

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. Nos.982, 1019 and 1021 of 2019 and  
W.M.P.Nos.1099 and 1137 of 2019  
in W.P.No.982 of 2019 and  
W.M.P.Nos. 1139 and 1140 of 2019  
in W.P.No.1019 of 2019 and  
W.M.P.Nos. 1141 and 1142 of 2019  
in W.P.No.1021 of 2019

- 1 M/s. D.M.Modern Rice Mill  
Rep. by Mr.D.Sampath  
Mrs. S.Geetha  
Partners  
59, Karukkinil Amarthaval Koil Street  
Kancheepuram - 631501
- 2 D.Sampath
- 3 S.Geetha ... Petitioners in all WPs

v.

- 1 The Authorised Officer  
Tamil Nadu Mercantile Bank Ltd.  
Chennai Region  
No.45, Pulla Avenue, Shenoy Nagar  
Chennai - 600030
- 2 The Registrar  
Debts Recovery Appellate Tribunal  
Chennai .. Respondents in all WPs

W.P. Nos.982/2019 : Writ Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records on the files of the 2nd respondent pertaining to the proceedings in R.A.(SA) No.139/2018 dated 24.12.2018 and quash the same.

W.P. Nos.1019/2019 : Writ Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records on the files of the 2nd

respondent pertaining to the proceedings in R.A.(SA) No.138/2018 dated 24.12.2018 and quash the same.

W.P. Nos.1021/2019 : Writ Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records on the files of the 2nd respondent pertaining to the proceedings in R.A.(SA) No.137/2018 dated 24.12.2018 and quash the same.

For Petitioners : Mr.T.V.Badrinarayanan  
(in all WPs)

For Respondents : Mr.K.N.Chinna Krishnan - for R1  
(in all WPs)  
R2 - Tribunal

#### COMMON ORDER

(Order of the Court made by The Hon'ble Chief Justice  
and M.DURAISWAMY, J.)

Since the issue involved in all the three Writ Petitions are identical, they are disposed of by this common order.

2. The petitioners have filed the above Writ Petitions to issue a Writ of Certiorari to call for the records on the files of the Debt Recovery Appellate Tribunal pertaining to the order dated 24.12.2018 made in R.A.(SA) Nos.137, 138 and 139 of 2018 and to quash the same.

3.1 It is the case of the petitioners that they availed loan from the respondent-bank. Since the petitioners committed default in repaying the loan, the respondent-bank issued a notice under section 13(2) of the SARFAESI Act and a possession notice under section 13(4) of the Act. Challenging the possession notice dated 07.05.2014, the petitioners filed appeals in S.A.Nos. 234, 235 and 236 of 2014, before the Debts Recovery Tribunal-III, Chennai.

3.2 The Debts Recovery Tribunal, by order dated 01.01.2018, dismissed all the three appeals finding that the possession notice dated 07.05.2014 is valid in law and does not suffer from any legal infirmities.

3.3 Challenging the order passed by the Debts Recovery Tribunal, the petitioners preferred appeals in R.A.(SA) Nos.137, 138 and 139 of 2018 before the Debt Recovery Appellate Tribunal, Chennai. The Debt Recovery Appellate Tribunal, Chennai, by order dated 24.12.2018, confirmed the order passed by the Debts Recovery Tribunal and dismissed all

the three appeals. Aggrieved over the same, the petitioners have filed the above Writ Petitions.

4. The only contention raised by the learned counsel appearing for the petitioners is that the respondent-Bank erroneously classified the petitioners' loan account as Non Performing Asset [NPA] and therefore, initiation of the proceedings under the SARFAESI Act are liable to be set aside.

5. The learned counsel appearing for the respondent-Bank submitted that the petitioners, after availing the credit facilities, failed to make repayment as per the terms and conditions of the sanction and the operation was unsatisfactory in respect of all the loan accounts and they even failed to pay the accrued interest, therefore, the bank was left with no other option but, to classify the loan accounts as 'NPA' on 27.11.2013 (W.P.No.982/2019) and 30.06.2013 (W.P.Nos.1019 & 1021/2019) respectively. Since the petitioners did not come forward to resolve the loan accounts, the respondent-bank invoked the provisions of the SARFAESI Act and issued the demand notice under section 13(2) of the Act and consequently a notice under section 13(4) of the Act. Even with regard to the possession notice, the respondent-bank has followed the procedure as contemplated under the Act and the Rules made thereunder.

6. On a perusal of the statement of accounts, which is annexed in the typed set of papers, it is clear that the petitioners have made payments only during the pendency of the SARFAESI Appeal before the Debts Recovery Tribunal.

7. It is pertinent to note that according to the respondent-Bank, in September 2009 itself, the accounts have become irregular and the bank initiated SARFAESI measures after classifying the account as 'NPA' for recovery of its outstanding dues. Further, in the loan accounts, there had been no regular activities of business transaction in these accounts for a couple of years. In such a situation, merely by depositing meagre amounts, shall not make the accounts regular and operative insofar as the right of the bank for recovery of money under SARFAESI Act is concerned. The petitioners have failed to service the loan accounts periodically and created a huge gap in business transaction. In these circumstances, left with no other alternative, the bank had classified the accounts as 'NPA'. As per the records, the petitioners did not make any payments towards the loan accounts for three years, hence, by mere deposit of small amounts on the date of classification of NPA will not cure the defects.

8. Since the respondent-bank has rightly classified the petitioners loan accounts as NPA and also followed the procedure laid down under the SARFAESI Act for issuing the notice under section 13(4), we find no reason to interfere with the concurrent orders passed by both the Tribunals.

The Writ Petitions are devoid of merits and the same are dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Rj

To

1 The Authorised Officer  
Tamil Nadu Mercantile Bank Ltd.  
Chennai Region  
No.45, Pulla Avenue, Shenoy Nagar  
Chennai - 600030

2 The Registrar  
Debts Recovery Appellate Tribunal  
Chennai.

+3cc to Mr.K.N.Chinnakrishnan, Advocate Sr.13546, 13545, 13547

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