considering the fact that the Petitioner/Bank's Application dated 26.09.2017, is pending on the file of the Respondent/District Magistrate/District Collector, Coimbatore, without any progression in the subject matter in issue and also this Court, considering the request made on behalf of the Respondent/District Magistrate/District Collector, Coimbatore, in the interest of justice, grants two weeks' time to the Respondent, to dispose of the Application of the Petitioner/Bank, dated 26.09.2017, from the date of receipt of copy of this order. Further, the Respondent/District Magistrate/District Collector, Coimbatore, has to explain, in the Order to be passed by him, based on the Application of the Petitioner, dated 26.09.2017, the reasons for the inordinate delay, in not disposing of the Application of the Petitioner/Bank well within the time as enunciated under Section 14 of the SARFAESI Act. It is needless to make a pertinent mention that the Respondent/District Magistrate/District Collector, Coimbatore, has to pass a reasoned speaking Order on merits, after applying his judicial thinking mind, in a fair, free, just, unbiased and in a dispassionate manner, of course, after providing necessary opportunity to the Petitioner/Bank, if it so desires/advised.

With the above Observations/Directions, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msk
To

The District Magistrate/District Collector,
Office of the District Collector,
Coimbatore.

+1cc to Mr.S.Sethuraman, Advocate Sr.56243
+1cc to the Government Pleader Sr.56432

W.P.No.20926 of 2018

srg 29/08/2018