IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2019

CORAM:

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

W.P.No.29824 of 2019

V.Elangovan ..Petitioner

Vs

1. Reserve Bank of India
   Represented by Asst. Manager
   Consumer Education and Protection Cell
   Fort Glacis, Chennai - 600 001.

2. The Canara Bank
   Represented by its Manager
   Tondairpet Branch, No.50 G A Road
   Tondairpet, Chennai - 21.

3. Mrs.Elizabeth Netto
   Chief Manager & The Authorised Officer
   Canara Bank, Tondiarpet Branch
   50 G.A.Road
   Old Washermenpet, Chennai - 21.

4.S.Nagarajan ..Respondents

Writ Petition filed under Article226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records of the 1st respondent in impugned order dated 24.05.2019 bearing No.CEPEC (CHE)/No.2341/02.01.008/2018-2019 to quash the same as arbitrary, illegal and against the provisions of SARFAESI Act and consequently direct the 1st respondent to entertain the petitioner's complaint dated 13/05/2019 and requesting the 1st respondent to adjudicate it on merit.

For Petitioner : Mr.R.Chandra Sudan
For Respondents: Mr.Chevanan Mohan for R1
Mr.S.Kesavan for R2

ORDER

[Order of the Court was made by Dr.VINEET KOTHARI, J]

The petitioner Mr.V.Elangovan, Proprietor of Ganekar & Co, has filed this writ petition aggrieved by the communication dated 24.05.2019, whereby the Assistant Manager of Reserve Bank of India, refused to entertain the complaint No.C-2823 against the Canara Bank, Tondiarpet Branch, in pursuance of the complaint/letter dated 16.05.2019 given by him, on the ground that since Canara Bank had initiated action against the petitioner/borrower under the provisions of the SARFAESI Act, 2002, the Reserve Bank of India could not intervene in the matter.

2. The learned counsel for the petitioner submitted that Section 29 of the SARFAESI Act, incorporates that if any person contravenes or attempts to contravene or abets the contravention of the provisions of the said Act, he shall be punishable with imprisonment and therefore, the petitioner, in order to approach to the competent Court for taking cognizance against certain officials of the respondent Canara Bank, filed a complaint before the Reserve Bank of India, since without leave of the Reserve Bank of India, no Magistrate could take cognizance of any such offence as alleged by the petitioner against the officials of the Canara Bank, in view of Section 30 of the SARFAESI Act. Therefore, even though the appeal against the order of the Debt Recovery Tribunal-II, Chennai filed by the petitioner is pending before the Debt Recovery Appellate Tribunal, Chennai, independently the petitioner's complaint ought to have been examined by the Reserve Bank of India for giving permission to prosecute the officials of the Canara Bank or refusing the same on cogent reasons.

3. On the other hand, the learned counsel for the second respondent/ Canara Bank submitted that the said complaint, against the officials of the respondent bank, is purportedly given to obstruct the regular recovery proceedings under the provisions of the SARFAESI Act, for which, the petitioner's appeal under Section 18 of the SARFAESI Act is already pending before the Debt Recovery Appellate Tribunal, Chennai and therefore, all the points raised against the officials of the respondents, which are in defence in those proceedings, is very well raised before the learned Debt Recovery Appellate Tribunal, Chennai.

4. The learned counsel for the Reserve Bank of India prayed for some time to produce before us the complaint redressal mechanism adopted by the Reserve Bank of India.

5. Having heard the learned counsel, we are of the opinion that, at this stage, it would be more of academic exercise to direct the Reserve Bank of India to independently examine the complaint of the petitioner with reference to Sections 29/30 of the SARFAESI Act. All that the petitioner/borrower intends to say in such complaint, can be very well raised as grounds or objections before the Debt Recovery Appellate Tribunal against the impugned order of Debt Recovery Tribunal - II, Chennai, which is the subject matter of challenge before the DRAT.

6, If the petitioner is aggrieved by the order of the DRAT, he can, of course, seek further legal remedy including filing a complaint/representation with a reference to Sections 29/30 of the SARFAESI Act. At that stage, the Reserve Bank of India, could examine the same in the light of the provisions independently.

With these observations, this petition is disposed of. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

vsm

To

1.The Assistant Manager
Reserve Bank of India
Consumer Education and Protection Cell
Fort Glacis Chennai 1.

+1 CC to Mr.S.Kesavan, Advocate sr 96971.
+1 CC to M/s. King and Partridge, Advocate sr 96846
+1 CC to Mr.R.Chandra Mohan, advocate sr 96688.

GP(CO)
SP(10/01/2020)