IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.34527 of 2019

1.M/s.Techno Builders,
rep.by its Managing Partner,
Mr.M.A.Jahangir,
Office at Plot no.39, Door No.4/32,
Royala Nagar 1st Main Road,
Ramapuram, Chennai 600 089.

2.Mr.M.A.Jahangir

3.Mrs.J.Shajitha Banu

4.Mr.R.Sathyanarayanan .. Petitioners

Versus

1.M/s.Canara Bank,
Rep.by its Chief Manager,
Ashok Nagar Branch,
no.9, First Avenue,
Ashok Nagar, Chennai 600 083.

2.The District Collector,
No.62, Rajaji Salai,
Singaravelan Maligai,
Chennai 01. .. Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of mandamus directing the second respondent to consider the representation (objections) given by the petitioner dated 19.08.2019.

For Petitioners : Mr.Thenmozhi Shivaperumal

For Respondents : Mr.Akhil Akbar Ali
Government Advocate for R2

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

The petitioner is the partnership firm and it availed Housing Finance facilities from the 1st respondent Bank, vide Sanction letter dated 03.10.2007 and in view of the default committed in payment of dues, action was initiated under the provision of the Securatization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act') by issuing notice under Section 13(2) dated 15.03.2017.

2. The learned counsel appearing for the petitioner would submit that in respect of the said notice, reply was also given stating that due to 2015 mega floods, the petitioner Firm was unable to carryout day to day work/activities and as such prayed for some accommodation to settle the dues. Notice under Section 13(2) of SARFAESI Act dated 15.03.2017 was followed by notice under Section 13(4) of the said Act dated 17.04.2017. It was also followed by auction notice fixing the date of auction on 29.06.2019 and from the submission made by the learned counsel appearing for the petitioner, there was one bidder in the auction and the auction was knocked down in his favour. The 1st respondent Bank moved the 2nd respondent under Section 14 of the SARFAESI Act for getting actual physical possession of the asset and the 2nd respondent in turn has sent a communication dated 06.08.2019 to the Tahsildar, Maduravoyal in R.C.No.J14/22414/2019 dated 06.08.2019 calling upon him to cause enquiry and submit his report and copy of the said communication was also marked to the petitioner as well as to his partners. The petitioner Firm, on becoming aware of such a move on the part of the 2nd respondent, filed their objections dated Nil and thereafter came forward to file this Writ Petition stating among other things that challenging the recovery proceedings, appeals are also pending and that apart very many Civil Suits are pending and as such the 2nd respondent shall defer further proceedings under Section 14 of the SARFAESI Act.

3. Mr.Akhil Akbar Ali, learned Government Advocate accepts notice on behalf of the 2nd respondent.

4. This Court has carefully considered the rival submission and also perused the materials placed before it.

5. The Commissioner of Revenue Administration regarding compliance of Section 14 of the SARFAESI Act has issued a circular dated 01.03.2019 to all the District collectors as to the procedure followed by the District Collector / District Magistrate while dealing with the application under Section 14 of the SARFAESI Act and it is relevant to extract the same:

Commissionerate of
Revenue Administration and
Disaster Management,
Chepauk, Chennai 600 005.

CIRCULAR
PRESENT: Dr. KORLAPATI SATYAGOPAI, I.A.S.,
Additional Chief Secretary/
Commissioner of Revenue Administration

Rc.No.RA.6(3)/6075/2019
Dated:01.03.2019

Sub: Writ Petition~W.P.No.29670 of 2017 filed by Vijaya Bank, Coimbatore ~ to ensure ~ strict compliance ~ under ~ Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002 ~ Instructions issued~ Reg.

Ref: 1. Writ Petition W.P.No.29670 of 2017 filed by Vijaya Bank, Coimbatore.
2. Additional Chief Secretary to Government, Finance Department D.O.Letter N0 .6888A/ Res.II/2019~1, dated 13.02.2019.

The Government in Finance Department, Secretariat Chennai~ 600 009 in their D.O. letter 2nd cited it has informed that the Additional Government Pleader, High Court of Madras has stated that in the Writ Mandamus filed by Vijaya Bank, Coimbatore in W . P.No.29670/2017, the Division Bench of Madras High Court has directed State Government to issue suitable instructions to the District Collectors with regard to compliance regarding the time limit enumerated under Section 14 of the SARFAESI Act 2002 and requested this Commissionerate to issue necessary instructions to all the District Collectors so as to adhere the provisions of the SARFAESI Act 2002.

2) Section~14 of the SARFAESI Act: Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset, states that

(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him~

(a) take possession of such asset and documents relating thereto; and

(b)forward such asset and documents to the secured creditor:

(2) For the purpose of securing compliance with provisions of sub section (1) the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used, such force, as may, in his opinion, be necessary

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority

3) In the amendment issued in Sub~section (1) for Section 14 of the SARFAESI Act, 2002, the following provisions have been inserted, namely

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that~

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in subclause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non~performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub~section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non~acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub~section (4) of section 13 rad with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

4) After sub~section (1) of Section 14 of the SARFAESI Act, 2002 the following sub~section has been inserted namely

(1~A) The District Magistrate or the Chief Metropolitan Magistrate may authorize any officer subordinate to him,~

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor (ie) the Banker

5) In the amendment issued in sub~section (1) of the Section 14 of the Principal Act,

(i) In the second proviso, after the words ?secured assets?, the words ? within a period of thirty days from the date of application? have been inserted (ii) after the second proviso, the following proviso has been inserted namely:~

? Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his/her control, he/she should be recorded reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days?

6) The District Collectors are hereby directed to follow the above said instructions scrupulously and orders should be passed within the stipulated time limit. Any delay noticed in this regard will be viewed very seriously.

7) The District Collectors are also instructed a periodical report should be sent to this Commissionerate before 5th of every month on the following format.

District Name
Total No.of pending cases as on date
No of cases order passed during the month

No of cases pending

More than 1 month
More than 2 months
More than 3 months

8) The receipt of the circular may be acknowledged by return post.

Sd/~ K.SATYAGOPAL
Additional Chief Secretary
/Commissioner of Revenue Administration

6. In the considered opinion of this Court, Section 14 of the SARFAESI Act did not contemplate any notice of hearing / objection from the Borrowers and as such there may not be any necessity of affording opportunity of personal hearing to the Borrowers / petitioners and that apart though it is the claim of the petitioner that the appeal is pending against recovery proceedings, there is no interim order in operation and in the absence of the same, it is always open to the 2nd respondent to proceed further in accordance with law while dealing with the application filed under Section 14 of the SARFAESI Act by the 1st respondent.

7. In the light of the reasons assigned above, this Court is of the considered view that there is no merit in the Writ Petition. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

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To

1.The Chief Manager,
M/s.Canara Bank,
Ashok Nagar Branch,
No.9, First Avenue,
Ashok Nagar, Chennai 600 083.

2.The District Collector,
No.62, Rajaji Salai,
Singaravelan Maligai,
Chennai 01.

WP.No.34527 of 2019

MR(CO)
CSR: 29/01/2020