IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.01.2020

CORAM

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

WP.No.545 of 2020

Canara Bank,
Assets Recovery Management Branch,
2nd Floor, Circle Office, 563/1 Anna Salai,
Teynampet, Chennai -18.
represented by its Asst.General Manager .. Petitioner

Versus

The District Magistrate and
District Collector
Tiruvallur District. .. Respondent

PRAYER:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of certiorarified Mandamus to quash the impugned order passed in Rc.No.6320/2018/M2 dated 19.11.2019 by the respondent and consequently direct the respondent to pass fresh order in an application filed under section 14 of SARFAESI Act dated 20.03.2018 on merits.

For Petitioner : Mr.M.L.Ganesh

For Respondent : Mr. R.Vijayakumar,
Addl. Govt. Pleader

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

(1) By consent, the writ petition is taken up for hearing and is disposed of by this order. Mr. R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the sole respondent.

(2) The petitioner/Bank, in the affidavit filed in support of this Writ Petition, would aver among other things that it had sanctioned overdraft facility to the borrower, viz., M/s. A.J. Associates, represented by its proprietrix Mrs.Easwari, to the tune of Rs.190 Lakhs and in order to secure the repayment of

the loan liability, the borrower had offered primary security of immovable properties situate at Door No.24, VOC Street, Naravarikuppam, Redhills, Chennai-52, comprised in S.NO.84/1A admeasuring to an extent of 3103 sq.ft. Out of 5885 sq.ft, which is the subject matter of security and also created an equitable mortgage in respect of the said property by depositing the original Title Deeds. It is further averred that since the borrower committed default in repayment of the loan availed by her, the petitioner/Bank by invoking the provisions of the Securitisation And Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, [in short ''SARFAESI Act''] has issued a Notice under Section 13[2] of the said Act on 10.10.2017 directing the borrower to repay the sum of Rs.2,20,21,793.16/- as on 29.09.2017 within sixty days from the date of receipt of the said Notice and despite receipt of the said Notice, the borrower did not clear the loan. The petitioner/Bank also issued Possession Notice under Section 13[4] of SARFAESI Act on 23.01.2018 and necessary publication was also made in two News Dailies. The properties were brought for auction and sold in favour of the purchaser, viz., Mr.B.Saravanakumar, for a total consideration of Rs.83,18,000/- and since the petitioner/Bank could not hand over the actual physical possession of the properties, it invoked section 14 of the SARFAESI Act, by filing an application supported by an affidavit dated 20.3.2018 before the respondent.

(3) The learned counsel appearing for the petitioner would submit that the respondent, without understanding the scope and purport of Section 14 of the SARFAESI Act, has erroneously dismissed the petition on the ground that the property in question has already been sold in favour of the auction purchaser and therefore, the petitioner/Bank can no longer be the secured creditor.

(4) The learned counsel has also drawn the attention of this Court to the decision rendered by the Hon'ble Supreme Court of India reported in 2018 Manu SC 263 [ITC Hotels Limited Vs. Blue Coast Hotels Limited and others], and further invited the attention of this Court to paragraph No.50 of the judgment and would submit that admittedly, the petitioner/Bank took only symbolic possession of the secured assets and having sold the same and in order to hand over the actual physical possession, had invoked the provisions of Section 14 of the SARFAESI Act and as such, the reason assigned by the respondent, is unsustainable.

(5) Per contra, the learned Additional Government Pleader appearing for the respondent would submit that the order may be set aside and the matter may be remitted back to the

respondent for passing fresh orders in the light of the above cited decision of the Hon'ble Apex Court.

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

(7) It is relevant to extract paragraph 49 of the judgment reported in 2018 Manu SC 263 [ITC Hotels Limited Vs. Blue Coast Hotels Limited and others] :

> ''49......We note that even though the entire right, title and interest were purported to have been transferred, all the rights, transfer and interest could not be said to have been transferred since the possession of the property was not transferred to creditor. The possession was retained by the debtor who continued to do business and receive rent from the rooms on the property and has in fact continued to do so till date. There is no doubt that after taking over the property from debtor , the creditor also acquired the right to receive the usufruct of the property i.e., the rent in this case. However, this was an interest in the property which was not at any point of time transferred to the auction purchaser.
>
> 50 In this case, the creditor did not have actual possession of the secured asset but only a constructive or symbolic possession. The transfer of the secured asset by the creditor therefore cannot be construed to be a complete transfer as contemplated by Section 8 of the Transfer of Property Act. The creditor nevertheless had a right to take actual possession of the secured assets and must therefore be held to be a secured creditor even after the limited transfer to the auction purchaser under the agreement. Thus, the entire interest in the property not having been passed on to the creditor in the first place, the creditor in turn could not pass on the entire interest to the auction purchaser and thus, remained a secured creditor in the Act.''

(8) The Hon'ble Supreme Court of India in the above cited decision, had laid down the proposition that the transfer of secured assets by the creditor [in this case, the petitioner/Bank], cannot construed to be a complete transfer as contemplated under Section 8 of the Transfer of Property Act, and since the entire interest in the property having not been

passed on to the creditor in the first place, the creditor could not pass on interest to the auction purchaser and thus, remained as a secured creditor in the Act. Admittedly, the physical possession of the secured assets have not been taken and therefore, the petitioner/Bank has rightly invoked section 14 of the SARFAESI Act and despite sale of the secured assets taken place and knocked down in favour of the auction purchaser, in the light of the above judgment, this Court is of the considered view that it is open to the petitioner to avail the said remedy.

(9) In the result, the writ petition is allowed and the impugned order dated 19.11.2019 in Rc.No.6320/2018/M2, passed by the respondent is set aside and the matter is once again remanded back to the respondent, who shall take into consideration the above cited judgment of the Hon'ble Supreme Court of India and pass orders afresh on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner/Bank. No costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

msr

To

The District Magistrate and
District Collector,
Tiruvallur District.

+1cc to Mr.M.L.Ganesh, Advocate, SR.No.2672.

WP.No.545 of 2020

KK(CO)
CSR: 28.02.2020