IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:23.01.2018

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.41985 of 2016
and
WMP.Nos.35933 of 2016 and 587 of 2017

S.Sumathy .. Petitioner

Versus

1. Indian Overseas Bank
Tiruchengode Branch
represented through its Senior Manager
56 & 57, Theppakulam Street,
Sankari Road
Tiruchengode
Namakkal District - 632 211.

2. District Magistrate and District Collector
Namakkal.

.. Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to forbear and refrain from enforcing the order made in ROC.No.18419/2016-M4 dated 12.10.2016 passed by the second respondent.

For Petitioner	:	Mr.O.R.Abdul Kalam for M/s.R.K.Sekina Reshma
For Respondent - 1	:	Ms. Ananda Gomathy
For Respondent - 2	:	Mr.K.V.Dhanapalan Special Government Pleader

ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN,J.)

The petitioner has filed this Writ Petition seeking to issue a Writ of Mandamus directing the respondents to forbear and refrain from enforcing the order made in ROC.No.18419/2016 - M4 dated 12.10.2016 passed by the second respondent.

2. Brief facts of the case of the petitioner, as averred in the Writ Petition, are as follows:-

The petitioner, being a borrower, created mortgage by deposit of title deeds with the first respondent Bank on 01.03.2013 and 08.08.2013 and availed loan to the tune of Rs.21,49,360/- (Rs.11,19,360/- + Rs.10,30,000/-). On 18.04.2016 The first respondent filed petition before the Debt Recovery Tribunal, Madurai, under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The petitioner appeared before the Debt Recovery Tribunal on 10.08.2016 and the said petition has been adjourned to 05.12.2016 for reply. Even before the Debt Recovery Tribunal adjudicated the matter and quantified the petitioner's liability, the first respondent bank sought to enforce the security interest under Section 13 of the SARFAESI Act and obtained an order dated 12.10.2016 from the second respondent, within the ambit of Section 14 of the SARFAESI Act, to take possession of the mortgaged property of the petitioner with an intention to dispossess the petitioner. Hence, this Writ Petition.

3. The petitioner has also filed a petition in W.M.P.No.587 of 2017 and stated that after the filing of Writ Petition, the petitioner came to know that the Bank Manager has sent a cover containing blank papers to the petitioner. According to the petitioner, the said act of the Bank Manager indicated his intention to put the petitioner, in harm. Therefore, the petitioner prayed that she may be permitted to raise the following additional ground in the Writ Petition, viz., “the bank being secured creditor hath not acted fairly and in good faith; It has acted with its arbitrary powers”.

4. Brief facts of the case of the first respondent, as averred in the counter affidavit, are as follows:-

The petitioner has clearly admitted the factum of availing the loan and the subsequent default. As payments were not forthcoming, bank was constrained to issue notices under SARFAESI Act and took measure under Section 14 of the SARFAESI Act. According to the decision of the Hon'ble Supreme Court in the bench mark judgment between “M/s.Transcore .vs. Union of India”, parallel proceedings can be initiated by the banks, both under RDBFI Act, as well as SARFAESI Act. The petitioner is put to strict proof of reckless allegations made in the grounds and additional grounds. The Writ Petition is bereft of merits and further smacks of malafides, afterthought and deserves to be dismissed in limine with exemplary costs.

5. Heard the learned counsel for the petitioner, learned counsel for the first respondent as well as learned counsel for the second respondent and perused the materials, available on record.

6. From the perusal of records, it is seen that the petitioner approached the first respondent bank for availing loan and the first respondent bank granted financial assistance to the petitioner viz., housing loan-1 for a sum of Rs.11,19,360/- and housing loan -2 for Rs.10,30,100/-, and the petitioner being the borrower and her husband being the guarantor, created mortgage by depositing title deeds as security; and in respect of housing loan-1, they executed a demand promissory note on 04.03.2013 for a sum of Rs.11,19,360/- and a letter promising to repay the loan in 120 monthly instalments of Rs.15,000/- each, with subsequent interest; and in respect of housing loan-2, they executed a demand promissory note dated 08.08.2013 for a sum of Rs.10,13,000/- and a letter containing terms and conditions promising to repay the loan in 240 monthly instalments of Rs.10,200/- each, with subsequent interest. The petitioner also executed registered Memorandum of Title Deeds on 01.03.2013, supplemental Memorandum of Title Deeds on 07.08.2013 and a revival letter on 05.10.2015. However, after repaying the loan of Rs.3,60,000/-, the petitioner defaulted and did not repay the amount as per their promise, due to ailment of her husband and lastly, the petitioner paid a sum of Rs.40,000/-. Since there was default in payment, several demands were made by the respondent bank and the respondent bank issued a demand notice dated 12.10.2015.

