IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2018

CORAM:

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

W.P.No.19696 of 2018
and WMP No.23126 of 2019

HDFC Bank Ltd.,
having its branch office at
No.590, Sri Sai Towers, 3rd Floor,
D.B.Road, R.S.Puram, Coimbatore - 641 002
represented by its Legal Head,
P. Kasi Viswanathan ... Petitioner

vs.

1. The District Collector cum District Magistrate,
District Collector Office,
Tiruppur District.

2. Mrs.S.Sulochana
3. Mr.P.Subramaniam ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the District Collector cum District Magistrate, Tiruppur to expeditious disposal of the Application filed by the petitioner bank under Section 14 of SARFAESI Act filed on 26.03.2018 through Register Post, on merits within a time limit as may be fixed by this Court.

For Petitioner : Ms.Surasika Parthasarathy
for Mr.K.Govindarajan

For Respondents : Mr.V.Prabhu [for R1]
Government Advocate.

ORDER

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

Seeking assistance, for taking physical possession, HDFC Bank Limited, represented by its Authorized Officer, has filed an application dated 26.03.2018, under Section 14 of the SARFAESI Act, 2002, before the District Collector cum District Magistrate, Tiruppur District, 1st respondent herein.

2. According to the petitioner, the said petition is pending for nearly five months. Left with no other alternative, instant writ petition has been filed for a mandamus, directing the 1st respondent, to pass orders on the petition dated 26.03.2018, filed under Section 14 of the SARFAESI Act, within such time frame to be fixed by this Court.

3. Respondent Nos.2 & 3, are the borrowers. As the District Collector cum District Magistrate, Tiruppur District, the 1st respondent is bound to pass orders on the application, we are of the view that there is no need to issue notice to respondent Nos.2 & 3. Hence, notice to respondent Nos.2 & 3, is waived.

4. On this day, when the writ petition came up for admission, on instructions, Mr.V.Prabhu, learned Government Advocate submitted that orders are yet to be passed in the application filed under Section 14 of the SARFAESI Act, 2002. He prayed for four weeks time.

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

6. 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.

7. 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."

8. 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 Additional Government Pleader 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."

9. 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."

10. 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 Collector cum District Magistrate, Tiruppur District, to dispose of the application dated 26.03.2018, 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 Collector cum District Magistrate, Tiruppur District, should act in accordance with Section 14 of the SARFAESI Act, 2002

11. With the above direction, this writ petition is disposed of accordingly. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VII)

// True Copy//

Sub Assistant Registrar

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To

The District Collector cum District Magistrate,
Tiruppur District.

+1 cc to Mr.K.GOVINDARAJAN, Advocate SR.No.52129
+1cc to Government Pleader SR.No.54016

W.P.No.19696 of 2018
and WMP No.23126 of 2018

AD(CO)
SMI/21.08.2018