BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.01.2019
CORAM:
THE HON'BLE Mr. JUSTICE R.SUBBIAH
AND
THE HON'BLE Mr. JUSTICE B.PUGALENDHI

W.P.(MD)No.604 of 2019

The South Indian Bank Limited.,
Regional Office, Madurai,
No.3, LIC Building,
West Marret Street,
Madurai,
Rep.by its Authorized Officer.
... Petitioner

Vs.

The District Magistrate / The District Collector,
O/o. The District Collector,
Collectorate Buildings,
Maduri - 625 020.
... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in proceedings in R.O.C.No.C6/58423/2017, dated 05.10.2018 setting aside the communication of the respondent dated 05.10.2018 as not being in the terms of Section 14 of the SARFAESI Act, and consequently, direct the respondent to pass appropriate orders in the application dated 15.12.2017 submitted by the petitioner under Section 14 of SARFAESI Act, within one month by rendering necessary assistance to the petitioner in terms of Section 14 of SARFAESI Act to take physical possession of the secured assets as set out in the application dated 15.12.2017 submitted by the petitioner.

For Petitioner : Mr.I.Ohm Prakash, S.C. for
Mr.R.Pandivel
For Respondents : Mr.V.R.Shanmuganathan, Spl.G.P.

ORDER

(Order of the Court was made by R.SUBBIAH,J.)

This Writ petition has been filed to quash the proceedings in R.O.C.No.C6/58423/2017, dated 05.10.2018 as it is in violation of Section 14 of SARFAESI Act, and consequently, direct the respondent to pass appropriate orders in the application of the petitioner dated 15.12.2017 filed under Section 14 of SARFAESI Act, within a period of one month for taking physical possession of the secured assets.

2.The petitioner is the Bank viz., The South Indian Bank Ltd. It is the case of the petitioner that the partners of Shree Saravana Traders, viz., Siva and Surilivel have availed cash credit facilities, facility of letter of credit and adhoc cash credit facility by mortgaging their immovable properties as security. One Aruna, Sivapriya and Selvarani stood as guarantors for such loan. As the said partnership firm defaulted in repayments, the petitioner Bank has classified the said loan account as NPA. On 21.08.2017 under Section 13(2) of SARFAESI Act a demand notice has been issued to the said partnership firm. On 02.11.2017 the petitioner Bank has taken symbolic possession by issuing possession notice and the same was published in newspapers both Tamil and English on 04.11.2017.

3.In the above circumstances, on 15.12.2017 the petitioner Bank has filed an application under Section 14 of SARFAESI Act before the respondent / District Collector, Madurai and the same is taken on file in C3/58428/2017. On 20.12.2017, the respondent has sought for certain clarification and additional documents. Accordingly, on 26.02.2018 the petitioner Bank has sent reply to the letter dated 20.12.2017. Despite repeated requests made by the petitioner Bank, the respondent has not passed any order in the said application filed under Section 14 of the Act. Whileso, on 05.10.2018, the respondent has sent a notice to the defaulters and also to the petitioner Bank for enquiry. Accordingly, the defaulters and the petitioner Bank appeared for such enquiry. During enquiry, the respondent has informed the petitioner Bank with regard to amicable settlement to close the default account by granting further period of 9 months to the defaulters.

4.The grievance of the petitioner Bank is that under SARFAESI Act, the respondent is bound to pass orders for taking actual possession of the defaulter's property. Without doing so, the respondent has sent notice to the defaulters in the application filed under Section 14 of the Act and also conducted an enquiry. The further grievance of the petitioner Bank is that the respondent has informed the petitioner Bank as further notice will be issued after a period of 2 months. Since the respondent has no jurisdiction to adjudicate the application filed under Section 14 of the Act, the petitioner is before this Court with the present Writ petition for the aforesaid relief.

5.The learned counsel appearing for the petitioner Bank has relied on the judgments in ***W.P.(MD)No.12789 of 2016 dated 21.07.2016 (United Bank of India, Madurai Branch Vs. The District Collector / District Magistrate, Madurai District)***, wherein this Court in paragraph Nos.20, 21 and 22 held as follows:

> "20.Since in a majority of the cases, we find that there was some kind of trepedition on the part of the District Collectors, we clarify that their satisfaction that the matter requires the assistance to be rendered to the secured creditor **is to be arrived** at upon carefully appreciating the information furnished

by the Authorised Officer of the secured creditor. The affidavit of the Authorised Officer vouching for the facts and data contained in the information could be obtained. This measure is obviously contemplated so that in case of any inaccuracies in the information furnished to the District Collector, it is the Authorised Officer of the secured creditor who will become accountable and responsible but not the District Collector.

21.With the mounting arrears of debts to be recovered by the Banking sector in the country, it is imperative that the District Collector concerned shall deal with any such request made by the secured creditor as expeditiously as is possible and preferably with a maximum period of two months from the date of receipt of such request. The District Collector is also empowered to secure any information which is relevant and required for recording his satisfaction. **The satisfaction of the District Collector, can be recorded in the files maintained in his office and the same shall also preferably be adverted to in the order which he passes,** so as to clear all such possible doubts which persist in the minds of the borrowers as to whether the District Collector has truly been satisfied or not about the need and necessity, to exercise the power conferred under Section 14 of the Act. As noticed by us in this case, the District Collector, **shall not insist for information to be furnished with regard to the possession of the secured asset lying with the secured creditor or not.** That would amount to begging the question itself. If the possession of the secured asset were to be lying with the secured creditor, the need and necessity to invoke the provision contained under Section 14 of the Act itself would not arise.

22.It is also necessary for us to clarify that the information can be obtained by the District Collector from the Authorised Officer and it is open to the District Collector to get it verified as to whether the secured asset is in possession of any tenant and in case any such tenant is in possession of the secured asset, it shall be open to the District Collector to put such a tenant on notice, hear him and then pass an appropriate order."

6.The learned counsel appearing for the petitioner also relied on yet another judgment reported in ***2018 SCC Mad. 4463 (State Bank of India Vs. District Collector (District Magistrate), Tirupur District)***, wherein this Court has held that Section 14 of the SARFAESI Act, 2002 mandates as on receipt of an affidavit from the Authorized 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, within a period of 30 days from the date of application, proviso to the said section states that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate, within the said period of thirty days, for the reasons beyond his control, he may after recording reasons, in writing, for the same, pass the order within such also period but not exceeding in aggregate 60 days.

7.In view of the above said judgments, we are of the opinion that the respondent is bound to pass orders, within a period of 30 days from the date of filing of the application for the purpose of taking possession of the secured assets. Accordingly, the respondent is directed to pass appropriate orders in the application filed by the petitioner under Section 14 of SARFAESI Act, within a period of 6 weeks from the date of receipt of a copy of this order. The Writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

nbj

To
The District Magistrate / The District Collector,
O/o. The District Collector,
Collectorate Buildings,
Maduri - 625 020.

1 CC to M/s.R.PANDIVEL, Advocate (SR-43089[F] dated 28/01/2019)

+1 CC to M/s.SPL GP (SR-43265[F] dated 29/01/2019)

W.P.(MD)No.604 of 2019

28.01.2019

DS/ /SAR- (09.04.2019) 4P 4C