IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/8/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.12564 of 2018

1. Latha Paranthaman

2. M. Paranthaman ... Petitioners

Vs

1. The District Collector
Nilgiris
Udhagamandalam

2. The Chief Manager/Authorised Officer
Bank of India
Coonoor Branch
Mount Road
Coonoor 643 102. ... Respondents

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 impugned order in Rc.B3/33086/2013 dated 3/5/2018 passed by the first respondent and quash the same.

For Petitioners ... Mr.G.V.Mohankumar
for Mr.Naveen Kumar Murthi

For Respondents ... Mr.Kamalesh Kannan
Government Advocate

O R D E R

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

Order of the District Collector-cum-District Magistrate, Nilgiris District, Udhagamandalam, dated 3/5/2018, providing assistance to the Chief Manager/Authorised Officer, Bank of India, Coonoor Branch, respondent No.2, to take physical possession of the mortgaged property, is challenged in the instant writ petition.

2. Summary of the order of the District Collector-cum-District Magistrate, is extracted hereunder:-

"In this regard, an enquiries were conducted by the District Magistrate/Collector of the Nilgiris on 30/10/2017 and 9/4/2018.

The connected records and documents submitted by the petitioner and respondents were perused and scrutinised and the arguments putforth were also heard. The prayer of the petitioner is to pass appropriate orders and directions to take physical and actual possession of the secured assets under Section 14 of the SARFAESI Act 2002.

Section 14 of the Act states that where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be the District Magistrate shall, on such request being made to him

(a). Take possession of such asset and documents relating thereto:

(b). Forward such assets and documents to the secured creditor and

(c). For the purpose of securing compliance with the provisions of sub-Section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used, such force as may in his opinion be necessary.

Accordingly, in exercise of the powers conferred under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Tahsildar and Taluk Executive Magistrate, Coonoor is hereby ordered to take possession of the property described hereunder and forward such property to the petitioner and report compliance to this office.

3. Order passed by the District Collector-cum-District Magistrate can be challenged, by way of an application, under Section 17 of the SARFAESI Act, 2002. As per the said Section, “Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter (may make an application along with such fee, as may be prescribed) to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower]."

4. Record of proceeding shows that a Hon'ble Division Bench of this Court, vide order, dated 16/5/2018, has granted interim injunction.

5. Mr.G.V.Mohankumar, learned counsel for the petitioners submitted that conditional order has been complied with.

6. In the light of the statutory provision, instant writ petition is dismissed as not maintainable. Liberty is granted to the petitioners, to approach the Tribunal, under Section 17 of the Act, with an application for appropriate interim order. Time consumed in this writ petition be excluded. Since the order, dated 16/5/2018, is stated to have been complied with, Tribunal is directed to take note of the same and pass suitable interim orders. District Collector shall not enforce the order, for a period of three weeks, from today. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/--
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The District Collector
Nilgiris
Udhagamandalam

2. The Chief Manager/Authorised Officer
Bank of India
Coonoor Branch
Mount Road
Coonoor 643 102.

+1 CC TO GOVERNMENT PLEADER SR.NO. 56110

W.P.No.12564 of 2018

ASK(03/09/2018)