IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE Mrs.JUSTICE S.RAMATHILAGAM

W.P.No.20978 of 2018

M/s Shriram Housing Finance Ltd.,
Rep. By its Authorized Officer,
Mrs.Asha Lukose,
No.221, 1st Floor,
Royapettah High Road,
Chennai - 600 004 ... Petitioner

vs.

The District Collector,
The District Magistrate,
Thiruvallur Collectorate,
Thiruvallur District ... Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the Respondent to pass orders on the Petition filed on 22.02.2018 under Section 14(1) of SARFAESI Act within the stipulated time.

For Petitioner : Mr.M.Ajmal Azzath

For Respondent : Mr.J.Pothiraj
Special Government Pleader

O R D E R

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

Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader for the Respondent.

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

3. According to the Petitioner, the Borrowers, viz., K.Manivannan and Guganayahi approached the Petitioner for availing House Loan to purchase House / Flat and that the sum of Rs.28,00,000/- [Rupees Twenty Eight only] was sanctioned as Loan, as per Loan Agreement No.SHLHCHNI0000391 towards the purchase of an immovable property. As per the terms and

conditions of the loan, the borrowers had to pay the loan pursuant to the sanction of loan and in continuation of the process of loan, the borrowers had deposited all the original deeds and title deeds and related documents pertaining to the schedule property with an intention to create Equitable Mortgage to secure the repayment of Home Equity Loan and further that, the borrowers had executed and registered a mortgage by way of deposit of title deeds to and in favour of the Petitioner. As a matter of fact, the said mortgage deed was registered [as Document No.19398 of 2014] on the file of SRO, Kundrathur.

4. The stand of the Petitioner is that the borrowers are highly irregular in honouring their commitments and further, they had committed default in payment of three consecutive Equal Monthly Installments and hence the loan account of the borrowers was classified as Non-Performing Assets [NPA] as on 07.04.2017. Since the borrowers had committed persistent default, the Petitioner invoked the ingredients of Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [Act 54 of 2002], as per Notice dated 21.07.2017 for foreclosure of loan vide Loan Agreement No.SHLHCHNI0000391 and calling upon the Borrowers to pay the entire outstanding of Rs.31,34,490/- [Rupees Thirty One Lakh Thirty Four Thousand Four Hundred and Ninety only] as on 19.07.2017. Even after receipt of notice, there was no response or improvement in the conduct of the Borrowers and hence Possession Notice dated 23.11.2017 was issued, as per Section 13 (4) of the SARFAESI Act, 2002. In fact, the Possession Notice was issued in leading News Paper on 25.11.2017. The Petitioner took the symbolic possession of the mortgage property, as per Notice dated 23.11.2017.

5. The Learned Counsel for the Petitioner points out that the Petitioner filed an Application on 22.02.2018 before the Respondent seeking suitable direction or assistance for taking possession of the property in issue. The Respondent has not acted on the Petition filed by the Petitioner on 22.02.2018 and till date, the matter is pending on his file without any subsequent progress in the subject matter in issue.

6. At this juncture, Mr.Pothiraj, Learned Special Government Pleader informs this Court that the Respondent / District Collector, Thiruvallur District will pass orders on the Application / Petition filed by the Petitioner dated 22.02.2018 within three weeks from the date of receipt of a copy of this Order.

7. In the present case, it comes to be known that the Respondent / District Collector, Thiruvallur had addressed a Communication in R.C.No.3802/2018/M2 dated 27.02.2018 to the

Tahsildar, Maduravoyal requesting the latter to check thoroughly the facts submitted by the Petitioner and physically verify all the original records by summoning the Petitioner to produce the relevant records and to submit a detailed report, after inspection of the site, along with proforma enclosed. In fact, the Respondent / District Collector, Thiruvallur had informed the Tahsildar, Maduravoyal to complete the exercise in question within a week's time from the date of receipt of his Letter R.C.No.3802/2018/M2 dated 27.02.2018. Since the matter is pending for morethan six months on the file of the Respondent, the Petitioner is not in a position to know about the status of its application dated 22.02.2018.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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 Magstrate reported in AIR 2010 Gujarat at Page 72.

13. It is to be pointed out that when the Chief Metropolitan Magistrate or the District Judge failed to adhere to the Provision of Section 14 of the SARFAESI Act, 2002, then, the

'Writ Petition is Maintainable in Law'. Further, the Authority acting under Section 14 of Act is not required to act beyond the purview of Section 14 by usurping the powers available to the Debt Recovery Tribunal under Section 17 of the Act.

14. Considering the submission of the Learned Special Government Pleader appearing on behalf of the Respondent / District Collector, Thiruvallur, praying for two weeks time to pass necessary orders by the Respondent on the Application of the Petitioner / Housing Finance dated 22.02.2018, this Court, at this stage, in the interest of justice grants two weeks time to the Respondent / District Collector, Thiruvallur to pass necessary orders on the Application of the Petitioner dated 22.02.2018 from the date of receipt of a copy of this Order. It cannot be gainsaid that the Respondent / District Collector, Thiruvallur shall pass a reasoned speaking order on merits in a fair, free, just, dispassionate and in a prudent manner, after applying his thinking judicial mind in the subject matter in issue. If the Petitioner requires any opportunity of hearing, then, the Respondent shall provide the same, of course, after adhering to the 'Principles of Natural Justice'.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssd

To

The District Collector,
The District Magistrate,
Thiruvallur Collectorate,
Thiruvallur District

+1cc to the Government Pleader, S.R.No.56888

W.P.No.20978 of 2018

BR(CO)
GSP(04/09/2018)