

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM:

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

W.P.No.14229 of 2018
and WMP No.16803 of 2018

Shanmugam Pattu

... Petitioner

vs.

1. The State Bank of India,
Stressed Assets Recovery Branch,
Represented by its Chief Manager,
Red Cross Building, 2nd Floor,
No.32, Montieth Road, Egmore,
Chennai - 600 008.

2. The District Magistrate and District Collector,
Collectorate Office,
Kancheepuram.

.... 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 relating to order No.RC/MC/3859/2018 dated 11.05.2018 passed by the District Magistrate and District Collector, Kancheepuram and quash the same.

For Petitioner : Mr.T.V.Suresh Kumar

For Respondents : Mr.M.L.Ganesh

ORDER

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

Concept Medicare (India) Private Limited Company, has availed loan and defaulted payment. Therefore, State Bank of India, has filed application dated 08.03.2018 under Section 14 of the SARFAESI Act, before the District Magistrate cum District Collector, Kancheepuram, for assistance.

2. On the application dated 08.03.2018, filed by the respondent bank, seeking assistance for taking physical possession of the secured assets, vide order dated 11.05.2018, the District Magistrate cum District Collector, Kancheepuram,

directed the Tahsildar-Alandur, to take possession of the mortgaged property, after due verification of the genuineness of land records and handover the same, to the bank under proper acknowledgment. Thasildar-Alandur has also been instructed to verify as to whether there is any tenant in occupation. For brevity, order dated 11.04.2018 of the District Magistrate cum District Collector, Kancheepuram, is reproduced hereunder.

RC.M3/3859/2018

Dated:11.05.2018

Sub: Securitization and Reconstruction of Financial Assets

and Enforcement of Security Interest Act, 2002-

Petition filed by the Authorized Offer, M/s.State Bank

of India, No.32, Montieth Road, Egmore, Chennai -

600 008 - Orders under Section 14(1) (2) of the Act for

taking possession of the secured assets - issued -

regarding.

Ref: 1. The Authorized Offer, M/s.State Bank of India,

No.32, Montieth Road, Egmore, Chennai - 600 008 -

Dt:08.03.2018

2. And other connected records.

ORDER:

The Authorized Offer, M/s.State Bank of India, No.32, Montieth Road, Egmore, Chennai - 600 008, has filed applications under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 praying to pass an order enabling the petitioner to take possession of the following Secured Assets of the Borrower who availed financial assistance from M/s.State Bank of India, No.32, Montieth Road, Egmore, Chennai - 600 008, executing mortgage of the said property. The following details are arrived based on the affidavit filed by the Authorized Officer and other records submitted by him.

1	Name and Address of the Borrower	1. M/s.Concept Medicare India Pvt Ltd. 2. Mrs.S.Pattu, 3. Mr.Nalini Pattu, Above all are residing at Flat No.FF-2/FF-3, Casa XS Apartment, Ramachandra Mission Road, Manappakam, Chennai - 600 116. 4. Dr.Bhawana Dev, 5. Dr.Nitesh Kumar Both are residing at Flat No.FF-1, Casa XS Apartment, Ramachandra Mission Road, Manappakam, Chennai - 600 116.
2.	Details of Property with Survey No.	All the piece and parcel of land and Building measuring to an extent of UDS 1755.03 Sq.ft with Super built up area comprised in S.Nos.43/2 situated at Manapakkam Village, Alandur Taluk, Kancheepuram District.
3.	Extent	UDS 1755.03 Sq.ft.
4.	Boundary of the Property	North by : Property of L&T Ltd., South by : Public Road, East by : Property of Ragubathy & Others West by : Property of L&T Ltd.,
5.	Date of loan/OD availed	09.04.2014
6.	Loan Amount	Rs.6,75,00,000/-
7.	Date of the loan classified as Non-performing Asset	31.01.2014
8.	Outstanding Amount as on 28.01.2014	Rs.7,82,76,792.11
9.	Date of 13(2) Demand Notice and its acknowledgment	03.02.2014 Yes Served

10.	Demand Notice Paper Publication	No
11.	Date of Possession Notice u/sec 13 (4)	10.04.2014
12.	Possession Notice Paper Publication	Yes. In "The New Indian Express" in English Language on 12.04.2014, and "Dina Karan" in Vernacular Language on 12.04.2014.

