THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALTHA

WP.No.33789 of 2019
and W.M.P.No.34291 of 2019

Loganathan ...Petitioner

Vs

1.The District Collector,
O/o.The District Collector,
Coimbatore-18.

2.Canara Bank,
Asset Recovery Management Branch,
rep.by the Authorised Officer,
R.S.Puram, Coimbatore 641 002.

3.The Inspector of Police,
B-6, Peelamedu Police Station,
Coimbatore. ....Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus forbearing the respondents from taking possession of the petitioner's premises in S.F.No.785/1, Door No.33, Periyar Nagar, Kalapatti Village, Coimbatore with residential building pending disposal of the Writ Petition.

For Petitioner : Mr.I.Abrar Mohamed Abdullah

For Respondents : Mr.E.Manoharan
Additional Government Pleader
for R1 & R3

Mr.P.Raghunathan
for TS.Gopalan&Co
for Canara Bank for R2

ORDER

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

By consent, the Writ Petition is taken up for final disposal. Mr.E.Manoharan, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 3 and Mr.P.Raghunathan for TS.Gopalan & Co., learned counsel for Canara Bank accepts notice on behalf of the 2nd respondent.

2. The petitioner is a Director of a Private Limited Company namely, M/s.Harimadhavaa Alloys Private Limited and was engaged mainly in the business of manufacture of various alloys. It is stated by the petitioner that originally he availed loan from the Andhra Bank and it was taken over by the 2nd respondent with an enhanced facility and for the due repayment of loan, enough and sufficient securities has also been created by mortgaging immovable properties also. The petitioner would further state that the subject matter of the present litigation is a residential complex of various Units and Floors and it was leased out to several persons in the year 2003, vide Lease Deeds dated 16.09.2013 and 02.10.2013 respectively and that apart, other persons are also residing in the said premises as tenants. The petitioner would further add that on account of bad business conditions, the Company was unable to pay it's debts and therefore, the 2nd respondent has invoked Section 13(2) of the Securitization and Reconstruction of financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI Act) and issued a notice under Section 13(2) dated 08.02.2018 followed by a possession notice dated 22.04.2014 and the 2nd respondent has also approached the 1st respondent for taking possession of the secured assets under Section 14 of the SARFAESI Act and thereafter the 1st respondent, vide proceedings dated 07.11.2016 had issued notice to him calling for enquiry for taking possession of the property in S.F.No.785/1 admeasuring to an extent of 5 cents 252 sq.ft, Kallapatti East Village. The petitioner has entered appearance and participated in the said proceedings. It is also stated by the petitioner that the 2nd respondent had also initiated proceedings under Recovery of Debts and Bankruptcy Act, 1993 by filing Original Application No.316 of 2016 and it was allowed on 08.01.2018, quantifying the recovery of the amount payable at Rs.7,52,94,957/- with interest and other dues.

3. The 2nd respondent has also gave a OTS Proposal vide communication dated 17.12.2018 with certain terms and in furtherance of the said proposal, the petitioner paid a sum of Rs.1,50,00,000/- between 17.12.2018 and 25.04.219 by selling

units to third parties and also taken possession of the said units. The petitioner became aware of the fact that the 1st respondent has passed an order under Section 14 of the SARFAESI Act and since he did not have the benefit of getting copy of the order, filed W.P.No.30641 of 2019 and the Division Bench of this Court, vide order dated 25.10.2019, granted opportunity to the petitioner to take further legal remedy against the order under Section 14 of the Act within a period of four weeks from that day and till such time, directed that no coercive steps shall be taken against the petitioner in the matter and in the event of filing application under Section 17 of the SARFAESI Act, the jurisdictional Debts Recovery Tribunal was requested to decide the case in accordance with law as expeditiously as possible.

