

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.19236 of 2018

State Bank of India,
(Retail Assets Central Processing Centre),
Rep by its Chief Manager,
Sunil Kumar Choudhary S/o Krishna Choudhary
No.16, Whannels Road, Egmore,
Chennai - 600 008. ... Petitioner

Vs.

1.District Magistrate & District Collector,
Thiruvallur,
Thiruvallur District.

2.Sathish Kumar.S ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to dispose the Eviction petition filed by the petitioner vide CMP.No.12432/2017/M2, which is pending for 13 months at an early date and pass orders.

For Petitioner : Ms.S.R.Sumathy

For R1 : Mr.Kamalesh Kannan
Government Advocate

ORDER

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

State Bank of India, (Retail Assets Central Processing Centre), Chennai, represented by its Chief Manager, has submitted an application under Section 14 of the SARFAESI Act, 2002, seeking assistance from District Magistrate-cum-District Collector, Thiruvallur District. Though the said application has been taken on file in C.M.P.No.12432/2017/M2, by the 1st respondent, the same is pending from nearly 13 months. Hence, petitioner has filed the instant writ petition, for Mandamus, directing the said Authority to pass orders.

2. Record of proceedings, shows that on 27.07.2018, a Hon'ble Division Bench of this court, has ordered notice to the respondents, returnable in one week. Respondent No.2, is the borrower.

3. Ms.S.R.Sumathy, learned counsel for the petitioner, submitted that the second respondent could not be served and accordingly, an affidavit has been filed.

4. Mr.Kamalesh Kannan, learned Government Advocate, submitted that appropriate orders would be passed on the application filed under Section 14 of the SARFAESI Act, 2002. He prayed for four weeks time.

5. Though a Hon'ble Division Bench of this Court has ordered notice to the respondent No.2, and the same is yet to be served, we are of the view that, respondent No.2, is not required to be heard, while issuing a direction to the District Magistrate-cum-District Collector, Thiruvallur District, to discharge his statutory duty, under Section 14 of the SARFAESI Act, 2002. Therefore, fresh notice to the respondent No.2, is waived.

6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. Section 14 of the SARFAESI Act, 2002 mandates that on receipt of an affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit, pass suitable orders for the purpose of taking possession of the secured assets, within a period of 30 days from the date of application. Proviso to the said Section states that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate, within the said period of thirty days, for the reasons beyond his control, he may after recording reasons, in writing, for the same, pass the order within such period but not exceeding in aggregate 60 days.

8. The Principal Secretary to Government, vide, Letter No.19498/Res.II/2014-1, dated 09.07.2014, has issued directions, stating that there should be speedy disposal of the application filed under Section 14 of the SARFAESI Act. The said letter is extracted hereunder:-

"I am to invite your kind attention to the reference cited (copy enclosed) wherein the GM, SLBC, Chennai, has requested to advise the District Collectors (District Magistrates) for speedy disposal of applications filed by banks to assist in taking possession of securities of the defaulters charged to the banks under Section 14 of SARFAESI Act, 2002.

2. In this connection, I am to request you to

take necessary action for speedy disposal of the applications filed by the banks in taking possession of securities of the defaulters charged to the banks under Section 14 of SARFAESI Act, 2002, without affecting the image of the administration."

9. Following the said letter, in W.P.No.7813 of 2016, dated 22.04.2016, a Hon'ble Division Bench of this Court, has passed the following order:-

"In the light of the above, we direct the District Collector (District Magistrate), Thanjavur District, to pass orders on the Application dated 18/8/2015 in file Ref.No.34810/2015, filed under Section 14 of the SARFAESI Act, within the period of two months from the date of receipt of a copy of this order. While doing so, procedure set out under Section 14 of the Act should be followed. Mr.B.Kumar, learned Government Advocate is directed to forward the copy of this order to the Principal Secretary to Government, Finance (Res.II), Department, Chennai for appropriate follow up action. Along with the supporting affidavit, to the instant writ petition, the petitioner has also enclosed the copies of the petitions, dated 8/1/2014, 7/5/2014, 11/9/2014, 24/12/2014 and 31/1/2015, filed under Section 14 of the SARFAESI Act, 2002."

10. Further, the Secretary to Government, Finance (Res.II) Department vide, Letter No.32082/Fin/Res.II/2017, dated 03.08.2017, has issued directions to all District Collectors, stating that they are supposed to act on the SARFAESI Application within a period of 30 days for the purpose of taking possession by lending banks. The said letter is extracted hereunder:-

To

All District Collector (w.e.)

Sir / Madam,

Sub: SARFAESI Act, 2002 - Action of District Collectors being Chief Metropolitan Magistrate / District Magistrate under Section 14, appropriate file action requested - Reg.

Ref: Letter received from the Zonal Manager of Indian Bank, Zonal Office - DDDC Building, 1st Floor, 91, Pennagaram Road, Dharmapuri - 636 701, dated 28.06.2017 addressed to the CS to Government of Tamil Nadu.

I am to invite your attention to the reference cited received from the Zonal Manager, Indian Bank in connection with taking appropriate action under Section 14 of the SARFAESI Act, 2002.

2. As per Section 14 of the SARFAESI Act, 2002 the Authorised Officer of lending banks can approach the District Collectors being CMM/DM, by filing an application to take actual possession / Control over the property of the NPA. According to the Act, the District Collectors are supposed to act on that application within a period of 30 days for the purpose of taking possession by lending banks. Therefore, I am to request you to take immediate action as per the SARFAESI Act without any delay.

3. I am also to request you to acknowledge the receipt of this letter."

11. Placing on record the submission of the learned Government Advocate and in the light of the directions issued by the Principal Secretary to Government, vide, Letter No.19498/Res.II/2014-1, dated 09.07.2014, following the earlier order of this Court in W.P.No.7813 of 2016, dated 22.04.2016, and also the subsequent directions of the Secretary to Government, Finance (Res.II) Department vide Letter No.32082/Fin/Res.II/2017, dated 03.08.2017, we direct, the District Magistrate cum District Collector, Thiruvallur District, to dispose of the application, seeking assistance for taking physical possession, if not done earlier, within a period of four weeks, from the date of receipt of a copy of this order. While doing so, District Magistrate cum District Collector, Thiruvallur District, should act in accordance with Section 14 of the SARFAESI Act, 2002.

12. With the above direction, this writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar

// True Copy//

WEB COPY
Sub Assistant Registrar

To

District Magistrate & District Collector,
Thiruvallur, Thiruvallur District.

+1cc to Mr.S.R.Sumathy, Advocate SR.No.54970

+1cc to Government Pleader SR.No.56416

W.P.No.19236 of 2018

SV (CO)

<https://hcservices.courts.gov.in/hcservices/>
SM/30.08.2018