7. After two years of sanctioning the loan, by filing O.A.No.411 of 2016, the respondent bank initiated proceedings under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, against the petitioner before the Debts Recovery Tribunal , Madurai. The petitioners' contention is that the respondent bank did not wait, but acted in a very fast manner and taken steps to the detriment of the enforcement of its security. Summons were served on the petitioner by the Registrar of Debts Recovery Tribunal, Madurai and on receipt of the same, the petitioner appeared before the Debts Recovery Tribunal, Madurai, on 10.08.2016, and prayed the Tribunal to grant some time for filing reply statement. The Tribunal, which has to determine and fix the liability, adjourned the matter to 05.12.2016, as per the request of the petitioner.

8. It is also contended by the learned counsel for the petitioner that while the matter was pending before the Debts Recovery Tribunal in O.A.No.411 of 2016, the first respondent, in a hurried manner, chose to invoke Sections 13 and 14 of the

SARFAESI Act and consequent to the said proceedings, the petitioner was called upon by the second respondent/District Magistrate -cum- District Collector, Namakkal and a letter in writing was extracted to record her undertaking that she would discharge the whole debt within a fortnight. It is the further contention of the petitioner that she was threatened that in case of failure to discharge the loan, she would be thrown out of her house and the same would be sold. However, the petitioner could not comply with the undertaking, which made the second respondent/District Magistrate -cum- District Collector, Namakkal, to pass an order in his Reference No.18419/2016-M4 on 12.10.2006, which is under challenge before this Court.

9. The petitioner has filed a petition in W.M.P.No.587 of 2017 seeking permission to raise the following additional ground in the Writ Petition, viz., "the bank being secured creditor hath not acted fairly and in good faith; It has acted with its arbitrary powers" stating that after filing the Writ Petition, the petitioner came to know that the Bank Manager has sent a cover containing blank papers to the petitioner and the said act of the Bank Manager indicated that there is hidden device, in him to put the petitioner, in harm. Learned counsel for the respondent has denied the said allegations and submitted that there is no injustice caused to the petitioner. However, this Court is of the view that there is no bar for the petitioner to raise the additional legal grounds and hence, allowed this Miscellaneous Petition in W.M.P.No.587 of 2017 and the petitioner is permitted to raise the additional legal grounds.

10. The main contention of the learned counsel for the petitioner is that Section 14 of the SARFAESI Act can be invoked or enforced only after the adjudication and fixation of petitioner's liability by the Debts Recovery Tribunal, and not prior to that, and that too when the respondent bank has chosen to invoke Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The entire arguments of the learned counsel for the petitioner revolve only around 2 points, i.e.,

> (1) Whether the bank can invoke parallel proceedings both under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 as well as SARFAESI Act ?
>
> (2) Whether duties cast upon the bank that they can invoke securitisation proceedings only after adjudication and fixation of liability by the Debts Recovery Tribunal in the application filed by the Bank under Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ?

11. The argument of the learned counsel for the petitioner is that the respondent bank has initiated proceedings under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, against the petitioner before the Debts Recovery Tribunal, Madurai in O.A.No.411 of 2016 and at the simultaneously, parallel proceedings have been initiated under Sections 13 and 14 of the SARFAESI Act, consequent to which, the petitioner was called upon by the second respondent and the second respondent extracted her undertaking that she would discharge the whole debt within fortnight. The petitioner has also raised an additional ground that the bank being secured creditor had not acted fairly and in good faith and acted within its arbitrary power. Learned counsel for the petitioner has raised a question whether the bank has option to proceed both under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and SARFAESI Act, 2002.

