IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.29884 of 2013 and
M.P.Nos.2 of 2013 & W.M.P.No.22669 of 2018

1. P.S.Sankaranarayanan
2. S.Rama ... Petitioners

v.

1. The Union of India
Represented by its Secretary to Government
Ministry of Finance, North Block
New Delhi - 110 001

2.The Authorised Officer
Karnataka Bank Limited
K.K. Nagar Branch
No.10, P.T.RAjan Salai, K.K.Nagar
Chennai - 78

3. D.Mariappan

4. M.Valli ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records and the order of the 2nd respondent dated 30.08.2013 in Ref No:HO: LRD (SU):PF:2020:OR:6087/1/2/3: 2013-14 and quash the same as illegal.

For Petitioner : Mr.J.Antony Jesus

For Respondents: Mr.S.R.Raghunathan - for R2
No appearance - for R1, R3 & R4

O R D E R

(Order of the Court made by M.DURAISWAMY,J.)

The petitioners have filed the above Writ Petition to issue a Writ of Certiorari to call for the records of the order dated 30.08.2013 passed by the 2nd respondent and to quash the same.

2. It is the case of the petitioners that they purchased a flat in flat "D", First Floor, Sri Vari Apartments, Old No.16, New No.24, Mariamman Koil Cross Street, West K.K. Nagar, Chennai from the 3rd respondent on 18.06.2007 under a registered sale deed by obtaining a housing loan from Axis Bank. While so, on 25.04.2013, the petitioners received a legal notice from the 2nd respondent bank stating that the respondents 3 and 4 have mortgaged the said flat and obtained loan for a sum of Rs.30,00,000/- (Rupees thirty lakhs only) and that they have committed default in repaying the loan amount. In the said notice, the 2nd respondent bank had informed the petitioners that the respondents 3 and 4 had mortgaged the property and obtained the loan on 24.11.2006. When the mortgage was prior to the purchase made by the petitioners on 18.06.2007, the petitioners have challenged the notice issued under section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act'), dated 30.08.2013.

3. It is settled position that a notice issued under section 13(2) of the SARFAESI Act cannot be questioned. That apart, if the petitioners are aggrieved over the initiation of the proceedings under the SARFAESI Act, the remedy open to them is only to approach the Debts Recovery Tribunal under section 17 of the SARFAESI Act.

4. In the judgments reported in (2018) 3 Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], and (2018) 1 Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] the Hon'ble Supreme Court held that aggrieved parties cannot challenge the proceedings initiated under the SARFAESI Act directly by filing a writ petition under Article 226 of the Constitution without approaching the Debts Recovery Tribunal.

5. A notice under section 13(2) of the SARFAESI Act, cannot be a cause of action for any direction under Article 226 of the Constitution of India because it was only a show cause notice. It is pertinent to note that after the issuance of notice under section 13(2) as required under the Act, the debtor can discharge the liability within 60 days and if the same is not discharged within the time stipulated, it is for the secured creditor to take action under section 13(4), either taking of the possession of the secured assets or by taking over management of the secured assets or appoint any person to manage the secured assets or require by the notice in writing to a person, who has subsequently acquired the secured assets from the borrower to pay.

6. The notice under section 13(2) of the SARFAESI Act really does not give any rights to cause of action because by itself the notice does not provide any right or liability to the borrower. Hence, challenge to the notice under section 13 (2) of the SARFAESI Act is premature, since it is possible that the secured creditor may be satisfied with the reply of the borrower to the aforesaid notice and may drop the proceedings.

7. Therefore, the writ petition challenging section 13(2) of the SARFAESI Act is liable to be rejected. Section 17 of the SARFAESI Act provides for a remedy before the Debts Recovery Tribunal challenging the action taken under section 13 (4) of the SARFAESI Act by way of an alternative remedy.

8. In these circumstances, the Writ Petition is devoid of merits and the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Secretary to Government
   Union of India
   Ministry of Finance, North Block
   New Delhi - 110 001.

2.The Authorised Officer
Karnataka Bank Limited
K.K. Nagar Branch
No.10, P.T.RAjan Salai, K.K.Nagar
Chennai - 78.

+1cc to Mr.J.Antony Jesus, Advocate Sr.58776
+1cc to Mr.S.R.Rajagopal, Advocate Sr.58262

W.P. No.29884 of 2013 and
M.P.No.2 of 2013 & W.M.P.No.22669 of 2018

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srg 6/9/2018