

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.6974 & 6975 of 2018

and

WMP Nos.8626 & 8628 of 2018

P.Perumal ... Petitioner in both WPs.

vs.

1. City Union Bank Limited,
Rep. by its Authorised Officer,
Administrative Office,
No.24-B, Gandhi Nagar,
Kumbakonam - 612 001.

2. City Union Bank Limited,
The Manager,
Vellore Branch,
No.29, Arcot Road, {IDA SCUDDER ROAD}
Near Murugan Temple,
{Opp to CMC nursing college}
Vellore - 632 004

... Respondents in both WPs

Prayer in WP No.6974 of 2018: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, to call for the records of the 1st respondent and to quash the symbolic possession notice dated 25.01.2018 in respect of the mortgaged property viz., Plot of an extent of 2673 sq.ft. with ground floor construction of an extent of 1546 sq.ft. and 1st floor construction 1261 sq.ft. in Revenue Ward No.5, Door No.13, New Door No.35, Old Ward No.30, New Ward No.36, Town Survey No.272, Block No.7, Veerakoil Street, Vellapadi Vellore Town.

Prayer in WP No.6975 of 2018: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, to call for the records of the 1st respondent and to quash the symbolic possession notice dated 25.01.2018 in respect of the mortgaged property viz., (i) Item

No.1, Total extent of 3729 sq.ft. or 0.08 1/2 acres situated in Revenue ward No.4, Municipal Ward No.30, Velapadi, South Vellore Town, Vellore Taluk & District and ii) Item No.2, Vacant land of an total extent of 2701 sq.ft. in Arcot Road @ Ida Scudder Road, Kagithapattiarai, Revenue Ward No.1, Municipal Ward No.30, Block No.32, Town Survey No.2391 (Part) North Vellore Town, Vellore Taluk & District.

For Petitioner : Mr.S.Rajkumar
in both WPs.

COMMON ORDER

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

In the instant writ petitions, the petitioner has challenged two possession notices, both dated 25.01.2018, issued under Section 13(4) of the SARFAESI Act, claiming sum of Rs.72,52,395/- and Rs.1,03,69,585/-, respectively.

2. Though, Mr.S.Rajkumar, learned counsel on record submitted that 30% of the outstanding amount mentioned in symbolic possession notice dated 25.01.2018, would be deposited within one week from today, and further offered to file an affidavit of undertaking to make payment, of the balance amount within three months, from today, and on that score, prayed to entertain the instant writ petitions, this Court is not inclined to do so, in the light of the alternate and effective remedy provided under the SARFAESI Act, 2002, by which symbolic possession notice dated 25.01.2018 and stay of auction fixed on 28.03.2018, both can be challenged. Reference can be made to the following decisions.

(i) In Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW 86, this Court held as follows:

"This Court has repeatedly held in a number of decisions right from the decision in Division Electronics Ltd. v. Indian Bank (DB) Markandey Katju, C.J., (2005 (3) C.T.C., 513), that the remedy of the aggrieved party as against the notice issued under Section 13(4) of SARFAESI Act is to approach the appropriate Tribunal and the writ petition is not maintainable. The same position has been succinctly stated by the Hon'ble the Supreme Court in Transcore v. Union Of India (2006 (5) C.T.C. 753) in paragraph No. 26 wherein the Supreme Court has held as under:

—
"The Tribunal under the DRT Act is also the Tribunal under the NPA Act. Under Section 19 of the DRT Act read with Rule 7

of the Debts Recovery Tribunal (Procedure) Rules, 1993 (1993 Rules), the applicant bank or FI has to pay fees for filing such application to DRT under the DRT Act and, similarly, a borrower, aggrieved by an action under Section 13(4) of NPA Act was entitled to prefer an Application to the DRT under Section 17 of NPA." (Emphasis added) "

(ii) In Union Bank of India v. Satyawati Tondon, reported in 2010 (5) LW 193 (SC), the Hon'ble Apex Court, at paragraph Nos.16 to 18 and 27 to 29, held as follows:

"16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos. 1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs. 50,000/- was paid by respondent No. 1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section 13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No. 1.

17. There is another reason why the impugned order should be set aside. If respondent No. 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available

to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for re-dressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases

relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1=1999-2-L.W. 200 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act.

29. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy."

(iii) In *Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India*, reported in (2010) 5 LW 560, the Court held as follows:

"The petitioner has filed this writ petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the possession notice dated 16.09.2004 issued by the respondent

under the SARFAESI Act and consequently direct the respondent to effect the settlement in accordance with the SBI OTS-SME 2010 Scheme as contained in its letter dated 18.03.2010 and unconditionally restore physical possession of the six rooms taken physical possession by it at No. 29, Sarojini Street, T. Nagar, Chennai - 17 with such damages.

... When a specific forum has been created which enables the borrower to challenge the action of the financial institution by filing necessary petition under Section 17, the petitioner is not entitled to invoke the writ jurisdiction of this Court. What could not be achieved by the petitioner by filing a petition before the appropriate Forum, which is at present barred by period of limitation, could not be permitted to be achieved by extending the jurisdiction conferred to this Court under Article 226 of The Constitution of India. Above all, since the petitioner has violated the terms and conditions of the loan by transferring the property in favour of her son, this Court is not inclined to entertain the petition.

..... "

3. While challenging the abovesaid possession notice dated 25.01.2018 and auction notice dated 13.02.2018, before the tribunal, it is always open to the petitioner to raise all tenable grounds, including the offer to deposit 30% of the outstanding amount, made before this Court. If any application is filed under Section 17 of the SARFAESI Act, 2002, the tribunal may consider the same.

4. With the above observation, writ petitions are dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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To

1. The Authorised Officer,
City Union Bank Limited,
Administrative Office,
No.24-B, Gandhi Nagar,
Kumbakonam - 612 001.

2. The Manager,
City Union Bank Limited,
Vellore Branch,
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WMP Nos.8626 & 8628 of 2018

CA(CO)
TR(12/04/2018)



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