IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.34980 of 2019 and
W.M.P.No.35776 of 2019

Sri Ramani Resorts and Hotels Pvt. Ltd.,
rep by its Managing Director
Sri Ramani Residency
No.8/42, Maharaja Surya Road,
Alwarpet, Chennai - 600 018. ... Petitioner

Vs.

State Bank of India,
(Earlier State Bank of Travancore)
rep by its Authorized Officer and Assistant General Manager,
Stressed Assets Management Branch,
Red Cross Buildings,
32, Red Cross Road,
Egmore, Chennai - 600 008. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of respondent comprised in notice bearing Ref.No.SAMB/CLO-II/1325 dated 02.12.2019 and quash the same as arbitrary, illegal and unconstitutional.

For Petitioner : Mr.S.Ramesh

For Respondent : Mr.K.Chandrasekaran

O R D E R
(Order of the Court was made by M.SATHYANARAYANAN, J.)

With consent, the Writ Petition is taken up for final disposal.

2.The learned counsel appearing for the petitioner would submit that the respondent - Bank, by invoking Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI" Act) has issued a notice dated 12.08.2016, calling upon the petitioner as well as their Directors to pay a sum of Rs.13,72,67,866/- with future interest and incidental expenses as on 30.07.2016, for which also a suitable reply was sent on 21.09.2016. The respondent has passed an order of rejection dated 03.10.2016 under Section 13(3)(A) of the SARFAESI Act, for which also, a reply dated 17.10.2016 was sent for which, once again the respondent has issued a reply dated 28.10.2016. The learned counsel appearing for the petitioner would submit that even prior to the institution of proceedings under SARFAESI Act, the petitioner has filed a Civil Suit in C.S.No.988 of 2015 on the file of this Court against the respondent - Bank for permanent injunction restraining the defendant, their men, agents from acting contrary to the terms agreed for the grant of the loan, including making claims of repayment of the amounts due from the plaintiff during the moratorium period as set out in the sanction letter dated 07.04.2014.

3. It is pointed out by the learned counsel appearing for the petitioner that pending disposal of the same, the petitioner also filed O.A.No.1316 of 2015 praying for ad-interim injunction restraining the respondent from taking any action towards premature recovery of any amount, contrary to the terms of the sanction letter dated 07.04.2014 and the learned Single Judge, vide order dated 18.04.2016, has clarified the earlier order dated 29.12.2015 by stating that the interim order is only in respect of demanding repayment during the moratorium period and the same would not restrain the respondent - Bank from proceeding further, in case, any of the other conditions are violated or to take further action to treat the account as a Non Performing Asset, in case there are other grounds to take such a course. It is also brought to the knowledge of this Court by the learned counsel appearing for the petitioner that the petitioner also filed a Writ Petition in W.P.No.40794 of 2016 against the respondent - Bank praying for issuance of Writ of Mandamus, directing the respondent to forthwith handover the physical possession of the property comprised at Survey Nos.202/2, 205/5A, 202/7A1B in Suchindram Village, Agateeswaram Taluk, Kanyakumari District, with an interim direction to de-seal the premises for the reason that symbolic possession was alone taken and sealing of the premises was done. The Writ Petition was allowed on 05.09.2019 with a direction to the respondent - Bank to take over possession by due process of law, after giving notice in the manner contemplated in the Act and Rules and shall not indulge in deviate methods and taking shelter under the SARFAESI Act. In the interregnum, the Debts Recovery Tribunal - II, Chennai has also issued demand notice in DRC.No.437/2019 in O.A.No.242/2017 for recovery of Rs.15,18,93,952/- with future interest and costs from the date of filing of the Original Application and it was also followed by a Recovery Certificate dated 13.11.2019.

4. The learned counsel appearing for the petitioner would submit that the respondent - Bank has issued the impugned notice dated 02.12.2019 under Rule 8(6) of the Security Interest (Enforcement) Rules in gross violation of Rule 8 (6) of the said Rules and also invited the attention to Rule 9 (1) and proviso to the said Section would submit that assuming for the sake of arguments, if it comes under the said proviso, still the respondent - Bank is under mandate to issue 15 days notice. Though the impugned notice is dated 02.12.2019, it was delivered only on 06.12.2019 and fixing of the date of auction on 20.12.2019 (tomorrow) is within 15 days and hence, prays for quashment of the impugned notice.

5. Per contra, Mr.K.Chandrasekaran, learned counsel for the respondent would submit that the sale notice pertains to, attempts made by the respondent - Bank by way of three attempts to effect sale of the property, and in the light of the fact that Rule 8(6) of the Security Interest (Enforcement) Rules wont come into play and action is being strictly taken under compliance of proviso to Rule 9(1) of the said Rule and prays for dismissal of the Writ Petition.

6. This Court has carefully considered the rival submissions and perused the records placed before it.

7. It is also relevant to extract Rule 9 (1) and the proviso to Rule 9 (1) of the Security Interest (Enforcement) Rules, 2002, as hereunder:

> "9. Time of sale, issuance of sale certificate and delivery of possession, etc.
>
> [(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower.
>
> PROVIDED FURTHER that if sale of immovable property by any one of the methods specified by sub-rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.]"

8. The petitioner also filed an additional affidavit dated 17.12.2019 with an Annexure namely, Track Consignment in respect of the impugned notice dated 02.12.2019 issued by the respondent. A perusal of the Track Consignment details would show that the impugned notice was despatched on 05.12.2019 and was delivered on the addressee on 06.12.2019 and if the date of delivery is taken into consideration, the date of fixing of

e-auction on 20.12.2019, falls within 15 days and the same is against the proviso to Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 and as such, the impugned notice warrants interference.

9. In the result, the Writ Petition is allowed and the impugned notice dated 02.12.2019 is quashed and the respondent – Bank is at liberty to issue a fresh notice under Rule 8 (6) read with Rule 9 (1) of the Security Interest (Enforcement) Rules, and shall decide further in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

va

To

The Authorized Officer and Assistant General Manager,
State Bank of India,
(Earlier State Bank of Travancore)
Stressed Assets Management Branch,
Red Cross Buildings,
32, Red Cross Road,
Egmore, Chennai – 600 008.

+1cc to Mr.K.Chandrasekaran, Advocate SR.105669
+1cc to Mr.S.Ramesh, Advocate SR.105630

W.P.No.34980 of 2019 and
W.M.P.No.35776 of 2019

BS(CO)
CB(28/01/2020)