

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

CORAM

THE HONOURABLE DR.VINEET KOTHARI ACTING CHIEF JUSTICE  
AND  
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.29194 of 2019

Phoenix ARC Private Ltd.,  
Acting as Trustee on behalf of  
Phoenix Trust FY17-8,  
5th Floor, Dani Corporate Part,  
No.158 CST Road, Kalina Santa Cruz (E)  
Mumbai 400 098. Petitioner

Versus

The District Collector,  
(The District Magistrate),  
Tirupur District,  
Karuppa Gaundanpalayam,  
Tirupur 641 604. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the Respondent to consider the representation dated 31.5.2019 sent by registered post as the Respondent refused to accept the copy physically and consequently direct the Respondent to pass suitable order in the petition dated 27.2.2018.

For petitioner : Mr.Ilayarajkumar  
for M/s.Ramalingam and Associates

For Respondent : Mr.Kamalesh Kannan

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, ACJ.)

The Petitioner, Phoenix ARC Private Limited, Mumbai, an Assignee of the South Indian Bank under the provisions of the SARFAESI Act, has filed this Petition under Article 226 of the Constitution of India seeking to enforce the order passed by the Respondent, District Collector under Section 14 of the SARFAESI Act 1965, on the basis of the Assignment of debts in favour of

the Petitioner on 17.3.2017, at a prior point of time, before the order under Section 14 was passed by the District Collector on 26.5.2017.

2. The Application was filed by the present Petitioner purportedly under Section 5(5) of the Act seeking the substitution of its name in the place of the South Indian Bank, on 27.2.2018 only much after the order was passed on 26.5.2017. The South Indian Bank appears to have given a representation on 12.3.2019 to the Respondent, District Collector, and the Respondent had disposed of the said Application by passing an order on 28.3.2019 without even referring to the Petitioner's name as Assignee of the said Bank and aggrieved by the same, the Petitioner, Assignee Company has approached this court.

3. Having heard the learned counsel for the Petitioner and upon perusal of Section 5(5) of the Act which is quoted below, we are of the opinion that the inter se rights of the present Petitioner, Assignee of South Indian Bank and the Assignor viz., the South Indian Bank cannot be decided in the present Writ Petition.

4. Section 5(5) of the Act reads as under:-

"On acquisition of financial assets under sub-section (1), the asset reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the asset reconstruction company in such pending suit, appeal or other proceedings."

5. Sub-Section (5) of Section 5 of the Act authorises the Assignee to move the concerned Tribunal or Court or Authority for the substitution of its name in any pending suit, appeal or other proceedings. Since in the present case, the Application filed under Section 14 of the Act stood disposed of on 26.5.2017, after the Assignment in favour of the present Petitioner on 17.3.2017 the Petitioner seems to have approached the District Collector after a long delay viz., on 27.2.2018. The learned District Collector does not seem to have taken note of the Petition filed by the Petitioner under Section 5(5) of the said Act.

6. In these circumstances, the order passed by the District Collector cannot be validly challenged by the Petitioner under

Article 226 of the Constitution of India. Therefore, with liberty to the Petitioner to take the assistance and as joint Applicant of the South Indian Bank to seek the enforcement of the order passed by the District Collector under Section 14 of the Act on 26.5.2017 through the District Collector himself.

7. The Writ Petition is disposed of accordingly. No costs.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssk.

To:

The District Collector,  
(The District Magistrate),  
Tirupur District,  
Karuppa Gaundanpalayam,  
Tirupur 641 604.

+1cc to Special Government Pleader sr.85835

+1cc to M/s.Ramalingam and Associates, Advocate sr.85755

W.P.No.29194 of 2019

rp(co)  
nr 14/11/2019

सत्यमेव जयते

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