

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.847/2020 & WMP.Nos.1019 & 1314/2020

R.Arumugasamy

....

Petitioner

Versus

The Authorised Officer cum Chief Manager
M/s.United Bank of India
Virugambakkam Branch
No.83, Arcot Road
Virugambakkam, Chennai 600 092.

...

Respondent

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of certiorari calling for the records pertaining to Letter No.UBI/SAMBC/RASTPL/304/2020 dated 04.01.2020 issued by the respondent addressed to the petitioner and to quash the same.

For Petitioner : MR.G.Senthilkumar

For Respondent : Mr.P.S.Ganesh

ORDER

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

- (1)By consent, the writ petition is taken up for final disposal.
- (2)M/s.R.A.Samy Trading Private Limited [Shanmuga Stores], No.21, Ranganathan Street, Chennai - 17, has availed financial assistance from the respondent/Bank and in view of the default committed by them, proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short 'the SARFAESI Act']] and the Possession Notice under Rule 8[1] of the Security Interest [Enforcement] Rules, 2002 dated 11.12.2013 was issued and the contents of the Notice would

disclose that a sum of Rs.20,65,92,565/- was due and payable by the borrowers.

- (3)The respondent/Bank, in order to get the actual physical possession of the property, invoked the provisions of Section 14[1] of the SARFAESI Act and filed an application before the District Magistrate and District Collector, Kancheepuram, who vide proceedings dated 24.09.2015 in RC.No.M3/12180/2014, has passed a positive order and also directed the Deputy Commissioner of Police, Adayar, to render police protection to the Tahsildar, Sholinganallur, for taking physical possession of the secured assets. The petitioner herein also filed a SARFAESI Appeal No.183/2017 challenging the Sale Notice dated 15.09.2014 and vide order dated 01.11.2018, a conditional order was passed by the Debts Recovery Tribunal-III, Chennai by permitting the appellants therein to make available funds of Rs.7 Crores, at the disposal of the Bank within eight weeks from the date of receipt of a copy of the said order and it appears that the said conditional order has not been complied with.
- (4)Some of the tenants claimed to be in possession of the secured assets, moved the DRT, by filing SA.SR.Nos.15040 and 15034/2019 and vide orders dated 02.12.2019, both the appeals were dismissed and making challenge to the same, they filed WP.Nos.34315 and 34318/2019 were listed on 10.12.2019 and this Court, having taken note of the submission that the possession of the secured assets have been taken on 09.12.2019, found the writ petitions have become infructuous and accordingly, dismissed the same vide common order dated 10.12.2019.
- (5)In the present writ petition, the communication of the respondent/Bank dated 04.01.2020 came to be filed, in and by which, the borrowers were informed of having taken of the physical possession of the property and the sale of the same.
- (6)The learned counsel for the petitioner would submit that Valuation Report in respect of the secured assets dated 16.12.2013 contains very many infirmities and that apart, the procedural formalities have not been complied with. He would further submit that the petitioner also made a challenge to the common order dated 13.06.2019 passed in CRP [NPD] .No.1485/2019 and WP.No.5224/2019, by filing SLP [C] Nos.19282 and 19283/2019 and both petitions were dismissed by the Hon'ble Supreme Court of India on 07.11.2019.
- (7)The learned counsel appearing for the respondent/Bank would submit that all the efforts taken by the borrowers had ended in futility and only for the purpose of protracting the

proceedings, the present writ petition has been filed and in the light of the fact that the amount due is nearly Rs.25 Crores and odd, the respondent/Bank may be allowed to proceed with the auction of the property and realise the public money.

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

(9) A perusal and consideration of the rival submissions and the materials placed before this Court would indicate that the efforts made by the petitioner by repeatedly approaching DRT as well as Appellate Forum and this Court, had ended in failure and the physical possession of the assets was also taken on 09.12.2019 and only thing to be done is to auction the property. In the considered opinion of the Court, the grounds urged by the learned counsel for the petitioner had already been considered and rejected by various Forums and despite an opportunity afforded to make payment of Rs.7 Crores vide the above cited order, it appears that the said order has also not been complied with. In the considered opinion of the Court, there are no merits in this writ petition and the same deserves dismissal.

(10) In the result, the writ petition stands dismissed and the interim order granted in SARFAESI Appeal No.183/2017 dated 01.11.2018 by the DRT, stands vacated. No costs. The petitioner and the other borrowers are granted two weeks time from today to remove the articles stored in the said properties subject to the condition that it can be done in the presence of the officials of the respondents/Bank. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Authorised Officer cum Chief Manager
M/s.United Bank of India, Virugambakkam Branch
No.83, Arcot Road, Virugambakkam, Chennai 600 092.

+1cc to Mr.G.Senthilkumar, Advocate Sr.5144

+1cc to Mr.P.S.Ganesh, Advocate Sr.5496

+1cc to Mr.K.J.Parthasarathy, Advocate Sr.5357

WP.No.847/2020

vba[co]

srg 25/02/2020