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.21013 of 2018

M/s Edelweiss Housing Finance Ltd.,
Rep. By its Authorized Officer,
Mr.M.P.K.Mahendra Varma,
No.3rd Floor, M.T.H.Rajan Properties,
No.40, Bazullah Road,
T.Nagar, Chennai - 600 017 ... Petitioner

vs.

1. The District Collector / Magistrate,
Thiruvallur District,
Thiruvallur
2. M.Janani
3. S.Malan
4. M.Divya
[Respondents 2 to 4 are given up] ... Respondents

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 03.10.2016 under Section 14(1) of SARFAESI Act within the stipulated time.

For Petitioner : Mr.T.R.Udaya Kumar

For 1st Respondent : Mr.J.Pothiraj
Special Government Pleader

R2 to R4 given up

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., M.Janani, S.Malan and M.Divya approached the Petitioner for availing House Loan to purchase House / Flat and that the sum of

Rs.50,00,000/- [Rupees Fifty Lakhs only] was sanctioned as Loan, as per Loan Agreement No.LCHESTH0000004465 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.

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 15.05.2014. 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. LCHESTH0000004465 and calling upon the Borrowers to pay the entire outstanding of Rs.64,09,765.15/- [Rupees Sixty Four Lakhs Nine Thousand Seven Hundred and Sixty five and fifteen paise only] as on 20.01.2016. Even after receipt of notice, there was no response or improvement in the conduct of the Borrowers and hence Possession Notice dated 18.04.2016 was issued, as per Section 13(4) of the SARFAESI Act, 2002. The Petitioner took the symbolic possession of the mortgage property, as per Notice dated 18.04.2016.

5. The Learned Counsel for the Petitioner points out that the Petitioner filed an Application on 03.10.2016 before the Respondent seeking suitable direction or assistance for taking possession of the property in issue. The Respondent has not performed its statutory obligation and the Petitioner's Application dated 03.10.2016 is not yet processed. The matter is pending for more than six months on the file of the Respondent.

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 03.10.2016 within two weeks from the date of receipt of a copy of this Order.

7. In fact, the Respondent / District Collector, Thiruvallur District had addressed a communication in Rc.No.22024/2016/M2

dated 13.10.2016 to the Tahsildar, Ambattur requesting to check thoroughly the facts submitted by the Petitioner and physically verify all the original records by summoning the Counsel for the Petitioner to produce the records and submit a detailed report, after inspection of the site, along with the performa enclosed. As a matter of fact, the Respondent had granted six weeks from the date of receipt of his communication dated 13.10.2016 to the Tahsildar, Ambattur to submit the particulars called for in the subject matter in issue.

8. The Petitioner has filed the present Writ Petition, since the Respondent had not taken any steps to pass orders on the application of the Petitioner dated 03.10.2016 under Section 13 (4) of SARFAESI Act.

9. 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.

10. 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.

11. It is to be remembered that when the 'Principle 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.

12. 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.

13. 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.

14. 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.

15. 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 03.10.2016, this Court, at this stage, in the interest of justice grants two weeks time to the Respondent / District Collector, Thiruvallur District to pass necessary orders on the Application of the Petitioner dated 03.10.2016 from the date of receipt of a copy of this Order. It cannot be gainsaid that the Respondent / District Collector, Thiruvallur District 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 'Principle of Natural Justice'.

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

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

The District Collector / Magistrate,
Thiruvallur District,
Thiruvallur

+1 CC to Mr. Manimaran, Advocate sr 56658.
+1 CC to Govt. Pleader sr 56886.

W.P.No.21013 of 2018

MG(CO)
SP(10/09/2018)