12. Learned counsel for the petitioner, by relying on a decision of the Patna High Court reported in AIR 2013 Patna 1 (M/s.Purnea Cold Storage .vs. State Bank of India), would submit that once the bank has initiated proceedings against the petitioner under SARFAESI Act, bank is debarred from initiating parallel proceedings under Debts Recovery Tribunal Act or any other Acts, till the bank exhausts all the steps taken under Section 13 of the SARFAESI Act. The relevant portions in the said decision are extracted hereunder:-

> "9. So far as validity of initiation and maintainability of a proceeding under SARFAESI Act during the pendency of an O.A. Application before the Tribunal under DRT Act, the views of the Apex Court in M/s.Transcore (AIR 2007 SC 712) (supra) are law of the land in terms of Article 141 of the Constitution of India. However, in the present case, the situation is converse. Admittedly, in this case, the Bank has initiated a proceeding under SARFAESI Act earlier by issuing a notice under Section 13 (2). Thereafter, it has taken steps for invoking jurisdiction of the Tribunal under DRT Act also by filing an application under Section 19 of DRT Act. Whether this course of action is permissible for a bank or financial institution is a question raised by the learned counsel for the petitioner in this case. The Apex Court in M/s.Trancore (supra) has found that both the Acts are complementary to each other and there was no provision in either of the Acts to debar initiation of a proceeding under the SARFAESI Act during the pendency of a proceeding under the DRT Act. But this cannot

be disputed that in view of the provisions of Section 35 of the SARFAESI Act, its provisions have overriding effect over other laws, while saving the application of other laws, including the DRT Act, by virtue of the provisions of Section 37. Hence, if SARFAESI Act provides for remedy and lays down procedure thereof, recourse to it would have an overriding effect on any provision or recourse to a remedy under any other Act. This situation, as has rightly been pointed out by the learned counsel for the petitioner, stands clarified by sub-section (10) of Section 13 of the SARFAESI Act, as reproduced herein below :

Section 13

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent Court, as the case may be, for recovery of the balance amount from the borrower.”

10. It is amply clear that this sub-section lays down that when the sale proceeds of the secured assets, put on auction sale under the provisions of SARFAESI Act, is not found sufficient to satisfy the debts, then only a bank or financial institution has the liberty to file an application before the Debts Recovery Tribunal having jurisdiction or a competent Court, as the case may be, for recovery of the balance amount from the borrower. Sub - rule (1) of Rule 11 prescribes for filing an application in terms of sub-section (10) of Section 13 in the Form annexed as Appendix (VI) to the Rules. This Form shows that at the time of filing of the application, a declaration has to be made that the matter, regarding which application was being made, was not “pending before any court of law or any other authority or any Bench or Tribunal”. Thus, reading the said provisions of SARFAESI Act, together with the Legislative intent emanating from the same, it is clear that if a secured creditor chooses to initiate a proceeding against a borrower under the SARFAESI Act, it is required to take all possible steps under the Act to satisfy its debts and it could take steps for realization

of remainder of its debts, under any other law, only after provisions of SARFAESI Act was exhausted.

11. In the circumstances, this Court finds that action of the Bank by filing application under Section 19 of the DRT Act, after initiation of the proceeding against petitioner under SARFAESI Act by issuing a notice under Section 13(2) of the Act, was without jurisdiction and beyond any authority of law. As a result, this Court allows the prayer of petitioner and restrains the Bank from taking steps and proceeding with its O.A.No.83/2011 pending before the Debts Recovery Tribunal, Patna."

13. In the judgment cited supra, learned single Judge of the Patna High Court held that if the secured creditor choses to initiate proceedings against the borrower under SARFAESI Act, it is required to take all possible steps under the Act to satisfy its debt and it could take steps for realisation of the reminder of its debt, only after the provisions of SARFAESI Act were exhausted and further held that the action of the bank by filing application under Section 19 of the Debts Recovery Tribunal Act, after initiation of proceedings against the petitioner under the SARFAESI Act by issuing notice under Section 13(2) of the Act was without jurisdiction and beyond any authority of law.

14. Learned counsel for the petitioner also relied upon the decisions of the Hon'ble Apex Court reported in AIR 1999 SC 1281 (1) (Babu Verghese and others ..vs.. Bar Council of Kerala and others) and AIR 2004 SC 2321 (M/s.Kusum Ingots and Alloys Ltd., ..vs.. Union of Indian and another). The Judgment reported in AIR 1999 SC 1281 (1) (cited supra) deals with Advocates Act and the issue related to the transaction of business by Bar Councils and the resolution passed in the regular meeting, wherein the Hon'ble Supreme Court held that the resolution passed in regular meeting would not relate back to date of circulation of the resolution. Another judgment reported in AIR 2004 SC 2321 (cited supra) relates to the territorial jurisdiction and determination of cause of action. These two decisions are not applicable and relevant to the present case on hand. The petitioner would also submit that the action taken by the bank under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and subsequent action under SARFEASI Act, to recover the dues are legally not sustainable, just because, both the proceedings cannot be initiated parallelly.