4. Mr.I.Abrar Mohamed Abdullah, learned counsel appearing for the petitioner would submit that a copy of the order was received and immediately after receipt of the certified copy of the order, an appeal was filed before the jurisdictional Debts Recovery Tribunal at Coimbatore on 22.11.2019 and it is yet to be numbered and that apart, there is no full time Presiding Officer for the said Tribunal and the Debts Recovery Tribunal at Madras is holding circuit sitting and therefore, there is some difficulty in moving the matter. It is also fairly brought to the knowledge of this Court by the learned counsel appearing for the petitioner that in the interregnum, the 2nd respondent Bank took possession of 6 out of 7 units with tenants and his apprehension is that auction may be conducted in respect of the said property, which was taken possession and therefore prays for interim protection till the numbering of the said appeal along with the petition for interim prayer. The learned counsel for the petitioner on the legal plea, made a submission that he is having a bright chance of success in the appeal preferred, for the reason that in terms of provisos 1 and 2 to Section 14 (i) (b) (ix) to SARFAESI Act, the order which is the subject matter of challenge is not passed on time.

5. Per contra, Mr.P.Raghunathan for T.S.Gopalan & Co learned counsel appearing for the 2nd respondent would submit that the 2nd respondent has filed an affidavit under Section 13(4) of the SARFAESI Act before the Authorized Officer / 1st respondent on 21.04.2014 and after a lapse of two years only, the order was passed on 30.05.2018 and since the petitioner is a willful defaulter, this Court need not show any further indulgence to him and prays for dismissal of this Writ Petition. The learned counsel for the 2nd respondent would further submit that affidavits dated 02.09.2015 and 22.11.2016 under Section 14 of the SARFAESI Act was filed and after providing reasonable opportunity to the petitioner, final order came to be passed on

30.05.2018 and thereafter, e-auction sale was conducted on 28.11.2019, in which, Mr.E.Balaji, S/o.Easwaran, residing at No.4-128, Palla Thottam, Mariamman Temple Road, Kamanayakkam Palayam, K.Krishnapuram Palayam, Coimbatore 641 658 became the successful bidder of the property situated at kalapatti Village, SF.No.785/1 an extent of 6.03 acre land in that an extent of 4.02 acres land was converted into layout house sites in the name of Periyar nagar and the possession of entire property was also handed over to him on 28.11.2019.

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

7. It is an admitted fact that in pursuant to the order dated 25.10.2019 in W.P.No.30614/2019, the petitioner was issued with the copy of the order dated 30.05.2018 passed by the 1st respondent and by invoking Section 17 of SARFAESI Act, he filed an appeal before the jurisdictional DRAT at Coimbatore on 22.11.2019. It is also the submission of the learned counsel appearing for the petitioner that the Registry of the Tribunal has informed the learned counsel for the petitioner that there was a delay by calculating the limitation period from the date of the order. This Court can also take note of the fact that there is no full time Presiding Officer for DRAT at Coimbatore and the Presiding Officer of the Debts Recovery Tribunal at Madras is holding circuit sitting.

8. The petitioner expressing his grievance that the proceedings of the District Magistrate / District Collector, Coimbatore dated 30.05.2018 Ref.No.16334/2014/U3 have not been furnished to him and therefore, he approached this Court by filing W.P.No.30614 of 2019 and vide order dated 25.10.2019, this Court passed an order for furnishing the said order and also granted opportunity to resort to further legal remedy against the said order passed under Section 14 of SARFAESI Act within a period of 4 weeks from that day and till such time directed the 2nd respondent that no coercive action shall be taken against the petitioner.

9. At this juncture, it is to be noted that the Writ Petition came to be disposed of at the admission stage itself without notice to the 2nd respondent. The petitioner, after obtaining copy of the order, has filed an appeal under Section 17(1) of SARFAESI Act before the Debts Recovery Appellate Tribunal-II along with a petition for stay and apprehending that taking advantage of the order, further process would follow, had filed this Writ Petition.

