IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.2457 of 2018
and
WMP No.2977 of 2018

S.Valarmathi ... Petitioner

vs.

1. The District Collector-cum-District Magistrate,
Pettayanchathiram, Vazhudavoor Road,
Puducherry - 605 009.

2. The Deputy Collector (Revenue) North,
Department of Revenue,
Revenue Complex, Ground Floor,
No.505, Kamaraj Salai,
New Saram, Puducherry - 605 013.

3. The Tahsildar,
Taluk Office,
Oulgar et, Lawspet,
Purducherry - 605 008.

4. United Bank of India,
Rep. by its Manager,
No.310, Jawaharlal Nehru Street,
Pondicherry - 605 001. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records from the first respondent vide order No.12805/DRDM/C3/SARFAESI/2016 dated 09.01.2018 and quash the same.

For Petitioner : Mr.D.Padmanabhan

For Respondents: Mr.C.T.Ramesh (for R1 t R3)
Additional Government Pleader (Pondy)

ORDER

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

Material on record discloses that a sum of Rs.50 Lakhs, has been availed as loan from United Bank of India, Pondicherry, to be repaid with interest at 12.75% in 84 equated instalments at Rs.90,000/- per month. Borrower has defaulted and therefore, bank has issued a notice dated 23.12.2010 under Section 13(2) of the SARFAESI Act, 2002, directing the petitioner to pay a sum of Rs.39,83,146/- within 60 days from the date of receipt of the notice failing which, bank would take recourse to one or more of the measures provided under Section 13(4) of the SARFAESI Act, 2002.

2. Thereafter, bank has issued possession notice dated 23.03.2011, taking symbolic possession of all that piece and parcel of the land and building situated (three floors) at RS no.144/7, Reddiarpalayam Revenue Village Oulgaret-Sub Registration District, Pondicherry and bounded on the

North by : Building,
South by : Canal
East by : Building,
West by Road.
Property owned by Mrs.S.Valarmathy

3. Material on record, further discloses that said property was brought for public auction and a sale certificate was also issued to Soorya Educational Trust, the auction purchaser.

4. Perusal of the above shows that the property has been sold for Rs.1,70,50,000/-. Thereafter, bank has filed an application under Section 14 of the SARFAESI Act, 2002, and after considering the parameters set out in Section 14 of the said Act, the District Collector-cum-District Magistrate, Puducherry, has passed orders on 09.01.2018, directing the Deputy Collector (Revenue) North-cum-Sub Divisional Magistrate to take possession of the schedule mentioned property and handover the said property to the authorised officer, United Bank of India or his authorised representative, within15 days from the date of issue of the order dated 09.01.2018. The Deputy Collector (Revenue) North-cum-Sub Divisional Magistrate, is also permitted to take necessary civil and police help for taking possession of the secured property. Order of the District Collector-cum-District Magistrate, Puducherry, is assailed in the instant writ petition.

5. Substantiating the prayer, Mr.D.Padmanabhan, learned counsel for the petitioner submitted that though the borrower, was in constant touch with the bank and offered one time

settlement, and though the bank had also agreed for the same, it was not honoured.

6. Learned counsel for the petitioner further submitted that when there were prospective buyers to purchase the property, at a higher value, bank had grossly reduced the reserve price and sold the property at Rs.1,70,50,000/-.

7. Though, property was transfered in the name of the purchaser, on 08.03.2017, through the registered sale certificate, dated 08.03.2017, registered as document No.2912 of 2017 dated 08.03.2017, belatedly, application under section 14 of the SARFAESI Act, 2002, has been filed before the District Collector-cum-District Magistrate, Puducherry, for taking physical possession of the property.

8. Referring to Sections 13(6) and 14 of the SARFAESI Act, 2002, and also placing reliance on the decision of the Calcutta High Court in United Bank of India and Another Vs State Bank of West Bengal and others in W.P.No.21814 (W) of 2017 dated 01.09.2017, Mr.D.Padmanabhan, learned counsel for the petitioner submitted that once the secured property is sold to a third party, then, the bank / secured creditor can no longer claim a security interest on such immovable property, as such security interest has been dissolved on the issuance of sale certificate and therefore, application filed by the bank under Section 14 of the SARFAESI Act, 2002, is not maintainable and in such circumstances, order dated 09.01.2018, made by the District Collector-cum-District Magistrate, Puducherry, has to be set aside.