15. Learned counsel for the respondent bank would rely on the decision of the Hon'ble Apex Court reported in AIR 2007 Supreme Court 712 (Transcore ..vs.. Union of India and another) wherein, it has been held that the banks/financial institutions are at liberty to proceed with both under Debts Recovery Tribunal Act, as well as SARFAESI Act and the Doctrine of Election is not applicable to the banks/financial institutions. In other words, parallel proceedings can be invoked/initiated by the banks/ financial institutions simultaneously, under both Acts. Learned counsel for the respondent bank would rely on para-29 of the Transcore Judgment (cited supra), where the following three points arose for determination and they were decided by the Hon'ble Apex Court:-

> 29. Three points arise for determination in these cases. They are as follows:
>
> (i) Whether the banks or financial institutions having elected to seek their remedy in terms of DRT Act, 1993 can still invoke the NPA Act, 2002 for realizing the secured assets without withdrawing or abandoning the O.A. filed before the DRT under the DRT Act.
>
> (ii) Whether recourse to take possession of the secured assets of the borrower in terms of Section 13(4) of the NPA Act comprehends the power to take actual possession of the immovable property.
>
> (iii) Whether ad valorem court fee prescribed under Rule 7 of the DRT (Procedure) Rules, 1993 is payable on an application under Section 17(1) of the NPA Act in the absence of any rule framed under the said Act

16. In the above well celebrated Judgment, stands as a pinnacle to the present issue, the Hon'ble Supreme Court held that both the Acts are complementary to each other and Doctrine of Election does not apply in the matter of choosing the remedy provided in either of the Act. In the above judgment, it is also held by the Hon'ble Apex Court as follows:-

> "14. There is one more reason for enacting NPA Act, 2002. When the civil courts failed to expeditiously decide suits filed by the banks/ FIs., Parliament enacted the DRT Act, 1993. However, the DRT did not provide for assignment of debts to securitization companies. The secured assets also could not be liquidated in time. In order to empower banks or FIs. to liquidate the assets and the secured

> interest, the NPA Act is enacted in 2002. The enactment of NPA Act is, therefore, not in derogation of the DRT Act. The NPA Act removes the fetters which were in existence on the rights of the secured creditors. The NPA Act is inspired by the provisions of the State Financial Corporations Act, 1951 ("SFC Act"), in particular Sections 29 and 31 thereof. The NPA Act proceeds on the basis that the liability of the borrower to repay has crystallized; that the debt has become due and that on account of delay the account of the borrower has become sub-standard and non-performing. The object of the DRT Act as well as the NPA Act is recovery of debt by non-adjudicatory process. These two enactments provide for cumulative remedies to the secured creditors. By removing all fetters on the rights of the secured creditor, he is given a right to choose one or more of the cumulative remedies. The object behind Section 13 of the NPA Act and Section 17 r/w Section 19 of the DRT Act is the same, namely, recovery of debt. Conceptually, there is no inherent or implied inconsistency between the two remedies. Therefore, as stated above, the object behind the enactment of the NPA Act is to accelerate the process of recovery of debt and to remove deficiencies/obstacles in the way of realisation of debt under the DRT Act by the enactment of the NPA Act, 2002."

17. In the light of the above decision, this Court is of the view that action of the bank was perfectly justified and legal in having initiated proceedings before the Tribunal under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 as well as before the District Magistrate under SARFAESI Act.

18. Moreover, in Transcore Judgment cited supra, while dealing with the provision of Section 13 of the SARFAESI Act, the Hon'ble Supreme Court at para-23 of the Judgment, held that the Section deals with liquidation of liability and enforcement of security interest; therefore, remedies of enforcement of security interest under NPA Act and the Debts Recovery Tribunal Act are complementary to each other and there is no inherent or implied inconsistency between these two remedies under the two different Act; therefore, the Doctrine of Election has no application, in this case. Initiation and maintainability of proceedings under the SARFAESI Act during the pendency of OA application before the Tribunal under Debts Recovery Tribunal

Act, is valid. There is nothing in the provisions of the SARFAESI Act or in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, to suggest that invocation under one Act would forbear the provisions of other Act. The issue, whether the bank would resort to SARFAESI Act without withdrawing the proceedings before the Debts Recovery Tribunal, has been sufficiently explained by the Hon'ble Supreme Court in the above decision.

