IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.09.2018
Pronounced on : 22.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.22225 of 2010
and M.P.No.1 of 2010

1.Mrs.Devika

2.Mrs.S.Geetha

3.Mrs.S.Chitra

4.K.Latha ... Petitioners/Guarantors

Vs.

1.Syndicate Bank,
Rep. by its Chief Manager & Authorised Officer,
Mr.A.Narayana Shettigar,
Oppanakara Street Branch,
Coimbatore. ... 1st Respondent/Creditor

2.M/s.Andavar Electrical Distributor,
Rep. by its Managing Partner,
D.K.Bakiyavel.

3.D.K.Bakiyavel

4.Mrs.P.Poongodi ... 2 to 4 respondents/ Borrowers

5.C.N.Padmanabhan ...5th respondent/Guarantor

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the C.M.P.No.597 of 2009 on the file of the Chief Judicial Magistrate Court at Coimbatore and to quash the same.

For Petitioners: Mr.S.Sathyanarayanan for Mr.C.Selvaraj

For R1 : Ms.P.Sreenivasulu

For R2 to R4 : Not ready in notice

For R5 : No appearance

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O R D E R

The petitioner are respondent in C.M.P.No.597 of 2009 on the file of the Chief Judicial Magistrate, Coimbatore. The petitioners herein filed this petition to quash the above proceedings.

2.The contention of the petitioners is that the Chief Judicial Magistrate, Coimbatore has no jurisdiction to pass the order dated 20.08.2010 in C.M.P.No.597 of 2009. The lower Court is has no jurisdiction to entertain an application filed by the respondent Bank under Section 14 (1) of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (herein after referred as SARFAESI Act). Further contention is that mandatory notice under Section 13 (2) of the Act was not served individually to the petitioner. Further, the notice was sent to the Power of Attorney Mr.C.N.Padmanabhan, father of the petitioner, who is R4 in C.M.P.No.597 of 2009. The notice issued to the father, Power of Attorney has not been mentioned in what capacity it was been sent to him. Further it is contended that the Power of Attorney is a forged one as per Finger Print Bureau Report dated 10.10.2011. The respondent bank suppressing the sale dated 08.06.2009, which is under challenge in S.A.No.102 of 2009 on the file of the Debt Recovery Tribunal (DRT), Coimbatore has filed the above petition. Further, when the notice was issued to them under Section 13(2) of the SARFAESI Act by the respondent bank before the Debt Recovery Tribunal (DRT), Coimbatore, and hence they are not estopped to contend that Section 13(2) notice was not served to them. Further 13(4) Possession Notice issued by the respondent bank has been challenged before the Debt Recovery Tribunal (DRT), Coimbatore in OA (S) 42 of 2005. Hence, prayed to quash or setaside the impugned order dated 20.08.2010 in C.M.P.No.597 of 2009.

3.Further the learned counsel for the petitioners filed a typed set of papers and additional typed set of papers with documents and relied upon the following citations:

"1) Indian Overseas Bank Vs. M/s. Sree Aravindh Steels Ltd. & Others reported in CDJ 2008 MHC 4896;

2) Authorised Officer, Canara Bank Vs. Sulay Traders through Bipin Kantilal Vakta & Others reported in 2010 of DRTC 818 (Gujarat);

> 3) V.Noble Kumar Vs. The Authorised Officer Standard Chartered Bank Auto and Mortgage Collections, Chennai & Others reported in CDJ 2010 MHC 4627;
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> 4) Sheeba Philominal Merlin & Another The Repatriates Co-op Finance & Development Bank Ltd., Chennai & Others reported in CDJ 2010 MHC 4715; and
>
> 5) M/s. Signal Apparels Pvt. Ltd., & Another Vs. Canara Bank P.N. Road Branch, Tirupur & Another reported in CDJ 2010 MHC 4316.”

