

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/3/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.5775 of 2018

D. Nedunsezhian ... Petitioner

Vs

1. The District Magistrate-
cum-District Collector
Namakkal District.

2. K.K.Dhanraj

3. D. Valarmathi

4. Kotak Mahindra Bank
rep. By its Authorised Officer
Sonia Plaza, I Floor, No.5
330 State Bank Colony
Junction Main Road
Newar AVR Circle
Salem 636 004.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus to direct the first respondent herein to consider the representation dated 2/3/2018 and implead the petitioner and his sister and offer an opportunity in Proceedings under Section 14 of the SARFAESI Act, in Notice issued by the first respondent in Na.Ka.No.22217/2017-M4, dated 16/11/2017, preferred by the fourth respondent.

For petitioner ... Mr.R.Rajesh Vivekananthan

For respondents ... Mr.M.Elumalai
for R.1.

O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Mr.K.K.Dhanraj, second respondent has borrowed loan from M/s.Kotak Mahindra Bank, Salem, fourth respondent. For default, possession notice, under Section 4 of the SARFAESI Act, dated 28/3/2016 and sale notice, dated 8/7/2016 are stated to have been issued. Petitioner and his sister, son and daughter of the second respondent, borrower have filed an

application in S.A.No.308 of 2016, on the file of the Debts Recovery Tribunal, Madurai, under Section 17 (1) of the Act and the same is stated to be pending.

2. Contending inter alia that in the subject property mortgaged with the Bank, by the second respondent, father, petitioner and his sister have a right and that they were not aware of the mortgage to M/s. Kotak Mahindra Bank, Salem, fourth respondent, petitioner is stated to have made an interlocutory petition, in I.A.No.1701 of 2016, seeking interim injunction, restraining the fourth respondent, from selling the schedule mentioned properties and along with an application, in I.A.No.1704 of 2016 also has been filed for interim stay of sale notice, dated 8/7/2016. While taking recourse under the SARFAESI Act, 2002, by filing an application, under Section 17 of the Act, petitioner and his sister, have also filed a Civil Suit, in O.S.No.167 of 2016, on the file of the learned Principal Judge, Namakkal, seeking for a declaration, declaring the mortgage created by the second respondent, in favour of Kotak Mahindra Bank, with respect to 2/3rd undivided share, as null and void and not binding upon them. Petitioner and his sister have also sought for a consequential relief of the division of the suit property into three equal shares and allot and deliver possession of such shares. Fourth respondent has entered appearance in the suit. Suit is also stated to be pending.

3. In the meanwhile, based on an application filed under Section 14 of the SARFAESI Act, 2002, the District Magistrate-cum-District Collector, Namakkal, respondent No.1, vide proceedings in Na.Ka.No.22217/2017-M4, dated 16/7/2017, has issued show cause notice to the respondents 2 and 3 and on coming to know of the same, petitioner and her sister have issued a legal notice to the District Magistrate-cum-District Collector, Namakkal, first respondent. Added further, on 2/3/2018, petitioner in person has submitted a representation, to the District Collector-cum-District Magistrate, Namakkal, requesting the first respondent to implead both the petitioner and his sister in the above said proceedings. As no order has been passed, on the representation, petitioner has sought for a mandamus, directing the District Collector-cum-District Magistrate, Namakkal, first respondent, to implead both the petitioner and his sister in the above said proceedings and consequently provide opportunity in the proceedings, under Section 14 of the SARFAESI Act, 2002.

4. Mr.R.Rajesh Vivekananthan, learned counsel for the petitioner made submissions on the above.

5. We have perused the material available on record.

6. As of now, though a Civil Suit No.167 of 2017, on the file of the Principal District Judge, Namakkal, has been filed, there is no declaration that the mortgage created by

the second respondent, in favour of Kotak Mahindra Bank, fourth respondent, as null and void, and not binding upon them. Besides petitioner and his sister have also filed S.A.No.308 of 2016, on the file of the Debts Recovery Tribunal, Madurai, taking a plea that the petitioner and his sister are coparceners and that the property in question is an ancestral and joint family property to which both of them have equal share. Before the Tribunal, petitioner has also contended that suppressing the above fact, R.2 has mortgaged the property with the Bank. When the petitioners have raised the above said contentions, it is for the District Collector-cum-District Magistrate, to take appropriate decision, as to whether the petitioner and his sister have to be impleaded in the application filed, under Section 14 of the SARFAESI Act, 2002. At this juncture, we only observe that rights of the petitioner and his sister have not been declared so far, by any Court. Though on the facts and circumstances, petitioners have prayed for a mandamus, we are not inclined to issue the same. Except to state that it is for the Collector, to decide as to whether petitioner and her sister, who have raised the above contentious issues, have to be given an opportunity in the proceedings, under Section 14 of the SARFAESI Act, 2002.

7. With the above observation, writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The District Magistrate-cum-District Collector
Namakkal District.

2. The Authorised Officer
Kotak Mahindra Bank
Sonia Plaza, I Floor, No.5
330 State Bank Colony
Junction Main Road
Newar AVR Circle
Salem 636 004.

+ 1 cc to MR. R. Rajesh Vivekananthan, Advocate Sr.20367

W.P.No.5775 of 2018

KJ (CO)

<https://hcservices.ecourts.gov.in/hcservices/>
EU (10/04/2018)