19. As regards AIR 2013 Patna 1 cited supra, cited by the learned counsel for the petitioner, the said judgment has been overruled and set aside by a Division Bench of the same Patna High Court on 31.07.2013 on an Appeal filed by the respondent Bank therein (State Bank of India). The Division Bench of the Patna High Court, in the Judgement reported in Indian Kanoon - http://indiankanoon.org/ doc/3567028 (The State Bank of India .. vs.. M/s.Purnea Cold Storage), has set aside the decision of the learned single Judge of the Patna High Court reported in AIR 2013 Patna 1 cited supra, and held that

> "We are of the opinion that the learned single Judge has rightly held that both the Acts are complementary to each other and that there is no inherent or implied inconsistency between the remedies under the two Acts. However, having held that both remedies are complementary to each other and there was no inherent or implied inconsistency in either of the enactments, the learned single Judge has erred in holding that the provisions contained in the Act of 2002 has an overriding effect over the Act of 1993. Once the Act of 2002 is invoked, the remedy under the Act of 1993 cannot be availed of except for the remainder of the dues which cannot be satisfied by sale of the secured assets.
>
> Section 35 of the Act of 2002 does give the Act of 2002 an overriding effect over any other law notwithstanding anything inconsistent contained in such other law. In other words, the Act of 2002 would have overriding effect over the provisions contained in the Act of 1993, had the provisions contained in the 9 / 10 Act of 1993 been inconsistent with the provisions contained in the Act of 2002. It is by now well settled and accepted universally that the Act of 2002 is complementary to the Act of 1993 and has been enacted with a view to providing a speedier remedy to the secured creditors. Having held that there was no inherent or implied inconsistency between the two enactments, the learned single Judge has

> erred in invoking Section 35 of the Act of 2002 to stay the proceeding before the Tribunal. We also agree with the Delhi High Court that there is no embargo in either of the Acts restraining the secured creditor from pursuing both the remedies simultaneously or one after the other. The reading of such an embargo would frustrate the very soul and very purpose of both the enactments.
>
> There is nothing wrong about the Bank in approaching the Tribunal within the period of limitation. No ulterior motive can be imputed against the Bank for approaching the Tribunal within the period of limitation as suggested by Mr. Arbind Kumar Jha. On the contrary, we believe that it is the endeavour of the petitioner to thwart every action of the Bank in realizing its outstanding dues. The petitioner has challenged every stage of action before this Court or before the Tribunal. The intention to delay the proceeding is writ large in the conduct of the petitioner.
>
> We can view this matter the other way also. Sub- section (10) of Section 13 of the Act of 2002 does enable a secured creditor to realise remainder of its dues before the Debts Recovery Tribunal in case the sale proceeds of the secured assets are not sufficient to satisfy the debt. In the present case, the secured asset could not be sold at all. Hence, the entire debt remained outstanding even after having taken recourse to the Act 10 / 10 of 2002. The Bank, therefore, had the remedy of recovery before the Tribunal as envisaged by Section 13(10) of the Act of 2002.

Therefore, while relying on the Judgments/decisions of the learned single Judge as to their applicability and as to whether they are overruled or even differentiated, more caution should be exercised. This Court expects that while relying on a decision of the learned single Judge, the learned counsel, being a Court Officer/s, to be very careful and necessitates him/them, to verify as to whether a particular Judgment is overruled or set aside by any subsequent Division Bench / larger Bench. Hence, reliance made by the petitioner's counsel with regard to AIR 2013 Patna 1 (cited supra) cannot be accepted at all.

20. Therefore, in the light of the aforesaid decisions of the Hon'ble Apex Court and Division Bench of the Patna High

Court, proceedings under Section 19 is permissible, during the pendency of the proceedings under Recovery of Debts Due to Banks and Financial Institutions Act,1993 and hence, there is no reason, to hold that recovery proceedings as legally bad, just because the bank has resorted to SARFAESI Act. In view of the above decisions and Statute, both the proceedings can be simultaneously initiated because SARFAESI Act and Recovery of Debts Due to Banks and Financial Institutions Act, are complementary to each other and there is no bar to initiate proceedings under both the Acts. Moreover, money involved is public money, which has to be recovered from the defaulters. The object behind the Act is for speedy disposal of the cases and the money can be recovered without waiting for fixation of the liability. Therefore, the bank can initiate proceedings simultaneously both under SARFAESI Act and Recovery of Debts Due to Banks and Financial Institutions Act.

