

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.33742/2019 & WMP.Nos.34219 & 34220/2019

1.Muruganantham
2.Tmt.Thilagavathy Petitioners

Versus

1.The District Collector
Office of the District Collector
Thiruvarur District.
2.The Revenue Divisional Officer
O/o.The Revenue Divisional Office
Mannargudi, Thiruvarur District.
3.The Authorised Officer
M/s.Equitas Small Finance Bank Limited
Kumbakonam Branch, Thanjavur District. Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of mandamus directing the certiorarified mandamus calling for the records relating to the 2nd respondent by its proceedings Na.Ka.1086/2019/A3 dated 04.11.2019, consequential order of the 1st respondent by its proceedings Rc.499/2019/C2 dated 09.10.2019 and quash the same and further direction, directing the 1st respondent to remove the lock and seal of the property of land with building comprised in RS.No.142/5B with an extent of 2 cents or 871/20 and UDR S.No.147/5B [Old RS.No.142/4] [as per Revenue record S.No.142/5B] measuring with an extent of 2907 sq.ft., admeasuring with an extent of 3778.20 sq.ft., situate at Thiruthuraipoondi Town Municipality, Thiruthuraipoondi Taluk.

For Petitioners: Mr.S.Arivazhagan
For RR 1 & 2 : Mr.Akhil Akbar Ali, GA
For R3 : Mr.A.Damodaran

ORDER

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

- (1) By consent, the writ petition is taken up for final disposal. Mr.Akhil Akbar Ali, learned Government Advocate appears on behalf of the respondents 1 and 2 and Mr.A.Damodaran, learned counsel appears on behalf of the 3rd respondent / Bank.
- (2) The petitioners are carrying on the business under the name and style of 'Murugan Departmental Store' and for the development of their business, they availed the loan from the 3rd respondent / Bank and for the due repayment of the loan, they created security in the form of Mortgage over the land together with the building thereon comprised in RS.No.142/5B with an extent of 2 cents or 871/20 and UDR S.No.147/5B [Old RS.No.142/4] [as per Revenue record S.No.142/5B] measuring with an extent of 2907 sq.ft., admeasuring with an extent of 3778.20 sq.ft. The petitioners committed default in payment of the loan and therefore, the 3rd respondent / Bank had initiated arbitral proceedings. The Sole Arbitrator vide interim Award dated 18.02.2019 in IA.No.173/2019 in ACP.No.350/2017, had quantified the amount at Rs.89,41,495/-. The 3rd respondent had also initiated proceedings under the provision of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short 'the SARFAESI Act'], by issuing notices under Section 13[2] followed by 13[4] of the SARFAESI Act and despite that, the petitioners did not clear the dues and therefore, the 3rd respondent filed an application before the 1st respondent under Section 14 of the SARFAESI Act and vide order dated 09.10.2019, the petition came to be ordered and challenging the legality of the same, the present writ petition is filed.
- (3) Mr.S.Arivazhagan, learned counsel for the petitioner would submit that the 1st respondent did not issue the Possession Notice before taking possession through the orders of the 1st respondent and that apart, the 1st respondent has failed to put the petitioners on notice before ordering the application and since the relevant mandatory provisions of the SARFAESI Act, have been violated, prays for interference.
- (4) The writ petition was listed for hearing on 05.12.2019 and on that day, Mr.Akhil Akbar Ali, learned Government Advocate accepted notice on behalf of respondents 1 and 2 and undertook to produce the files and accordingly, the matter is listed today.
- (5) Mr.A.Damodaran , learned counsel appearing for the 3rd respondent / Bank would submit that all necessary documents have been furnished along with the application filed under Section 14 [1] and [2] of the SARFAESI Act and the 1st respondent, after due and proper application of mind and deriving satisfaction only, has passed the impugned order and

hence, prays for dismissal of this writ petition.