9. Heard Mr.D.Padmanabhan, learned counsel for the petitioner and perused the materials available on record.

10. Admittedly, petitioner has borrowed a sum of Rs.50 Lakhs for the purpose of development of school including building, repairing and renovation, purchase and making of furniture, lab-equipments, computer peripherals etc. Admitted interest is 12.75%. Property has been mortgaged with the bank. Borrower and guarantors have also agreed to repay a sum of Rs.50 Lakhs with interest at the rate of 12.75%, in 84 equated monthly instalments of Rs.90,000/- per month, with effect from September 2006. Default is admitted.

11. Bank has issued a notice dated 23.12.2010 under Section 13(2) of the SARFAESI Act, 2002 to the Trustees and Guarantors viz., Mrs.G.E.Satish, Mrs.Kuyili, Mrs.Sugirtharamani, Mrs.Thirupathiammal, Mr.Manoharan and Mr.Suresh, directing them to pay a sum of Rs.39,83,146/- within 60 days from the date of such notice, failing which, bank will take recourse to one or more of the measures provided under Section 13(4) of the

SARFAESI Act, 2002. Description of the property mentioned in Section 13(2) notice dated 23.12.2010, is extracted.

Immovable property consisting land and building (three floors) at RS No.144/7, Reddiarpalayam Revenue Village Oulgaret-Sub Registration District, Pondicherry and bounded on the

North by : Building,
South by : Canal
East by : Building,
West by Road.
Property owned by Mrs.S.Valarmathy

12. Borrower and guarantors have failed to remit the outstanding amount within 60 days from the date of notice issued under Section 13(2) of the SARFAESI Act, 2002. Hence, bank has issued possession notice dated 23.03.2011, to take symbolic possession of the same. Even then, borrower and guarantors have failed to pay the amount to the bank. Thereafter, bank has issued sale notice dated 16.06.2016 and sold the mortgaged property on 28.07.2016, to Soorya Educational Trust, who had offered Rs.1,70,50,000/-. Accordingly, a sale certificate dated 08.03.2017 has been registered on the file of the Sub Registrar, Oulgaret. Description of the property, mentioned in the sale certificate is as follows:

"All that piece and parcel of land and building situated at Pondicherry Registration District, Oulgaret Sub Registration District, Oulgaret Municipal Limit, Village No.36, Reddiyarpalayam Revenue Village, R.S.No.144/7, Cadastre No.117pt in which dry land with extent of 4 Ares & 64 Centiares i.e. 8 Kuzhees and 103/4 Veesams of land covered under the sale deed.

Boundaries: EAST of property belonging to Revathy - Vazhumuni Sathyanarayana and East-West Road end, SOUTH of Pump House and East West Road, WEST of Housing Board Houses and NORTH of Canal.

[Within the Pondicherry Registration District, Sub-Registration District of Oulgaret, Pondicherry, covered under vide document No.4025/1995, dated 06.12.1995]

13. From the supporting affidavit and material on record, it could be seen that there was no challenge to the possession notice dated 23.03.2011, either by the borrower or the guarantors, including the petitioner, whose property is stated to have been mortgaged with the bank, for securing the loan. Sale notice dated 16.06.2016, sale dated 28.07.2016 and consequently, sale certificate dated 08.03.2017, have not been challenged by any one. Perusal of the material on record discloses that the writ petitioner, is only a President, Correspondent and Administrator of M/s.Arul Sasthalaya Society, (Pondicherry) and not the borrower or the guarantor, as the case

may be.

14. Loan has been obtained by Arul Sasthalaya Society, for the purpose, as stated supra. Trustees, who stood as guarantors are Mrs.G.E.Satish, Mrs.Kuyili, Mrs.Sugirtharamani, Mrs.Thirupathiammal, Mr.Manoharan and Mr.Suresh. Property of the petitioner, is stated to have been mortgaged with the bank for the purpose of availing loan. Though, the petitioner, President, Correspondent and Administrator of M/s. Arul Sasthalaya Society, has submitted that her property had been undervalued, at the time of action, held on 28.07.2016, she has not chosen to question the same before the Debts Recovery Tribunal, on the abovesaid ground or raised any ground, alleging any irregularity, in the auction.

15. In the foregoing paragraphs, we have already recorded that petitioner has not chosen to question the notice issued under Section 13(4) of the SARFAESI Act, 2002, when symbolic possession was taken. Sale and consequently, sale certificate dated 08.03.2017 and registered as document No.2912 of 2017 on the file of Sub Registrar, Oulgaret, have not been questioned.