10. It is also brought to the knowledge of this Court by the learned counsel appearing for the petitioner that the Registry of DRAT has calculated the period of limitation from the date of the order passed in W.P.No.30641 of 2019 and it should be calculated on the basis of receipt of the order and the said aspect has been dealt in State of West Bengal and Others and R.K.B.K.Ltd and another (2015(9) Scale 550) :AIR 2015 SC 3411and it is also relevant to extract paragraph nos. 26, 28 & 29:

> 26. We have referred to the aforesaid authority in extenso as the Division Bench has in one line stated that the said decision makes it clear that communication of an order is necessary ingredient for bringing an end result to a status or to provide a person an opportunity to take recourse to law if he is aggrieved thereby, then the said order is required to be communicated. To arrive at the said conclusion, as has been stated earlier, the Division Bench has found support from Rani Sati Kerosene Supply Co. [2004 SCC OnLine Cal 327 : (2005) 4 CHN 264] wherein it has been held that if an order is communicated after 30 days, an order of cancellation can easily be frustrated and, therefore, the phrase by an order in writing to be made appearing in the proviso to Para 9 of the Control Order is to be construed as by an order in writing to be communicated.
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> 28. Keeping in view the aforesaid principles, if it is held that the order would become a nullity, it really does not serve the purpose of the Control Order. On the contrary, it frustrates it and, therefore, the interpretation placed by the High Court on Para 9 in juxtaposition with Para 10 to treat the order as null and void is neither correct nor sound. It is desirable that the authority shall pass an order within 30 days from the date of show-cause. Be it noted that there are two contingencies when the show-cause is issued for violation or when an order of suspension is passed.
>
> There can be no trace of doubt that the order will take effect from the date when it is served. The order, unless it is served, definitely neither the agent nor the dealer would suspend its activities or obey any order, for he has not been communicated.
>
> (Emphasis applied)
>
> Regard being had to this aspect, it is to be seen whether the prescription of 30 days from the date of order as provided in Para 10 would make the order null and void. The order passed by the authority comes into

effect when it is communicated. An order passed in file in case of this nature would not be an effective order, for it is adverse to the interest of the dealer or agent and, therefore, Para 10 has to be given a purposive meaning.

It has to convey that 30 days from the date of the order which is an effective order, and that is the date of communication.

(Emphasis applied)

Unless such an interpretation is placed, the intention of the rule-making authority and also the intention behind the object and reasons behind the Control Order and the Essential Commodities Act, 1955 would be frustrated. Thus, we are of the considered opinion that the view expressed by the High Court on this score also is absolutely incorrect and wholly unsustainable.

29. Apart from the above, the words used in Para 10 are "date of the order". In the scheme of the Control Order, the order comes into effect from the date of receipt by the agent or the dealer. Once that becomes the decision, the commencement of limitation of 30 days for the purpose of Para 10 would be the date when the order is effective. The High Court in Rani Sati Kerosene Supply Co.[2004 SCC OnLine Cal 327 : (2005) 4 CHN 264] has opined that if the order of cancellation is not served on the affected person and the appeal period expires, there is the possibility that the adverse order would become unassailable. The reasoning is totally fallacious. An appeal can only be preferred when the order is effective. The ineffective order, that is to say, uncommunicated order cannot be challenged. Therefore, the reasoning given by the Court in earlier judgment is erroneous and hence, the reliance thereupon by the impugned order is faulty. There has to be a purposive construction of the words "from the date of order". To place a construction that the date of an order would mean passing of the order, though not made effective would lead to an absurdity.

11. In the light of the above facts and circumstances, this Court requires the Debts Recovery Appellate Tribunal, Coimbatore to entertain the appeal along with petition for stay, if the papers are otherwise in order and take up the petition for stay at the first instance and give a disposal within a period of three weeks from the date of receipt of a copy of this order and thereafter shall take up the main appeal itself and give a disposal in accordance with law.

12. The Writ petition is disposed of with the above directions. No costs. Consequently connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1.The District Collector,
O/o.The District Collector,
Coimbatore-18.

2.The Inspector of Police,
B-6, Peelamedu Police Station,
Coimbatore.

+1 cc to M/s.J.Abrar Md.Abdullah Advocate sr 100620
+1 cc to Government Pleader sr101160
+1 cc to M/s.T.S.Gopalan & Co Advocate sr100680

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