2) On perusal of the material records and documents submitted by the Authorized Offer, M/s.State Bank of India, No.32, Montieth Road, Egmore, Chennai - 600 008, it is seen that the Borrower failed to repay the dues in time. Hence, the Bank classified the dues of the Borrower as Non-performing Asset and issued notice u/s 13(2) of the SARFAESI Act calling upon the borrowers to pay the outstanding amount due to them within 60 days. The borrower received the notice but failed to liquidate their liability. Thereafter, the petitioner took "Symbolic Possession" of the property, issued notice u/sec 13(4) of the Act, affixed the same on the secured assets and published the said notice in two newspaper. But the respondent had not come forward to settle the dues.

3) After considering the entire materials it is determined that under Section 14(1) of the Act, the petitioner (Secured Creditor) is entitled to take possession of the schedule mentioned assets. The petitioner has also complied with provisions of Section 13(4) of the Act and Rule 8(1) and (21) of Security Interest (Enforcement) Rules 2002.

4) In view of the aforesaid facts and as per the powers conferred on the District Magistrate and District Collector under Section 14(1)(2) of the SARFAESI Act, 2002 orders are hereby issued for taking over the possession of the Secured Assets as detailed above and handing over to the Authorized Officer of the Petitioner bank. The Tahsildar-Alandur, is authorized to take possession of the property after due verification of genuineness of land records and hand over the same to the petitioner bank under proper acknowledgment. The Tahsildar-Alandur, is also instructed to verify whether any tenancy occupation is prevalent there with proper agreements in which case

after following the due process of law proceed to take possession of the said property. Further he may be directed to give prior intimation to the person in possession of the property before taking possession of the secured assets and cause no physical harm of the inmates. The Tahsildar-Alandur, shall execute this order at once and submit report to this office at the earliest.

5) The Assistant Commissioner of Police, St.Thomas Mount, is requested to render necessary assistance by providing adequate police protection to the Tahsildar-Alandur, at the time of taking possession of the said property.

Schedule of Property as mentioned in the Affidavit

All the piece and parcel of land and Building measuring to an extent of UDS 1755.03 Sq.ft with Super built up area comprised in S.Nos.43/2 situated at Manapakkam Village, Alandur Taluk, Kancheepuram District. North by : Property of L&T Ltd., South by : Public Road, East by : Property of Ragubathy & Others West by : Property of L&T Ltd.,
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6) The Authorized Offer, M/s.State Bank of India, No.32, Montieth Road, Egmore, Chennai - 600 008, is fully responsible for any disputes and problems that may arise in respect of the said mortgaged property."

Being aggrieved by the said order, instant writ petition has been filed by the Guarantor, praying for a certiorari, to quash the same.

3. Though, the writ petitioner has prayed to quash the order of the District Magistrate cum District Collector, Kancheepuram, dated 11.05.2018, during the course of hearing, it was brought to the notice of this Court that when the Thasildar-Alandur, went to the spot for taking physical possession, petitioner/guarantor has given a letter, undertaking to surrender physical possession and sought for fifteen days time. De hors, the letter seeking time, instant writ petition has been filed.

4. Mr.T.V.Suresh Kumar, learned counsel for the petitioner submitted that guarantor/writ petitioner is aged about 69 years living with his mother, aged about 80 years and therefore, learned counsel for the petitioner reiterated that given sufficient and reasonable time, he would surrender possession of the mortgaged property viz., all the piece and parcel of land

and Building measuring to an extent of UDS 1755.03 Sq.ft with Super built up area comprised in S.Nos.43/2 situated at Manapakkam Village, Alandur Taluk, Kancheepuram District. He requires two months time.

5. Mr.ML.Ganesh, learned counsel for the bank, has no serious objection.

6. Considering the plight of the petitioner in locating alternate residence / accommodation, we deem it fit to grant two months time from today, to the petitioner, to surrender physical possession of the mortgaged property to the Authorised Officer, State Bank of India, No.32, Montieth Road, Egmore, Chennai-8. It is made clear that if the undertaking/assurance, is not honoured, it is open to the respondent bank to take appropriate proceedings.

7. Writ petition is disposed of, accordingly. No costs. Consequently, the connected writ miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The State Bank of India,
Stressed Assets Recovery Branch,
Represented by its Chief Manager,
Red Cross Building, 2nd Floor,
No.32, Montieth Road, Egmore,
Chennai - 600 008.
2. The District Magistrate and District Collector,
Collectorate Office,
Kancheepuram.

+1 CC to Mr.M.L. Ganesh, Advocate sr 37100.

+2 CCs to Mr. Genicon and Associates sr 36823.

W.P.No.14229 of 2018
and WMP No.16803 of 2018

NA(CO)
SP(14/06/2018)