16. Bank which has issued the sale certificate, to the successful bidder, has sought for assistance from the District Collector-cum-District Magistrate, Puducherry, for taking actual physical possession and therefore, filed an application under Section 14 of the SARFAESI Act, 2002.

17. Though, Mr.D.Padmanabhan, learned counsel for the petitioner contended that no sooner there was a transfer of the secured asset, to and in favour of the auction purchaser, by issuance of a sale certificate, and thereafter, bank cannot invoke the provisions of Section 14 of the SARFAESI Act, 2002, and also placed reliance on the decision of the Hon'ble Calcutta High Court in United Bank of India and Another Vs State Bank of West Bengal and others in W.P.No.21814 (W) of 2017 dated 01.09.2017, this Court is not inclined to accept the said contention, for the reason that the opening sentence of Section 14 itself makes it clear that where possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset 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 such 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; and

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

(2) 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.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

18. Taking possession of the secured asset involves two stages. Symbolic possession, when a notice is issued under Section 13(4) of the SARFAESI Act, 2002 and actual physical possession, under Section 14 of the said Act, when assistance is sought for from the learned Chief Metropolitan Magistrate or the District Collector-cum-District Magistrate of any District, as the case may be.

19. Though, issuance of sale certificate may confer transfer of interest or ownership in favour of the auction purchaser, from the reading of Section 14 of the SARFAESI Act, 2002, it could be deduced that the auction purchaser is not conferred with any right to seek for assistance from either the learned Chief Metropolitan Magistrate or the District Collector/District Magistrate, as the case may be. Section 14 of the SARFAESI Act, 2002, confers, a right, only on the secured creditor, to seek for assistance, from the learned Chief Metropolitan Magistrate or the District Collector/District Magistrate, as the case may be. Section 14 of the SARFAESI Act, 2002, does not envisage any right to the auction purchaser, to seek for assistance to take actual possession of the auctioned property. But, enables the bank, the secured creditor, to seek for assistance from the learned Chief Metropolitan Magistrate or the District Collector / District Magistrate, as the case may be, for the purpose of taking possession or control of any such secured asset.

20. Section 14 of the Act, does not clothe any right on the auction purchaser to seek for assistance from the learned Chief Metropolitan Magistrate or the District Collector / District Magistrate, as the case may be, to provide assistance. If actual physical possession has to be handed over to the auction purchaser by the bank, the secured creditor, the only remedy available to the secured creditor, is to approach the learned Chief Metropolitan Magistrate or the District Collector - cum- District Magistrate, as the case may be, to take physical possession. In the light of the above discussion and decision, we are not inclined to accept the contentions of the learned counsel for the petitioner.

21. Further, as per Section 13(4) of the SARFAESI Act, 2002, in case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

PROVIDED that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

PROVIDED FURTHER that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

22. Petitioner though claimed to be the owner of the property, has not challenged any of the measures taken by the bank towards realisation of the loan. In the light of the above, we are not inclined to entertain the instant writ petition.

23. Though, Mr.D.Padmanabhan, learned counsel for the petitioner also raised grounds that after issuance of the sale certificate dated 08.03.2017, bank has belatedly filed application under Section 14 of the SARFAESI Act, 2002 and that therefore, the same ought not to have been entertained, by the District Collector-cum-District Magistrate, this Court is not inclined to accept the said contention, for the reason that application under Section 14 of the SARFAESI Act, 2002, has been filed in the year 2016 (No.12805/DRDM/C.3/SARFAESI/2016), even before the sale certificate on 08.03.2017. After considering the averments made in the supporting affidavit, in exercise of powers under Section 14 of the SARFAESI Act, 2002, the District Magistrate cum District Collector (Pudhucherry) has passed the orders.

24. For the reasons stated supra, the writ petition is dismissed. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

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To

1 The District Collector
-cum- District Magisrate,
Pettayanchathiram, Vazhudavoor Road,
Puducherry 605 009

2 The Deputy Collector (Revenue)
North, Dept. of Revenue, Revenue Complex,
Ground Floord, 505, Kamarajar Salai,
New Saram, Puducherry 605 013

3 The Tahsildar Taluk office,
oulgaret , Laws pet,
Puducherry 605 008

4 United Bank of India
Rep by its Manager, 310,
Jawarhalal Nehru Street,
Puducherry 605 001

+1cc to Mr.M.MAGESH, Advocate, S.R.No. 8502
+1cc to the Government Pleader, S.R.No. 8327

W.P.No.2457 of 2018
and
WMP No.2977 of 2018

TR(06/02/2018)