

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.7798 of 2019

G.Senthil

.. Petitioner

-vs-

1. The Authorized Officer/Chief Manager,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Building,
No.32, Montieth Road,
Egmore, Chennai-600 008.
2. The District Magistrate and Collector,
Tiruvannamalai District,
Tiruvannamalai.
3. The Superintendent of Police,
Tiruvannamalai District,
Tiruvannamalai.
4. The Deputy Superintendent of Police,
Tiruvannamalai Town,
Tiruvannamalai.

5.K.Shanthi

6.Kasthuri

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents 1 to 4 to take physical possession of the schedule property from the 5th and 6th respondents and hand over the vacant possession to the petitioner herein within a time frame that may be fixed by this Hon'ble Court.

For Petitioner : Mr.T.Sundar Rajan
for M/s.J.Senthil Kumar

For Respondents : Mr.A.V.Arun
for respondent No.1

Mr.V.Jayaprakash Narayanan
Government Pleader
for respondent Nos.2 to 4

Mr.M.Tamil Thendral Arasu
for respondent No.5

No Appearance
for respondent No.6

ORDER

(Order of the Court was made by The Hon'ble Acting Chief Justice)

The petitioner/auction purchaser under Securitisation and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act") viz., G.Senthil, son of R.Gandhi, residing at No.56, 10th Street, Gandhi Nagar, Tiruvannamalai-606 601, has filed the present writ petition in this Court with the following prayer:

"For the reasons stated in the accompanying affidavit it is therefore prayed that this Honourable Court may be pleased to issue a Writ of Mandamus or any other Writ or Order or Direction in the nature of a Writ, directing the respondents 1 to 4 to take physical possession of the schedule property from the 5th and 6th respondents and handover the vacant possession to the petitioner herein within a time frame that may be fixed by this Hon'ble Court and pass such further order or orders as this Hon'ble Court may deem fit in the present circumstances of the case and thus render justice"

2. The District Collector, Tiruvannamalai, has passed an order under Section 14 of the SARFAESI Act on 11.11.2016 directing the property in question to be handed over to the auction purchaser. Respondent No.5/K.Shanthi, daughter of Krishnan Nair, residing at No.96A, Big Street, Tiruvannamalai and respondent No.6/Kasthuri, wife of Gopalakrishnan, residing at Door No.10C/1, Polur Salai, 7th Street, Tiruvannamalai, are claiming to be tenants in the property in question.

3. Respondent No.5/K.Shanthi has approached the Debts Recovery Tribunal-I, Chennai by way of S.A.No.3 of 2018 (K.Shanthi v. The Authorised Officer and Deputy General Manager, State Bank of India, Chennai-8 and others). The other tenant viz., Kasthuri did not file any application. The Debts Recovery Tribunal-I, Chennai, dismissed S.A.No.3 of 2018 preferred by the tenant K.Shanthi vide order dated 07.06.2018. Respondent No.5 does not appear to have filed any further appeal against the said order of the Debts Recovery Tribunal-I, Chennai dated 07.06.2018 before the Debt Recovery Appellate Tribunal. Instead, it appears that both the tenants have filed Civil Suits in the Court of the District Munsif, Tiruvannamalai viz., O.S.No.43 of 2018 and O.S.No.113 of 2018 and the said suits are pending in the Court of District Munsif, Tiruvannamalai.

4. The learned counsel for the petitioner/auction purchaser, Mr.T.Sundar Rajan for M/s.J.Senthil Kumar and the learned counsel for the first respondent Bank, Mr.A.V.Arun, submitted that no Civil Suit is maintainable as per Section 34 of the SARFAESI Act in respect of any matter which the Debts Recovery Tribunal or Debt Recovery Appellate Tribunal is empowered to determine and no such injunction can be granted by the Civil Court or other authority in respect of any action taken or to be taken under the said Act. However, the said Civil Suits are still pending and the first respondent Bank has filed applications under Order VII, Rule 11 C.P.C. for rejection of the plaints before the trial Court.

5. This Court granted some time on the last occasion on 26.09.2019 to the learned counsel appearing for respondent No.5 to get instructions as to whether respondent No.5 is willing to hand over the vacant possession of the suit property in question to the auction purchaser by referring to the latest decision of the Hon'ble Court in the case of Bajarang Shyamsunder Agarwal v. Central Bank of India and another, reported in 2019 SCC OnLine SC 1173. The said decision is dated 11.09.2019. However, the learned counsel for respondent No.5/tenant, Mr.M.Tamil Thendral Arasu, submitted that the tenancy in favour of the first respondent Bank is a registered one, whereas in the case of Bajarang Shyamsunder Agarwal (supra), the tenancy was not registered.

6. Be that as it may, having heard the learned counsel parties, we are satisfied that the petitioner/auction purchaser is entitled to take possession of the property in question in pursuance of the order passed by the District Collector, Tiruvannamalai under Section 14 of the SARFAESI Act. Therefore, the petitioner/auction purchaser is left free to approach the District Collector, Tiruvannamalai, to enforce and

execute its order and also ensure delivery of possession to the petitioner. On the other hand, the alleged tenants in the property in question viz., respondent Nos.5 and 6 have an alternate remedy to prefer an appeal against the said order dated 7.6.2018 passed by the Debts Recovery Tribunal-I, Chennai before the Debt Recovery Appellate Tribunal under Section 17 of the SARFAESI Act, subject to complying with the relevant conditions for maintaining such appeal.

