IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.28985 of 2018 and
W.M.P.Nos.33879, 33883, 33884 of 2018

R.Ramesh .. Petitioner

Vs.

1.The Authorized Officer,
State Bank of India,
Stressed Assets Resolution Centre (SARC),
Vellore, Vellore District.

2.The District Collector,
Vellore District, Vellore.

3.The Sub Collector,
Vellore District, Vellore.

4.T.Iradhikamani .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the entire records pursuant to the proceedings issued by the 2nd respondent vide R.C.C1/5355/2018 dated 27.07.2018 and quash the same with a consequential direction to the 2nd respondent to dispose of the representation dated 23.08.2018 submitted by the petitioner after giving opportunity of hearing to the petitioner on merits and in accordance with law within a stipulated time.

For Petitioner : Mr.T.P.Prabakaran

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 certiorarified mandamus calling for the entire records pursuant to the proceedings issued by the 2nd respondent dated 27.07.2018 and to quash the same and consequently direct the 2nd respondent to dispose of the representation dated 23.08.2018 submitted by the petitioner after giving opportunity of hearing to the petitioner on merits and in accordance with law within a time frame.

2.The petitioner availed a loan of Rs.10,00,000/- from the respondent – Bank and committed default in re-paying the same. Hence, the respondent – Bank issued a notice dated 02.12.2015 under Section 13(2) of the SARFAESI Act, which was duly served on him. Subsequently, the respondent – Bank issued a notice under Section 13(4) of the Act on 14.07.2016 and took symbolic possession of the property. Thereafter, the respondent – Bank filed an application under Section 14 of the SARFAESI Act before the District Magistrate – District Collector, Vellore for taking physical possession of the property. Since the respondent – Bank had complied with the provisions of the SARFAESI Act in taking symbolic possession, the District Magistrate, by order dated 27.07.2018, authorized the Sub Collector, Vellore to take possession of the secured asset and to hand over the same to the Authorized Officer of the Secured Creditor viz., the State Bank of India.

3.Though the impugned order was passed as early as on 27.07.2018, the petitioner has filed the Writ Petition after a lapse of three months. After the passing of the impugned order, the petitioner has also given a representation dated 23.08.2018 to the District Magistrate to furnish a copy of all the documents filed by the Branch Manager of the Bank. Inspite of having knowledge about the order passed by the District Magistrate, he did not challenge the same immediately.

4.In the judgment reported in (2011) 2 Supreme Court Cases 782 [Kanaiyalal Lalchand Sachdev and others Vs. State of Maharashtra and others], the Hon'ble Supreme Court held as follows:

> "...
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> 22.We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT.
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> 23.In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh Vs. Natinal

Insurance Co. Ltd., (2003) 3 SCC 524 : 2003 SCC (Cri) 762; Surya Dev Rai Vs. Ram Chander Rai, (2003) 6 SCC 675 and SBI VS. Allied Chemical Laboratories, (2006) 9 SCC 252)."

4.1.Following the ratio laid down by the Apex Court, the Division Bench of this Court in the judgment reported in (2015) 5 MLJ 358 [Deccan Chronical Holdings Limited, A Company incorporated under the Companies Act, 1956, having its Registered Office at Secunderabad - 500 003, Andhra Pradesh Vs. Canara Bank, represented by its Authorized Officer, Prime Corporate Branch, TSR Complex, S.P.Road, Secunderabad - 500 003] held as follows:

"...

13.Section 13(4) stipulates taking over symbolic possession of the secured assets. Section 14 contemplates taking physical possession of the secured assets with the assistance of the order of the CMM or District Magistrate, as the case may be. Both actions come within the definition of measure/action under sub-section (4) of Section 13, and as such, the appeal under Section 17 SARFAESI Act against the order passed under Section 14 of the SARFAESI Act is maintainable. The handing over of possession of the borrower or taking over possession of the secured asset by the secured creditor pursuant to the order passed under Section 14 is not mandatory or pre-condition for the purpose of preferring an appeal under Section 17 of the SARFAESI Act."

5.The petitioner has not filed any appeal as against the impugned order under Section 17 of the SARFAESI Act. However, the learned counsel submitted that the petitioner is going to challenge Section 13(4) notice dated 14.07.2016.

6.But under Section 17 of the SARFAESI Act, the petitioner should have challenged the Section 13(4) notice within 45 days from the date of the notice. The District Magistrate has considered all the aspects and rightly ordered eviction of the petitioner.

7.For the reasons stated above, we do not find any ground to interfere with the order passed by the 2nd respondent viz., The District Collector - District Magistrate. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Authorized Officer,
State Bank of India,
Stressed Assets Resolution Centre (SARC),
Vellore, Vellore District.

2.The District Collector,
Vellore District, Vellore.

3.The Sub Collector,
Vellore District, Vellore.

+1cc to Mr.T.P.Prabakaran, Advocate sr.no.75780

W.P.No.28985 of 2018 and
W.M.P.Nos.33879, 33883, 33884 of 2018

vba(co)
nr 26/11/2018