

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.34674 of 2018 and
W.M.P.Nos.40217 & 40220 of 2018

- 1.Rajalakshmi Traders,
rep by its Proprietrix S.Geetha
No.14, Allikulathur Street,
Karaikal - 609 602.
- 2.R.Srinivasan ... Petitioners
- Vs.
- 1.Indian Bank,
rep by its Chief Manager
and Authorized Officer,
Karaikal Branch,
96-98, Bharathiar Road,
Karaikal - 609 602.
- 2.T.Susaritha ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records of the 1st respondent in the notice dated 28.02.2018 under Section 13(2) of the SARFAESI Act, 2002 and the possession notice under Section 13 (4) of the Act and to quash the same and direct the 1st respondent to declare that the account of the 1st petitioner is not a NPA.

For Petitioner : Mrs.Chitra Sampath, Senior Counsel
for Mr.R.Sunil Kumar

For Respondents: Mr.Jayesh B.Dolia,
for M/s.Aiyar and Dolia (R1)
R2 - no appearance

O R D E R

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The above Writ Petition has been by the petitioner to issue a Writ of certiorarified mandamus to call for the records of the

1st respondent in respect of the notice dated 28.02.2018 under Section 13(2) of the SARFAESI Act, 2002 and the possession notice under Section 13 (4) of the Act and to quash the same and consequently, to direct the 1st respondent to declare that the account of the 1st petitioner is not a Non Performing Asset.

2.The petitioner has challenged the Section 13(2) notice dated 28.02.2018 and the possession notice dated 18.09.2018 issued under Section 13(4) of the SARFAESI Act.

3.It is settled position that the notice under Section 13 (2) of the SARFAESI Act cannot be challenged either before this Court or before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. The petitioner can only challenge the possession notice issued under Section 13(4) of the Act.

4.Mr.Jayesh B.Dolia, learned counsel appearing for the respondent - Bank submitted that the possession notice dated 18.09.2018 has already been withdrawn and therefore, the petitioner cannot challenge Section 13(2) notice alone in the Writ Petition.

5.Since the respondent - Bank had already withdrawn the Section 13(4) notice and after the withdrawal of the same, what remains is only Section 13(2) notice. As already stated, Section 13(2) notice cannot be challenged by the petitioner and it is at a premature stage. The petitioner can give a reply to the Section 13(2) notice and the respondent - Bank would consider the same and pass orders under Section 13(3-A) of the Act.

6.The learned counsel appearing for the respondent - Bank submitted that the reply sent by the petitioner was also considered and a reply was also sent under Section 13(3-A) of the Act.

7.In these circumstances, we are not inclined to entertain the Writ Petition challenging the Section 13(2) notice. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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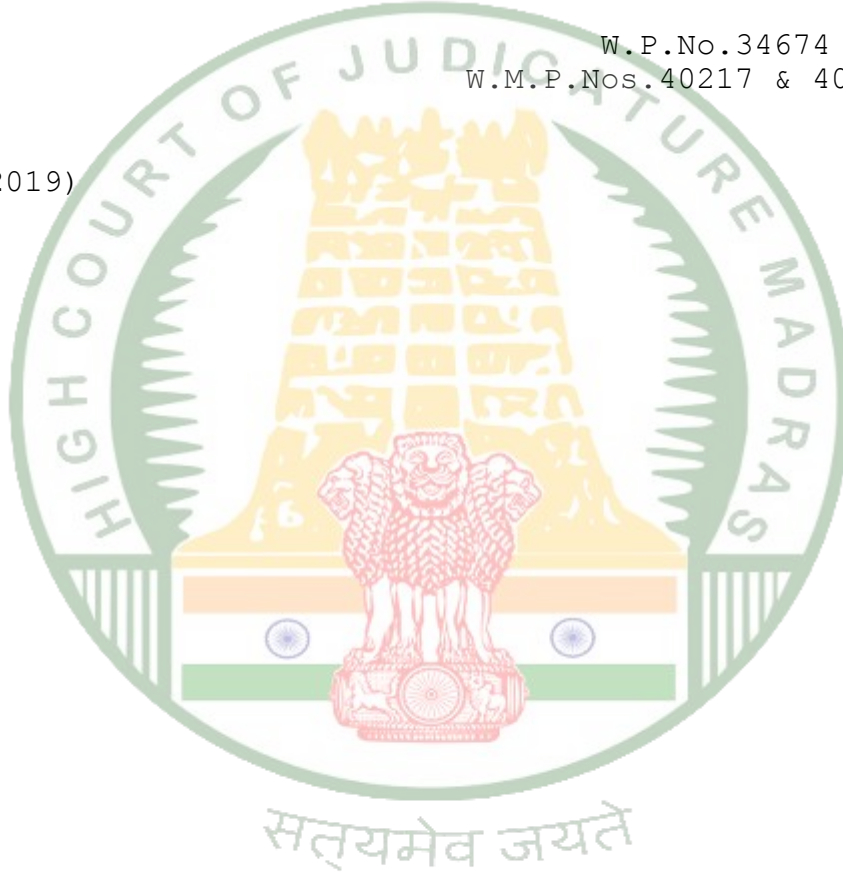
To

1.The Chief Manager
and Authorized Officer,
Indian Bank,
Karaikal Branch,
96-98, Bharathiar Road,
Karaikal - 609 602.

+lcc to Mr.Aiyar & Dolia, Advocate, S.R.No. 25635
+lcc to Mr.R.Sunil Kumar, Advocate, S.R.No. 26145

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W.M.P.Nos.40217 & 40220 of 2018

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