21. Learned counsel for the petitioner would also submit that Debts Recovery Tribunal (Procedure) Rules, 1993, says that Form-I (Rule 4) under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, should contain a column No.8, viz., "8. Matter not pending with any other Court, etc.:- The applicant further declares that the matter regarding which the application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal", but the respondent bank has not mentioned the same in the O.A. filed before DRT. Perusal of records shows that O.A. has been filed before the DRT, Madurai, on 18.04.2016 and thereafter only, proceedings under Section 14 of the SARFEASI Act has been initiated against the petitioner before the District Magistrate-cum-District Collector on 23.05.2016. Hence, there is no chance/necessity for the bank to mention the pendency of the petition under Section 14 of the SARFEASI Act, in O.A.No.411 of 2016 filed before the DRT, Madurai.

22. The reliefs sought for in O.A.No.411 of 2016 filed by the Bank against the petitioner and her husband, are as follows:-

> "a) Direct the defendants to pay a sum of Rs.13,36,097.74 as on 15.04.2016 to the applicant bank with the subsequent interest at the rate of 9.70% per annum with monthly rests plus 2% overdue interest from 16.04.2016 till the date of realisation towards the said Housing Loan-I;
>
> b) Direct the defendants to pay a sum of Rs.11,85,911/- as on 15.04.2016 to the applicant bank with the subsequent interest at the rate of 9.70% per annum with monthly rests plus 2% overdue interest from 16.04.2016 till the date of realisation towards the said

Housing Loan-II;

c) To issue Recovery Certificate directing the Recovery Officer,

i) To recover the total amount of Rs.25,22,008.74/- determined under the reliefs (a) & (b);

ii) To order for the sale of the Mortgaged property morefully described in the schedule hereunder and to appropriate the sale proceeds towards loan dues after defraying the expenses of sale;

iii) To pass an order holding that the defendants are jointly and severally liable to pay the amount determined under the Recovery Certificate.

d) To order for the cost of the application."

23. The Authorised Officer of the Bank has filed an affidavit in Section 14 petition and their prayer is to render assistance to the above institution to take possession of the secured assets and mortgaged property mentioned in that petition.

24. The prayer in both the petitions are different and when the Act/Statute gives power to proceed simultaneously, reliance placed by the learned counsel for the petitioner on Debts Recovery Tribunal (Procedure) Rules, 1993, that Form-I (Rule 4) under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, should contain the details regarding the pendency of any other matters before that Court or any other Court, does not merit consideration.

25. This Court, on 30.11.2016, ordered notice of motion in the Writ Petition and granted interim injunction. On 26.04.2017, there was an interim order by the Court directing the petitioner to deposit a sum of Rs.2,00,000/- with the first respondent bank on or before 15.06.2017. The petitioner has deposited the said amount as per the order dated 26.04.2017. The interim order already granted on 30.11.2016 was extended from time to time. It is also ordered that the petitioner has to approach the bank for negotiation of One Time Settlement. At this juncture, this Court does not express any opinion on the issue of One Time Settlement.

26. Since there is no bar for the respondent bank to initiate proceedings, simultaneously both under SARFAESI and RDDB&FI Act, this Court is not inclined to direct the respondents to forbear / refrain from enforcing the order made in ROC.No.18419/2016-M4 dated 12.10.2016 passed by the second respondent.

27. In fine, WMP.No.587 of 2017 filed by the petitioner seeking permission to raise additional grounds is allowed. Writ Petition is dismissed. Consequently, connected Miscellaneous

Petition in WMP.No.35933 of 2016 is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mra

To

1. The Senior Manager
Indian Overseas Bank
Tiruchengode Branch
56 & 57, Theppakulam Street,
Sankari Road
Tiruchengode
Namakkal District - 632 211.

2. District Magistrate and District Collector
Namakkal.

+1cc to Mr.R.K.Sekina Reshma, Advocate, S.R.No.5278

Writ Petition No.41985 of 2016
and
WMP.Nos.35933 of 2016 and 587 of 2017

RR(CO)
GSP(20/02/2018)