7. We are also constrained to observe that in view of a clear bar under Section 34 of the SARFAESI Act, which is quoted below, we fail to understand how the Civil Courts are entertaining such Civil Suits with regard to the matters arising under the provisions of the SARFAESI Act. Sections 34 and 35 of the said Act read thus:

"34. Civil Court not to have jurisdiction. - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)"

"35. The provisions of this Act to override other laws.- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

8. The Hon'ble Supreme Court in Jagdish Singh v. Heeralal and others, reported in (2014) 1 SCC 479, has held as under:

"22. The scope of Section 34 came up for consideration before this Court in Mardia Chemicals Ltd., (2004) 4 SCC 311 and this Court held as follows:

"50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents

that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken 'or to be taken in pursuance of any power conferred under this Act'. That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13."

23. Section 13, as already indicated, deals with the enforcement of the security interest without the intervention of the court or tribunal but in accordance with the provisions of the Securitisation Act.

24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have the jurisdiction to entertain any suit or

proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression "in respect of any matter" referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently, if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.

25. We are of the view that the civil court jurisdiction is completely barred, so far as the "measures" taken by a secured creditor under sub-section (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal, to determine as to whether there has been any illegality in the "measures" taken. The Bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondents 6 to 8 (sic Respondents 1 to 5) have been crystallised, before creating security interest in respect of the secured assets.

26. In such circumstances, we are of the view that the High Court was in error in holding that only civil court has the jurisdiction to examine as to whether the "measures" taken by the secured creditor under sub-section (4) of Section 13 of the Securitisation Act were legal or not. In such circumstances, the appeal is allowed and the judgment¹ of the High Court is set aside. There shall be no order as to costs."

9. Further, in *Authorised Officer, State Bank of India v. Allwyn Alloys Private Limited and others*, reported in (2018) 8 SC 120, it was held as under:

"8. After having considered the rival submissions of the parties, we have no hesitation in acceding to the argument urged on behalf of the Bank that the mandate of Section 13 and, in particular, Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the 2002 Act"), clearly bars filing of a civil suit. For, no civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under this Act to determine and no injunction can be granted by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act."

10. Therefore, in view of the overriding effect of the provisions of the SARFAESI Act and a clear bar under Section 34 of the said Act, the Civil Suits filed by the present respondent Nos.5 and 6 are not maintainable, but it seems that the learned trial Court has continued with the trial of the said suits although illegally. The trial Courts must, therefore, take suitable steps for rejection or return of such plaints immediately in view of the bar of law under Section 34 of SARFAESI Act and the overriding effect of the provisions of the SARFAESI Act provided under Section 35 of the said Act. The remedial measures provided to such persons is only before the Debts Recovery Tribunal or the Debt Recovery Appellate Tribunal. After such orders are passed by the concerned Tribunal, including the Appellate Tribunal, only the concerned aggrieved party can avail constitutional remedies under the Constitution of India. Filing and maintaining of such suits in Civil Courts are, therefore, in clear abuse of process of law and we strongly deprecate the same.

11. Therefore, the present writ petition is disposed of with the aforesaid liberty and direction to the concerned parties, including liberty to the auction purchaser to get the order enforced through the District Collector concerned. A time frame of three months is allowed for the District Collector, Tiruvannamalai, to take needful steps for implementation of the order passed under Section 14 of the SARFAESI Act. No costs.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

bbr

Note to Registry:

Copy of this order may be circulated to the Director, Tamil Nadu State Judicial Academy as well as all the Principal District Judges/District Judges in this State and the Chief Judge, Union Territory of Puducherry for bringing the same to the notice of the concerned Courts.

To:

- 1.The Authorized Officer/Chief Manager,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Building,
No.32, Montieth Road,
Egmore, Chennai-600 008.
- 2.The District Magistrate and Collector,
Tiruvannamalai District,
Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District,
Tiruvannamalai.
- 4.The Deputy Superintendent of Police,
Tiruvannamalai Town,
Tiruvannamalai.
- 5.The Director
Tamil Nadu State Judicial Academy
Chennai
- 6.The Section Officer
'F' Section
High Court, Madras 104.
(for communication the order to all Principal District
Judges/District Judge for bringing the same to the notice of
the concerned Courts)((2 copies)
- 7.The Chief Judge
Puducherry

8.The Registrar(Judicial)
High Court, Madras 104.

+1 CC to Mr.A.V.Arun, Advocate sr 86003.
+1 CC to Govt. Pleader sr 85836.
+1 CC to Mr.P. Mani, Advocate sr 85703.
+2 Ccs to Mr.J.Senthil Kumar, Advocate sr 85690.

W.P.No.7798 of 2019

SVI(CO)
SP(08/11/2019)