IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.06.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.11702 of 2018
and WMP No.13676 of 2018

1. Muthuraman
2. Bhanumathy ... Petitioners

vs.

1. The Authorised Officer,
Reliance Home Finance Limited,
Reliance House 4th Floor,
No.6, Haddows Road,
Nungambakkam,
Chennai - 600 006.

2. Reliance Home Finance Limited,
Registered Office,
Reliance Centre South Wing,
6th Floor, Off Western Express Highway,
Santacruz, East Mumbai -400 055. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, calling for the records i.e. the possession notice dated 07.03.2018 issued under Section 8(1) of Security Interest Enforcement Rules 2002 by the 1st respondent the Authorised Officer, Reliance Home Finance Ltd., Reliance House, 4th Flr, No.6, Haddows Road, Nungambakkam, Chennai-6 and quash the same and further direct the respondents not to insist the petitioners to pay the alleged sum of Rs.31,70,160/- being the loan amount to the respondents in Loan A/c.RHHLCE00000768.

For Petitioners : Mr.K.Balakrishnan
For Respondents : Mr.V.Jeevan Ram

ORDER

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

Possession notice dated 07.03.2018, impugned in this writ petition is reproduced hereunder.

POSSESSION NOTICE

(As per Rule 8(1) of Security Interest (Enforcement) Rules, 2002)

Whereas the undersigned being the Authorized Officer of the Reliance Home Finance Limited under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 andin exercise of Powers conferred under section 13(2) read with rule 8 of the Security Interest (Enforcement) Rules 2002, issued a Demand Notice dated 27th July 2016, calling upon the borrower (s) / Co-borrower(s): 1) Muthuraman H, 2) Bhanumathi H, Door No.F8, No.F8, No.71/15, Navalar High Road, Devraj Nagar, Saligramam, Chennai- 600 093 and to repay the amount mentioned in the notices being Rs.24,55,133/- (Rupees Twenty Four Lakhs Fifty Five Thousand One Hundred And Thirty Three Only) as on 25th July 2016 within 60 days from the date of receipt of the said notices.

The Borrower(s) / Co-borrower(s) having failed to repay the amount, notice is hereby given to the Borrower(s) / Co-Borrower and the public in general that the undersigned has taken possession of the property described herein below in exercise of powers conferred on him / her under Section 13(4) of the said Act read with Rule 8 of the said rule on this 7th March 2018.

The Borrower(s) / Co-Borrower(s) in particular and the public in general is hereby cautioned not to deal with the property and any dealings, with the property will be subject to the charge of Reliance Home Finance Limited for a total amount Rs.31,70,160/- (Rupees Thirty One Lakhs Seventy Thousand One Hundred and Sixty Only) as on 7th March 2018 and Interest thereon.

The Borrower / co-borrowers / Mortgagor(s) attention is invited to the provision of Section 13(8) of the SARFAESI Act, in respect of time available to redeem the secured assets.

Description of immovable Property

All that piece and parcel of the property bearing Flat No.G1, Ground Floor, admeasuring 595 square feet of super build up area (including proportionate common area) together with 263/2337 share of land right, title and interest in all that piece and parcel of land in Saligramam village, Egmore, Nungambakkam Taluk, Chennai District comprised in survey No.88/2A, T.S.No.43, Block No.27, bearing Plot No.6, K.K.Nedumsalai, Mathiazhagan Nagar, Saligramam, Chennai- 600 093, North by Survey No.82, South by: Plot No.5, East by: Survey No.88/2B and West by: 20 Feet Road."

2. Instant writ petition has been filed for a ceritorarified mandamus, to quash the abovesaid possession notice and for a further direction to the respondents not to insist the petitioners to pay the alleged sum of Rs.31,70,160/- being the loan amount, to the respondents in Loan A/c.RHHLCE00000768.

3. Statute provides for an effective and alternative remedy. Time and again, Hon'ble Supreme Court, as well as this Court, have held that when there is an effective and alternative remedy provided under the statute, writ petition should not ordinarily be entertained, reference can be made to few 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.
> ...."

4. In the light of the decisions stated supra, it is open to the petitioners to approach the tribunal under Section 17(1) on tenable grounds. Therefore, instant writ petition is dismissed on grounds of availability of alternative remedy. Petitioners are at liberty to approach the tribunal, if so advised.

5. Mr.K.Balakrishnan, learned counsel for the petitioner submitted that appropriate steps would be taken within a week, from today. Submission is placed on record.

6. Thus, while dismissing the instant writ petition for the reasons stated supra, liberty is given to the petitioner to workout his remedy. If any such application is filed under Section 17(1) of the SARFAESI Act, Registry of the tribunal, need not insist on delay. Registry is directed to process the appeal. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Note to office:
Registry is directed to return the original impugned notice dated 07.03.2018, issued under Section 13(4) of the SARFAESI Act, 2002, after getting an attested copy of the same, from the learned counsel for the petitioner.

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To

1. The Authorised Officer,
Reliance Home Finance Limited,
Reliance House 4th Floor,
No.6, Haddows Road,
Nungambakkam,
Chennai - 600 006.

2. Reliance Home Finance Limited,
Registered Office,
Reliance Centre South Wing,
6th Floor, Off Western Express Highway,
Santacruz, East Mumbai -400 055.

copy to
The Section Officer
Writ Section

+1 cc to Mr.K.Balakrishnan Advocate sr 36642
+1 cc to Mr.V.Jeevanram Advocate sr 36508

W.P.No.11702 of 2018
and WMP No.13676 of 2018

aa20/06/2018