BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS. JUSTICE R.THARANI

W.P.(MD)No.15942 of 2018

The South Indian Bank,
Rep by its Authorized Officer,
Nagercoil Branch,
Nagercoil,
Kanyakumari District. : Petitioner

Vs.

The District Collector,
Kanyakumari District,
Nagercoil. : Respondent

PRAYER: Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing K.Dis.No.C4/40971/2017, dated 15.05.2018 passed by the respondent and quash the same and consequently, direct the respondent to consider the petition filed by the petitioner Bank under Section 14 (1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

For Petitioner : Mr.T.Antony Arulraj

For Respondent : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

[Order of the Court was made by R.SUBBIAH, J]

Challenging the impugned order passed by the respondent in K.Dis.No.C4/40971/017, dated 15.05.2018 and consequently, direct the respondent to consider the petition filed by the petitioner Bank under Section 14(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the present petition has been filed.

2.Heard Mr.T.Antony Arulraj, learned counsel appearing for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondent.

3.The case of the petitioner is that one Mr.Johnsel Raja had interalia availed the following loans from the petitioner bank:

(i)Over Draft facility for Rs.50,00,000/- in the name of M/s.Sardar Raja Agencies – Pepsico.

(ii)Over Draft facility for Rs.50,00,000/- in the name of M/s.Sardar Raja Agencies – HLL.

The said Mr.Johnsel Raja is the sole proprietor of the above said concerns and for availing the facilities, he mortgaged the property in Survey Nos.606/3C1B and 606/31, Kanyakumari Village, Agastheeswaram Taluk, Kanyakumari District, having an extent of 24.76 cents. The Bank sanctioned the loan in his favour in the year 2013, whereas, the borrower failed to remit the amount and the account was declared as Non Performing Asset. Since he committed default in repayment of the loan amount, proceedings were initiated under the SARFAESI Act. Therefore, the Bank issued notice under Section 13(2) of the SARFAESI Act to him and his wife on 10.02.2016. Since there is no explanation from the borrower, the bank has initiated action under Section 13(4) of the SARFAESI Act and the possession was also taken vide paper publication dated 20.07.2017. The property was brought for auction vide auction sale notice dated 11.09.2017. Challenging the said notice, Johnsel Raja has filed S.A.No.413 of 2017 before the Debt Recovery Tribunal, Madurai. The Tribunal has passed a conditional order in I.A.No.2088/2017 directing the Bank not to confirm the sale till 30.01.2018 subject to the payment of Rs.6,41,000/- on or before 29.11.2017 as 1st installment, Rs.6,41,000/- on or before 29.12.2017 as 2nd installment and Rs.6,41,000/- on or before 29.01.2018 as 3rd installment. In the said order it is specifically stated that in the event of failure to pay even a single installment, the Ad-Interim stay against the Bank not to confirm the sale till 30.01.2018 shall stand vacated automatically and the said I.A shall stand dismissed. Since the said condition was not complied, the said I.A was also dismissed. Further, the bank decided to proceed under the Recovery of Debt due to bank and Financial Institution Act, 1993, filed O.A.No.742 of 2017 before the DRT, Madurai and the same is pending. Though the proceedings were initiated under SARFAESI Act, the borrowers did not take any steps to repay the loan. Therefore, following the order passed under Section 13(4) of the SARFAESI Act, the petitioner bank filed an application before the respondent under Section 14 of the SARFAESI Act seeking assistance for taking actual possession of the mortgaged properties scheduled in the affidavit. In such circumstances, the petitioner bank filed all relevant documents along with the affidavit filed under Section 14 of the SARFAESI Act. At that time, the authorized Officer has made an endorsement intimating the pendency of O.A filed against the borrower and guarantor before the DRT, Madurai, as directed by the District Magistrate. The respondent misconstrued the proceedings initiated under the Recovery of Debt due to bank and Financial Institution

Act, 1993 and the SARFAESI Act, and passed impugned order dated 15.05.2018 rejecting the petition on the ground that a case is pending before the DRT. Hence, the order under Section 14 of SARFAESI Act could not be passed for taking possession of the secured assets. Aggrieved over the same, the present writ petition has been filed.

4.Though very many contentions have been raised on the merits, the sum and substance of the submission of the petitioner is that the application filed by the petitioner Bank before the respondent under Section 14 of the SARFAESI Act, was returned on the ground that the Bank has already initiated the proceedings before the Debt Recovery Tribunal in O.A.No.742/2017, which is still pending. He further submitted that the pendency of O.A before the DRT, is not a bar to consider the application filed under Section 14 of SARFAESI Act.

5.In support of his contention, the learned counsel for the petitioner has relied upon the judgment of the Division Bench of this Court in the case of S.SUMATHY V. INDIAN OVERSEAS BANK, TIRUCHENGODE BRANCH, REPRESENTED THROUGH ITS SENIOR MANAGER 56 & 57,THEPPAKULAM STREET, SANKARI ROAD, TIRUCHENGODE, NAMAKKAL DISTRICT, AD ANOTHERS, reported in 2018-1-Writ L.R.323, wherein the pendency of O.A before the DRT, is not a bar to consider the application filed under Section 14 of SARFAESI Act, in which, the relevant portion is extracted hereunder:

> "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 inerest, 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 SURFAESI 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."

6.In the light of the aforesaid judgment, the impugned order is liable to be set aside. Accordingly, the Writ Petition is allowed and the impugned order passed by the respondent is hereby set aside and the matter is remanded back to the respondent to consider the same afresh and pass appropriate orders preferably within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The District Collector,
Kanyakumari District,
Nagercoil.

+1CC to Mr.T.Antony Arul Raj, Advocate, SR.No.95120

W.P.(MD)No.15942 of 2018
13.11.2018

NS
ES/SV/SAR 4/06.12.2018/4P/3C