4.The respondent bank filed their counter, typed set of papers and documents and contended that M/S. Andavar Electrical Distributor is a partnership firm and D.K.Bakiyavel and Mrs.P.Poongodi and C.N.Padmanabhan, who are third and fifth respondents herein are its partners. The petitioners father was one of its partner and have executed necessary documents in favour of the respondent bank as security and availed credit facility for a sum of Rs.44,00,000/- (Rupees forty four lakhs only). He was registered as power of attorney in the month of January 2002,as document No.71/2002. The Power of Attorney executed by the petitioners in favour of their father is to give them personal continuing guarantee for the aforesaid credit facility availed by them and also mortgage the property and for due repayment of the aforesaid credit facility. The registered Power of Attorney was handedover by the petitioners father on 06.02.2002 with title deeds of the property to the bank. Since the account of the respondents 2 to 4 became NPA and hence on 27.10.2003 notice under Section 13(2) of the SARFAESI Act was issued and thereafter on 29.07.2005 Possession notice was issued. The petitioner on receipt of the Possession notice filed O.A.(S) No.42/2005 on the file of the DRT, Coimbatore against the respondent and their Power Agent, who is the fifth respondent. In the said O.A. seeking various relief’s including a direction to the respondent bank (1) to produce the original registered Power of Attorney dated Nil of January 2002, registered as Document No.71/2002, in the office of the Registrar of Coimbatore; (2) to seek and obtain report of the Director Forensic Science Department regarding the disputed signatures and thumb impressions in the registered Power of Attorney dated Nil of January 2002 Document No.71/2002 and to declare that all the proceedings including the Recovery Proceedings initiated by the respondent bank under the SARFAESI /act, 2002 are null and void abinitio. In the said application, the respondent bank filed its counter opposing the case of the petitioners and in the said application the 5th respondent/petitioner's father did not file reply or objections. The respondent bank filed O.A.No.278 of 2004 against the petitioners, fifth respondent and against other borrowers for recovery of the amount due to it.

5.The respondent further states that during the pendency of O.A.(S).No.42/2005 on the file of the DRT, Coimbatore, the petitioners have filed an I.A.No.99 of 2007 in O.A.(S).No.42/2005 seeking to send the Power of Attorney executed by them to the Tamil Nadu Forensic Science Lab, Chennai for comparison of their signatures. After considering the contention of the petitioners the DRT, Coimbatore by its order dated 28.02.2007 dismissed the I.A.No.99 of 2007. Against which the petitioners have filed I.N.No.173 of 2007 before the DRAT Chennai and the DRAT /Chennai by its order dated 07.05.2007 directed the petitioners to deposit Rs.10,00,000/- in the DRAT, Chennai, as a condition precedent to take up I.N.No.173 of 2007 for a final disposal. The petitioners herein without complying the order dated 10.04.2007 passed by the DRAT, Chennai in I.A.Nos.272 and 273 of 2007 in I.N.No.173 of 2007, filed CRP.No.1216 of 2007 on the file of this Court and this Court by its order dated 24.04.2007 dismissed the CRP.NO.1216 of 2007 for non-compliance of the order passed by the DRAT, Chennai in I.A.Nos.272 & 273 of 2007 in I.N.No.173 of 2007 on the file of the DRAT, Chennai. The DRAT, Chennai by its order dated 07.05.2007 dismissed the I.N.No.173 of 2007. Against that order, the petitioners filed another CRP.(PD).No.1591 of 2007 before this Court.

6.The petitioners thereafter filed an I.A.No.866 of 2007 in O.A.(S)No.42/2005 along with O.A.No.278 of 2004 filed by the respondent bank. The DRT, Coimbatore by its order dated 27.09.2007 dismissed the said petition. Thereafter, the petitioners filed I.A.No.867 of 2007 in O.A.No.278 of 2004 seeking for cross examinations of the authorized officer of the Bank one Mr.V.K.Cyriac. The DRT, Coimbatore on 31.10.2007 dismissed the said petition. Against the same, the petitioners have filed an I.N.No.34 of 2008 before the file of the DRAT, Chennai. The DRAT, Chennai by its order dated 12.05.2008 dismissed the said appeal of the petitioners with cost. Against which the petitioners have filed CRP (PD) No.3301 of 2007 and CRP (PD) No.1591 of 2007 before this Court. This Court by its order dated 18.11.2008 dismissed the above CRP (PD)No.3301 of 2007. Thereafter, the respondent bank brought the mortgaged property for sale by inviting tenders/public auction. The same was challenged by the petitioners in I.A.No.251 of 2009, challenging the action of the bank for sale of the property in question. A conditional order was passed by the DRT, Coimbatore on 09.03.2009, directing the petitioners to pay a sum of Rs.10,00,000/- (Rupees ten lakh only) before the date of auction i.e. on 13.03.2009 and thereby directed the bank to defer the auction to be held on 13.03.2009 and if the petitioners fail to pay the amount before 13.03.2009, the interim order automatically stands vacated and the respondent bank will be at liberty to proceed further with the matter in accordance with the law. The petitioners have not complied with the order dated 09.03.2009 in I.A.No.251 of 2009 in O.A.(S) No.42 of 2005 passed by the DRT, Coimbatore. Thereafter, by giving wide publicity and also duly following the rules of SARFAESI Act, 2002 the property was brought for public auction on 08.06.2009. One Mr.E.Vijayakumar and four others participated and became successful bidders for a sum of Rs.6,13,000/-. On receipt of the sale consideration the respondent bank on 18.06.2009, issued registered sale certificate in favour of the said Mr.Vijaya kumar and four others. The said sale certificate was registered as Document No.2712/2009, in the office of the Registrar, Coimbatore. In spite of the property was sold in public auction, the petitioners have failed to handover the vacant possession of the property in question. Hence, the respondent bank filed C.M.P.No.597 of 2009 on the file of the Chief Judicial Magistrate, Coimbatore under Section 14 of the SARFAESI Act.