- (6) This Court has carefully considered the rival submissions and also perused the materials placed before it including the files produced by the learned Government Advocate appearing for the respondents 1 and 2.
- (7) A perusal of the files maintained by the 1st respondent would disclose that the 3rd respondent / Bank in the petition filed under sections 14[1] and [2] of the SARFAESI Act before the 1st respondent, took a specific stand that they have issued notices under Sections 13[2] and 13[4] of the SARFAESI Act and pages No.81 and 83 of the files would also disclose that Possession Notices were published both in Vernacular and English News Dailies.
- (8) The 1st respondent, on receipt of the petition, has directed the Revenue Divisional Officer, to cause inspection, who in turn, directed the Tahsildar, Tiruthuraipoondi, to cause inspection and based on the report of the Revenue Divisional Officer, dated 26.08.2019, has passed the impugned order.
- (9) A further perusal of the impugned order would also disclose that in paragraph No.3 of the order, the 1st respondent has recorded the fact that the Authorised Officer of the 3rd respondent / Bank has produced the copies of the documents, i.e., Letter of Authority, Loan Application, Loan Agreement, Memorandum of Deposit of Title Deeds, Demand Notice, Sale Deed along with the application to prove that all measures enumerated under Section 13 of the SARFAESI Act, have been taken.
- (10) Section 14 of the SARFAESI Act is for the benefit of the Financial Institutions and the said provision no way contemplates that the 1st respondent, before ordering the petition filed under Sections 14[1] and 14[2] of the SARFAESI Act, have to put the borrowers on notice and it is obligatory on the part of the 1st respondent to derive satisfaction that the measures contemplated under Section 13 of the SARFAESI Act, have been complied with and in the considered opinion of the Court, the 1st respondent has also derived the satisfaction and the files produced before this Court would also substantiate the said fact.
- (11) In view of the reasons assigned above, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

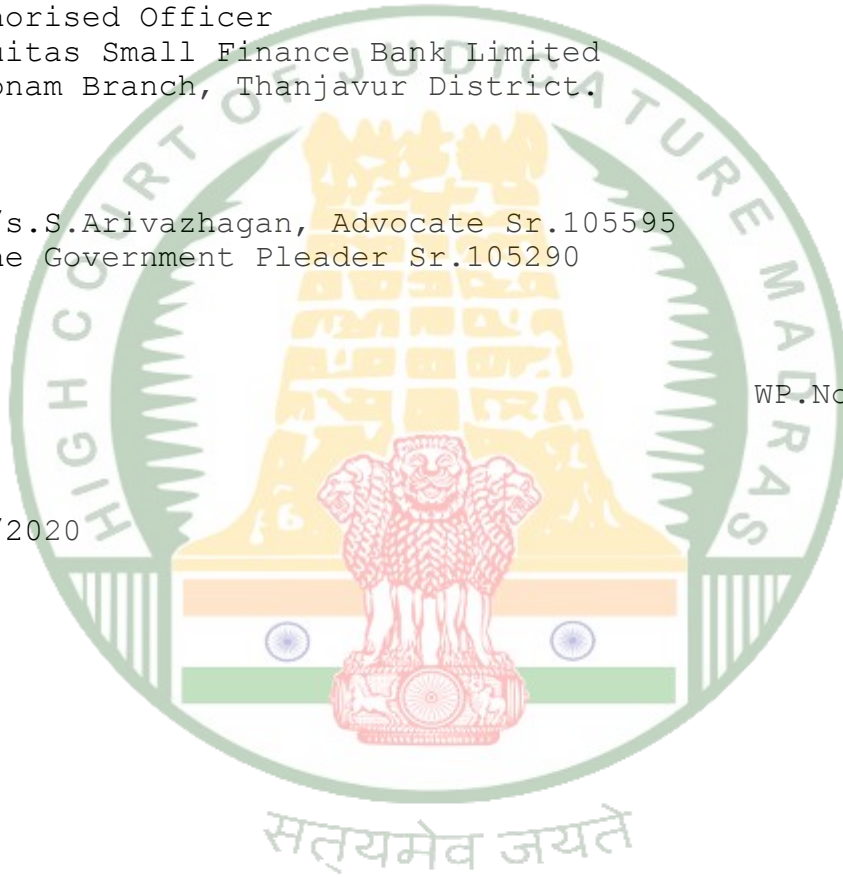
To

- 1.The District Collector
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O/o.The Revenue Divisional Office
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+1cc to M/s.S.Arivazhagan, Advocate Sr.105595
+1cc to the Government Pleader Sr.105290

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srg 28/01/2020



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