IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.34189/2019

M/s.Tamil Nadu Mercantile Bank Limited
Elampalli Branch, rep.by its Authorised
Officer, Mr.S.Rajendran, Having Regional
Office at No.105, Ramakrishna Road, Ist Floor
Near ATC Depot, Salem 636007. .. Petitioner

Versus

The District Magistrate/District Collector,
Office of the Salem,
Salem District. .. Respondent

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of mandamus directing the respondent to take appropriate action in the SARFAESI application ROC.No.25902/18/C5 dated 07.12.2018 filed under section 14 of the SARFAESI Act by the petitioner's Bank within a specified date that may be fixed by this Court.

For Petitioner : Mr.P.Tamilavel
For Respondent : Mr.Akhil Akbar Ali, GA

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 accepts notice on behalf of the respondent.

(2) The petitioner/Bank provided financial assistance to Tmt.M.Amudha, wife of Mr.M.Manickam, residing at Door No.4/95, K.K.Nagar, ----, 637 502, Salem District and in view of the default committed in settlement of dues, a Demand Notice under 13[2] of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short

''SARFAESI Act''] was issued on 18.07.2017 calling upon the borrowers and guarantors to pay the defaulted amount due and payable, which was followed by the Possession Notice dated ---- for the sum of Rs.--, Rs.-- and Rs.--- towards three accounts and despite receipt and acknowledgment, neither the borrower nor the guarantors had made the payment and therefore, the petitioner/Bank approached the Bank under Section 14 of the SARFAESI Act to take possession of the secured assets.

(3) The learned counsel for the petitioner/Bank would submit that the application along with relevant documents dated July 2018 were filed and the respondent has sent a communication dated 07.12.2018 in ROC.No.25902/2018/C5 to the Revenue Divisional Officer, forwarding original reference for conducting a detailed enquiry and report the fact immediately. The learned counsel has also drawn the attention of this Court to the second proviso to section 14[1][b][ix] and would submit that as per the said proviso, ''the Chief Metropolitan Magistrate or the District Magistrate, within the said period of 30 days for the reason beyond his control, may after recording reasons in writing for the same, pass orders within such further period not exceeding in aggregate 60 days'' and despite lapse of nearly one year and two months, no orders have been passed by the respondent despite a statutory obligation is cast upon him and hence, prays for appropriate orders.

(4) Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondent seeks time to get instructions as to the reasons for non-passing of the orders by the respondent on the application filed by the petitioner/Bank under Section 14 of the SARFAESI Act.

(5) This Court has considered the rival submissions and also perused the materials placed before it.

(6) It is also brought to the knowledge of this Court that despite a statutory obligation or mandate is cast upon the concerned official to pass orders within the stipulated time in terms of the second proviso to Section 14[1][b][ix], orders have not been passed and in this regard, the Additional Chief Secretary/Commissioner of Revenue Administration, has issued a Circular dated 01.03.2019 in Rc.No.RA.6[3]/6075/2019 advising the concerned officials to comply with the time line as well as other procedural formalities while passing orders under Section 14 of the SARFAESI Act. Despite such a Circular being issued by the Head of the Department, most of the officials have not passed orders within the time line stipulated under the said provision.

(7) It is high time that the Additional Chief Secretary/Commissioner of Revenue Administration, shall bestow his attention as to the non-following of the Circular dated 01.03.2019 by initiating appropriate and suitable action.

(8) It is also relevant to extract the said Circular dated 01.03.2019:-

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

CIRCULAR

PRESENT: Dr. KORLAPATI SATYAGOPAL, 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.''

(9) In the light of the fact that the respondent did not choose to pass orders within the time line stipulated in the above said proviso, this Court permits the petitioner/Bank to submit one more application by enclosing the relevant and necessary documents to the respondent within a period of two weeks from the date of receipt of a copy of this order and upon receipt of such application, the respondent, in compliance of the said Circular dated 01.03.2019, shall pass appropriate orders in accordance with law within the time line stipulated and communicate the decision taken, to the petitioner.

(10) The writ petition stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

AP

To

1.The District Magistrate/District Collector,
Office of the Salem,
Salem District.

2.The Authorised Officer
Tamil Nadu Mercantile Bank Limited
Elampalli Branch, Having Regional
Office at No.105, Ramakrishna Road, Ist Floor
Near ATC Depot, Salem 636007.

COPY TO:-

The Additional Chief Secretary/
Commissioner of Revenue Administration
Commissionerate of Revenue Administration
and Disaster Management, Chepauk
Chennai 600 005.

+1cc to Mr.P.Tamilavel, Advocate, SR.No.102347.
+1cc to Government Pleader, SR.No.103096.

WP.No.34189/2019

RJI(CO)
CSR:22/01/2020