

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.634 of 2019 and
W.M.P.No.690 of 2019

M.Shagul Hameed

... Petitioner

Vs.

1.The General Manager,
Corporation Bank,
Head Office at Chennai,
No.39, Whites Road, P.B.No.2227,
Chennai - 600 014.

2.The Assistant General Manager,
Corporation Bank,
Tirupur Main Branch,
No.300/1, Mangalam Road,
Tirupur - 641 604.

3.M/s.Capital Clothing Company,
S.F.No.47, Andipalayam,
Mangalam Road,
Tirupur - 641 168.

4.M.Harun Rashid

5.H.Farjana

6.Gousunnisa

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records relating to the impugned notices dated 09.11.2018 bearing No.OR/TPR/REC/CIF-1000975194/2018-19 on the file of the 2nd respondent and to quash the same.

For Petitioner : Mr.V.Prakash, Senior Counsel
for Ms.D.Kamachi

For Respondents : Mr.S.Sethuraman (R1 & R2)

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 certiorari to call for the records relating to the impugned notices dated 09.11.2018 on the file of the 2nd respondent and to quash the same.

2.It is the case of the petitioner that he stood as a guarantor for the loan availed by the 3rd respondent and gave his property as collateral security for the loan obtained. Since the borrower committed default in repaying the loan amount, the 2nd respondent - Bank issued a notice under Section 13(2) of the SARFAESI Act to the respondents 3 to 6. Further, it is the case of the petitioner that though the petitioner's property has been shown as Item No.1 of the Schedule of property mentioned in Section 13(2) notice, no notice has been issued to the petitioner. In these circumstances, the petitioner seeks to quash the notice issued under Section 13(2).

3.It is settled position that a notice issued under Section 13(2) cannot be challenged for the reason that the parties to the notice shall have right to give a reply within 60 days time.

4.However, in the present case, though the petitioner's property has been shown as the mortgaged property in the Section 13(2) notice, the petitioner has not been issued with any notice by the respondent - Bank so far.

5.The 2nd respondent - Bank also filed an affidavit stating that by inadvertence they have omitted to mention the Writ Petitioner's name in the demand notice and also regretted for the mistake committed by them. Further, the 2nd respondent has stated that they will not be proceeding against the petitioner's property (Item No.1) under the impugned notice dated 09.11.2018 without issuing a fresh demand notice to the Writ Petitioner.

6.The averments stated in the affidavit filed by the 2nd respondent - Bank is taken on record.

7.In view of the averments stated in the affidavit filed by the 2nd respondent - Bank, no further order is required. The Writ

Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

va

To

1.The General Manager,
Corporation Bank,
Head Office at Chennai,
No.39, Whites Road, P.B.No.2227,
Chennai - 600 014.

2.The Assistant General Manager,
Corporation Bank,
Tirupur Main Branch,
No.300/1, Mangalam Road,
Tirupur - 641 604.

+1 cc to M/s.S.Sethuraman, Advocate SR.No.3824

+1 cc to M/s.D.Kamachi, Advocate SR.No.3177

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W.M.P.No.690 of 2019

RR(CO)
CSL/05.02.2019

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