IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.27470 of 2018
&
W.M.P.No.31974 of 2018

P.Saraswathy .. Petitioner

v.

1.Allahabad Bank
Represented by its
Chief Manager
Purasawalkam Branch
Chennai - 600 084.

2.The Authorized Officer
Allahabad Bank
Purasawalkam Branch
Chennai - 600 084 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration, declaring the act of the respondents' in commencing the equated monthly installment from the month of December 2016 before the commencement of job for the petitioner's daughter P.Chitra D/o.Palaniswamy scheduled on 01.12.2018 and in violation of the repayment module contemplated under Educational Loan Scheme for pursing Higher Education in India and Abroad, thereafter classifying the loan account as non performing asset on 29.07.2018 and proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 thereby taking symbolic possession of the petitioner's vacant land situated in No.34, Puzhal Village, Ambattur Taluk, Thiruvallur District comprised in Survey No.452/11, Patta No.238, measuring about 2600 sq.ft. are all illegal, against natural justice, unfair, unreasonable, null and void consequently direct the 1st respondent to commence the equated monthly installment with respect to the educational loan sanctioned on 23.06.2014 in accordance with the repayment module contemplated under Educational Loan Scheme as amended from time to time for Pursuing Higher Education in India and Ab road by considering the request letter of my daughter P.Chitra, D/o. Palaniswamy, dated 21.05.2018.

For Petitioner : Mr.A.Kalaiselvan

O R D E R

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

The petitioner has filed the above writ petition to issue a Writ of Declaration, declaring the act of the respondents in commencing the equated monthly installment from the month of December 2016 before the commencement of the employment for the petitioner's daughter P.Chitra, D/o.Palaniswamy, scheduled on 01.12.2018 and in violation of the repayment module contemplated under Educational Loan Scheme for pursing Higher Education in India and Abroad, thereafter, classifying the loan account as non-performing asset on 29.07.2018 and proceeding under the SARFAESI Act, thereby, taking symbolic possession of the petitioner's vacant land and consequently direct the 1st respondent to commence the equated monthly installment with respect to the educational loan sanctioned on 23.06.2015 in accordance with the repayment module contemplated under Educational Loan Scheme, by considering the request of the petitioner's daughter dated 21.05.2018.

2. The learned counsel appearing for the petitioner submitted that the respondent-bank had issued Section 13(2) notice demanding the outstanding amount from the petitioner. The learned counsel further submitted that since the petitioner's daughter P.Chitra had joined the employment only in April 2018, the respondent-bank may be directed to recover the loan amount after three months period.

3. Though the petitioner has not stated anything about Section 13(4) notice in the affidavit filed in support of the above Writ Petition, the learned counsel appearing for the petitioner submitted that the respondent-bank had issued Section 13(4) notice.

4. By way of Writ of Declaration, the petitioner is challenging Section 13(2) notice as well as Section 13(4) notice.

5. It is settled position that notice issued under section 13(2) of the SARFAESI Act cannot be challenged either before this Court or before the Tribunal. However, Section 13(4) notice can be challenged before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

6. Since the learned counsel appearing for the petitioner submitted that the respondent-bank had already issued Section 13 (4) notice, the remedy open to the petitioner is to challenge Section 13(4) notice before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

7. In such view of the matter, we are not inclined to entertain the present Writ Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. It is open to the petitioner to challenge the Section 13(4) notice before the Debts Recovery Tribunal, in accordance with law.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Rj

To

1.The Chief Manager
Allahabad Bank
Purasawalkam Branch
Chennai - 600 084.

2.The Authorized Officer
Allahabad Bank
Purasawalkam Branch
Chennai - 600 084

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CSL/16.11.2018