7.The further contention of the respondent bank is that before invoking aid of Section 14(1) of the SARFAESI Act, the respondent bank followed the procedures envisaged under the SARFAESI Act by issuing 13(2) notice, Possession Notice, obtaining valuation report from the approved valuver and affixing sale notice in conspicuous part of the secured asset and publication of proclamations of sale in leading newspapers. In all stages, the petitioners were successful in filing application after application before the file of the DRT, Coimbatore, DRAT, Chennai and before this Court. The learned Chief Judicial Magistrate, Coimbatore after going through all records filed by the bank and satisfying itself that the respondent bank has complied with the mandatory requirements of the SARFAESI Act, ordered C.M.P.No.597 of 2009 on 20.08.2010 and hence, there is no illegality or irregularity in the said order.

8.Now, the petitioners case is that the office copy of the notice under Section 13(2) of the Act, the proof of the same and sale certificate under Section 14(1) of the SARFAESI Act are not produced. It is seen that the property has been mortgaged by C.N.Padmanabhan, father and Power Agent of the petitioners. Copy of the notice under Section 13(2) along with postal receipt despatch has been filed. It is also seen that these notices and the receipts have been enlisted as Document No.16 and 17 to the petition, thereafter the petitioners have also filed their objections.

9.On perusal of the order of this Court in W.P.No.9043, 9044 and 10228 of 2009 order dated 30.07.2009, the Lower Court had passed the impugned order. Further, it is seen that the petitioners have been participating and filing one petition after another before the DRT, DRAT and before this Court in various proceedings as seen in O.A.(S) No.42 of 2005 and various other I.A.s' and C.R.P.s' and C.R.P.(PD).No.15 and W.P.No.17990 of 2007.

10.The contention of the petitioners that statutory complaince of Section 13(2) notices are not followed, and they have also challenged the Section 18 of the Act. The Division Bench of this Court after going in detail dismissed the contention of the petitioner. Further the petitioners are aware of the proceedings against them from the year 2005 and they have been agitating their cause in one way or other and the petitioners contentions have been negatived.

11.Further the respondent bank relied upon the following citations:

1) N.S.Suresh Vs. Vijaya Bank & Anr. reported in II (2018) BC 441 (DB) (Mad.);

2) Ashok Khipal & Anr. Vs. District Magistrate, Barnala & Ors. reported in I (2018) BC 256 (DB) (P&H);

3) Agarwal Tracom Pvt. Ltd. Vs. Punjab National Bank & Ors. reported in I (2018) BC 3 SC; and

4) Veeraraghavan Vs. Indian overseas Bank reported in II (2018) BC 412 (DB) (Mad.)

12.The impugned order passed by the Chief Judicial Magistrate, Coimbatore has not been challenged by the petitioner before the Tribunal within the stipulated time. The petitioners are aware of the proceedings in the Tribunal from the year 2005 and they have initiated various proceedings against the bank. In the above factual matrix their contention that 13(2) notice and follow up action was not upto their knowledge is not acceptable.

13.14.In view of the above, this Criminal Original Petition is dismissed. This Court finds that there is no illegality or irregularity on the order passed by the Chief Judicial Magistrate, Coimbatore in C.M.P.No.597 of 2009 on 20.08.2010. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Coimbatore.

2.The Chief Manager &
Authorised Officer,
Mr.A.Narayana Shettigar,
Syndicate Bank,
Oppanakara Street Branch,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Selvaraj, Advocate, S.R.No.27400

SSI(CO)

RRS(06/05/2019)