IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.33497/2019 & WMP.No.33963/2019

1.M/s.Hitec NDT System Private Limited
rep.by its Director Ravikumar,
SF.No.350/2C, Kattampatti Village
Ganeshpuram Post, Sarkar Samakulam
Coimbatore 641 107.

2.Mr.Ravikumar .. Petitioners

Versus

M/s.Fedral Bank Limited
First Floor, No.21, Variety Hall Road
ML Lund Complex, Coimbatore 641 001. .. Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus forbearing the respondent from evict the first petitioner from survey No.350/2c, Kattampatti Village, Ganeshpuram Post, Sarkar Samakulam, Coimbatore 641 107.

For Petitioners : Mr.P.Tamilavel

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

(1)The first petitioner/Company availed financial assistance from the respondent / Bank and in view of the default committed, notice dated 29..06.2017 under section 13[2] of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short ''SARFAESI Act''], calling upon the petitioner Company as well as the Guarantors to pay a sum of Rs.64 Lakhs within sixty days from the date of receipt of the said notice and the said notice also indicated that in the event of non-payment of the sum claimed, the consequential action would also follow. The said notice was followed by the Possession Notice dated 05.10.2017 wherein it was indicated that as on 31.05.2017, the petitioner Company as well as the Guarantor, jointly or severally liable to pay a sum of Rs.42,18,365/-, Rs.70,93,561/- and Rs.61,65,197/- due under the Account No.18027100000051, jointly and severally, as on 31.05.2017, failing which, further action would follow. The petitioner, challenging the legality of the Possession Notice dated 05.10.2017, filed an appeal under section 17 of the SARFAESI Act before the Debts Recovery Tribunal, Coimbatore, during January 2018 along with an application for delay and the delay is yet to be condoned.

(2) The learned counsel for the petitioners has drawn the attention of this Court to impugned communication dated 25.09.2019 and would submit that the respondent/Bank had appointed an Enforcement Agency to take over the assets of the first petitioner/Company and the first petitioner/Company genuinely apprehends that without resorting to due process of law, through back door methods, the assets of the first petitioner/Company sought to be taken possession and hence, prays for interference.

(3) This Court has carefully considered the arguments advanced by the learned counsel for the petitioner and also perused the materials placed before it.

(4) A perusal of the impugned communication dated 25.09.2019 would disclose that the respondent/Bank had appointed M/s.Charitarth Financial Services Private Limited to assist to take physical possession of the secured assets of the first petitioner/Company and dispose of them, by following due process of law laid down under the said Act.

(5) In the light of the contents of the said Communication, the apprehension expressed by the first petitioner/Company is wholly unfounded.

(6) It is relevant to extract Section 19 of the SARFAESI Act:-

''19 Application to the Tribunal:-

(1) Where a Bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction:-

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain ; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(c) the cause of action, wholly or in part, arises:

Provided that the bank or financial

institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws [Amendment] Act, 2004, for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [54 of 2002], if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section [1] shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application.

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under the sub section, it shall pass such orders after recording the reasons therefor.

(2)Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section [1] and against the same person another bank or financial institution also has a claim to recover its debt, then, the latter bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal.

(3)Every application under sub-section [1] or sub-section [2] shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed.

Provided that the fee may be prescribed having regard to the amount of debt to be recovered.

Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub section [1] of section 31.

(6) On receipt of the application under sub-section [1] or sub-section [2], the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of the summons as to why the relief prayed for should not be granted.

(7) The defendant shall, at or before the first hearing or within such time as Tribunal may permit, present a written statement of his defence.

(8) Where the defendant claims to set off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards, unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set off.

(9) The written statement shall have the same effect as a plaint in a cross suit so as to enable the Tribunal to pass a final order in respect of both of the original claim and of the set-off.

(10) A defendant in an application, may, in addition to his right of pleading a set off under sub section [6], set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(11) A counter-claim under sub-section [8] shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

(12) The applicant shall be at liberty to file a written statement n answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(13) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the applicant may,

at any time before issues are settled in relation to the counter claim, apply to the Tribunal for an order that such counter claim may be excluded, and the Tribunal may, on the hearing of such application, make such order as it thinks fit.

(14) The Tribunal may make an interim order [whether by way of injunction or stay or attachment] against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(15) [A]Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him-

[i]is about to dispose of the whole or any part of his property ; or

[ii]is about to remove the whole or any part of the property from the local limits of the jurisdiction of the Tribunal ; or

[iii]is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest,

the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security ; in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security.

[B]Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owed by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

(16) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(18) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub section [14].

(19) If an order of attachment is made without complying with the provisions of sub-section [13], such attachment shall be void.

(20) In the case of disobedience of an order made by the Tribunal under sub sections [12], [13] and [18] or breach of any of the terms which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime, the Tribunal directs his release.

(21) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order-

[a] appoint a receiver of any property, whether before or after grant of certificate for recovery of debt ;

[b] remove any person from the possession or custody of the property.

[c] commit the same to the possession, custody or management of the receiver.

[d] confer upon the receiver all such powers, as to bringing and defending suits in the Courts or filing and defending applications before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rent and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

[e] appoint a Commissioner for preparation of an inventory of the properties of the defendant and for the sale thereof.

(22) Where a certificate of recovery is

issued against a company registered under the Companies Act, 1956 [1 of 1956], the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529-A of the companies Act, 1956 [1 of 1956] and to pay the surplus, if any, to the company.

(28) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due upto the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

(29) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(30) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the Certificate.

(31) Where the Tribunal, which had issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated.

Provided that in the case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

(32) The application made to the Tribunal under sub-section [1] or sub-section [2] shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(33) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

(7) Even for the sake of argument that the said entity, without

resorting to due process of law, is going to take possession of the assets of the first petitioner/Company, straightaway, the petitioners are having a remedial measure under the said provisions.

(8) In the considered opinion of the Court, this Court cannot act on surmises and conjectures based on the alleged apprehension expressed by the petitioner.

(9) In the result, the writ petition stands dismissed at the admission stage itself. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

AP

To

M/s.Fedral Bank Limited
First Floor, No.21, Variety Hall Road
ML Lund Complex, Coimbatore 641 001.

WP.No.33497/2019

AK(CO)
GN(20/01/2020)