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.21087 of 2018

M/s India Infoline Housing Finance Ltd
[IIFL]
having registered office at
12A-10, 13th Floor, Parinee Crescenzo,
C-38 and C-39, G Block Behind MCA
Bandra Kurla Complex,
Bandra East, Mumbai - 400 051
Branch Office at 9th Floor,
Bascon Futura, No.10/1, Venkatanarayanan Road,
T.Nagar, Chennai - 600 017
through its authorised officer,
Mr.M.Chandra Mohan ... Petitioner

vs.

The District Magistrate cum District Collector,
Kancheepuram District,
Kancheepuram. ... 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 11.05.2018 under Section 14 of SARFAESI Act within the stipulated time bearing Ref.No.2018/9005/03/349369/0511.

For Petitioner : Mr.V.Balasubramani

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., Mumtaz Begum and Habib Unissa Begum approached the Petitioner for availing Loan against equitable mortgage. As a matter of fact, the Petitioner sanctioned a loan facility of Rs.22,75,000/- on 27.06.2015 vide Prospect No.727511 and the said amount was to be repaid in 180 equal monthly installments of Rs.24,308/-. The borrowers had executed a relevant documents in favour of the

Petitioner subject to certain terms and conditions. The borrowers had created equitable mortgage over the immovable property, viz., Flat No.G-121, 1st Floor, G-Block, Amar Prakash Temple Waves, Phase-III, Near A.R.Weigh Bridge, Kundrathur, Chennai, Tamilnadu to secure repayment of said loan. The borrowers had failed to adhere to the terms of the loan agreement and defaulted in payments of monthly installments.

4. It is the stand of the Petitioner that the borrowers loan loan account was classified as Non Performing Asset and that the Petitioner issued a Notice dated 19.01.2018 to the borrowers as per Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 calling upon the borrowers to pay a sum of Rs.21,52,092.00/- [Rupees Twenty One Lakhs Fifty Two Thousand and Ninety two only] as on 19.01.2018 along with future interest at 9.65% per annum in loan account with effect from 19.01.2018 till the actual date of payment within 60 days from the date of receipt of this notice. In fact, by this notice, the borrowers were called upon by the Petitioner to discharge the liability within 60 days etc.,

5.The Learned Counsel for the Petitioner submits that the Petitioner issued Possession Notice dated 04.04.2018 and took symbolic possession of the mortgaged property and also published the same in News Papers, viz., Business Standard [English] Edition dated 09.04.2018 and Dinakaran [Tamil] Edition dated 09.04.2018. The Petitioner filed an Application on 11.05.2018, as per Section 14 of the SARFAESI Act making a request to the Respondent to take possession of the asset in question and to handover the same to it. The Respondent had not evinced any interest in the proceedings as per SARFAESI Act, hence the Petitioner has filed the present Petition.

6. At this juncture, Mr.Pothiraj, Learned Special Government Pleader informs this Court that the Respondent / District Collector, Kancheepuram District will pass orders on the Application / Petition filed by the Petitioner dated 11.05.2018 within two weeks from the date of receipt of a copy of this Order.

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 '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.

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. 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.

13. Considering the submission of the Learned Special Government Pleader appearing on behalf of the Respondent / District Collector, Kancheepuram, praying for two weeks time to pass necessary orders by the Respondent on the Application of the Petitioner / Housing Finance dated 11.05.2018, this Court, at this stage, in the interest of justice grants two weeks time to the Respondent / District Collector, Kancheepuram to pass necessary orders on the Application of the Petitioner dated 11.05.2018 from the date of receipt of a copy of this Order. It cannot be gainsaid that the Respondent / District Collector, Kancheepuram 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(CS IX)

//True Copy//

Sub Assistant Registrar

ssd

To

The District Magistrate cum
District Collector,
Kancheepuram District,
Kancheepuram.

+1cc to Mr.V.Balasubramani, Advocate SR.NO.56593
+1cc to Government Pleader SR.NO.56887

SV(CO)
sm:7.9.2018