THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALTHA

WP.No.33744 of 2019

M/s.Orex Leasing & Financial Service India Limited
A company incorporated under the provisions of
Companies Act, 1956 and having its registered
office at Plot No.94, Marol Co-operative Industrial Estate,
Andheri Kurla Road, Andheri (East), Mumbai 400 059
rep.by its Power of Attorney Mr.D.Gopinath
....Petitioner

vs.

The District Collector cum District Magistrate,
Kancheepuram Collectorate
Kancheepuram District. ...Respondent

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus directing the respondent, the District Collector cum District Magistrate of Kancheepuram, to provide administrative assistance on an expeditious basis under Section 14 of the SARFAESI Act 2002 to take possession of the secured Asset with respect to the application filed by the petitioner dated 31.05.2019 which is pending on the file of the respondent.

For Petitioner : Mr.S.K.Mariyappan

For Respondents: Mr.Akhil Akbar Ali
Government Advocate

ORDER

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

The petitioner Financial Company have granted financial assistance to M/s.S.V.Y Fish Merchand, in the form of secured lending facility Loan for a sum of Rs.1,41,47,000/- and Loan Agreement dated 09.02.2018 was also executed by Mr.Musthafa and

Mrs.V.Geetha and the borrowers became defaulters and therefore, the amount was classified as Non Performing Asset. The petitioner had issued a notice dated 14.03.2019 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act') demanding a sum of Rs.1,45,58,047.02/- as on 11.03.2019 and despite receipt and acknowledgment of the notice, dues have not been paid. Therefore the Possession Notice dated 28.05.2019 was issued under Section 13(4) of the SARFAESI ACT and it was also published in news dailies. Since borrower did not clear the dues, the petitioner had approached the respondent under Section 14 of the SARFAESI Act, vide application dated 06.08.2019 and despite lapse of nearly four months, no orders have been passed, hence they are constrained to approach this Court by filing this Writ Petition.

2. When the matter was listed for admission on 05.12.2019, the learned Government Advocate accepted notice and sought time to get instructions. When the matter is called, the learned Government Advocate, on instructions, would submit that Kancheepuram District has been bifurcated as Chengalpet and Kancheepuram District and the secured asset falls within the jurisdiction of Chengalpet District and the records are under transfer and it may take some time for the Collectorate of Chengalpet District to pass orders on the said application and prays for some accommodation.

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

4. 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 to be followed by the District Collectors / District Magistrates 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

5. In the light of the above facts and circumstances, Office of the District Collector cum District Magistrate, Kancheepuram Collectorate, Kancheepuram District is directed to transfer application dated 06.08.2019 submitted by the petitioner under Section 14 of the SARFAESI Act to the Collectorate of Chengalpet District within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the said official is directed to consider and dispose of the said application in terms of the above said Circular dated 01.03.2019, within a further period of four weeks thereafter and communicate the decision taken, to the petitioner.

6. The Writ Petition stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

sk

To
The District Collector cum District Magistrate,
Kancheepuram Collectorate
Kancheepuram District.

Copy to:
The District Collector,
Chengalpet District.

+2cc to Mr.B.K.Mariyappan, Advocate SR.No.103925

+1cc to Government Pleader SR.No.104538

RSV(CO)
GMY(30/01/2020)