

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.01.2020

CORAM

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

WRIT PETITION NO.1648 OF 2019
&
W.M.P.NO.1841 OF 2019

V.Devi

...Petitioner

Vs.

1. The District Collector,
Perundurai Road,
Erode District.
2. The Tahsildar,
Erode Taluk and District,
O/o.The Tahsildar,
Erode District.
3. The Authorized Officer,
HDFC Limited, HDFC House,
No.29, Kamaraj Road,
Coimbatore - 641 018.

4. V.Santharam

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari, calling for the records of the first respondent Ref.No.1877/2018/D2 dated 29.12.2018 and quash the same.

For Petitioner : Mr.T.Gowthaman

For Respondents: Mr.D.Raghu,
Government Advocate
(for R.1 to R.3)
Mr.C.Vidhusan (for R.4)

ORDER

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

The petitioner is the borrower and she availed housing loan for construction of superstructure in Kathirampatti Village, Site No.2, Sri Ganga Gardens, Old Sy.No.26-B, R.Sy.No.66/5 admeasuring to an extent of 1645 sq.ft. from the 3rd respondent bank. She was unable to repay the same and therefore, the third respondent/bank has initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act') by issuing a notice under Section 13(2) dated 28.11.2014. The 3rd respondent/bank, in order to get physical possession of the secured assets, has invoked the jurisdiction of the Collector of Erode by filing affidavit under Section 14(1) of the SARFAESI Act dated 14.07.2015 and the petitioner was issued with summons to appear for the enquiry. It was adjourned to 19.03.2019 and followed by an order dated 29.12.2018 wherein, the first respondent has directed the Tahsildar, Erode, to take physical possession of the secured assets and if necessary, can also avail the assistance of the Police. The petitioner making the challenge to the said order, has filed this writ petition.

2.The learned counsel appearing on behalf of the petitioner by drawing the attention of this Court to Proviso to Section 14 (i)(ix) of the Act would submit that as per the said Proviso, the District Magistrate or Chief Metropolitan Magistrate on satisfying with the contents of the affidavit shall pass suitable orders, within a period of 30 days from the date of application and if it is not possible for them to pass orders within the said period for reasons beyond their control, they may, after recording reasons in writing for the same, shall pass orders within a period of sixty days and admittedly, in terms of the communication of the summons dated 24.11.2015, the third respondent/bank submitted an application on 14.07.2015 and in order to get over the said litigation, again submitted a petition on 17.01.2018 based on which the impugned order dated 29.12.2018 came to be passed. Since such an act of the third respondent is beyond the period of limitation as provided in the said proviso, prays for interference.

3.Per contra, the learned counsel appearing on behalf of the third respondent Bank would submit that the petitioner is having an effective alternative remedy under Section 17 of the SARFAESI Act to challenge the impugned order dated 29.12.2018 passed by the first respondent and therefore, would contend that the writ petition is not maintainable.

4.This Court paid its best attention to the rival submissions made by the learned counsel appearing on behalf of the petitioner and also the learned counsel appearing on behalf of the respondents.

5.Whether the period stipulated in the said proviso is mandatory for disposal of the Applications filed under Section 14(i)(ix) of the SARFAESI Act came up for consideration before a Division Bench of this Court in the case of Bright, Managing Trustee, K.S.M.Educational & Charitable Trust Vs. District Collector & others reported in [2019] SCC OnLine Mad 2460 and the relevant paragraphs are extracted hereunder;

"23.In conclusion, we hold as follows:

(a)all the writ petitions filed by borrowers, namely, W.P.(MD) Nos.11986, 13006, 13654, 15507 & 24785 of 2019 challenging orders passed in Section 14 applications on the ground that the time limit prescribed by the amended Section 14 was exceeded are disposed of in the above terms by granting liberty to challenge the taking of possession by filing an appeal before the DRT concerned under Section 17 of the SARFAESI Act within two weeks from the date of receipt of a copy of the order;

(b)the writ petition filed by the secured creditor seeking expeditious disposal of the Section 14 application, namely, W.P.No.13726 of 2019, is allowed and the District Collector is concerned is directed to dispose of the application within a period of one month from the date of receipt of copy of this order;

(c)there shall be no order as to costs in any of these writ petitions; and

(d)all connected miscellaneous petitions are closed as a consequence of the disposal of the writ petitions.

In the light of the ratio laid down in the said judgment, the plea made by the learned counsel appearing on behalf of the petitioner, deserves rejection.

6.At this juncture, the learned counsel for the petitioner would submit that the petitioner may be permitted to avail alternative remedy under Section 17 of the SARFAESI Act by making challenge to the impugned order of the first respondent dated 29.12.2018.

7.In the result, the writ petition stands dismissed and the petitioner is granted liberty to avail the appellate remedy before the Jurisdiction Tribunal in respect of the order dated 29.12.2018 passed by the first respondent under Section 14(i) (ix) of the SARFAESI Act. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrm/tsi

To

1. The District Collector,
Perundurai Road,
Erode District.
2. The Tahsildar,
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O/o.The Tahsildar,
Erode District.
3. The Authorized Officer,
HDFC Limited, HDFC House,
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Coimbatore - 641 018.

+1cc to Mr.T.Gowthaman, Advocate, S.R.No.7850

+2cc to Mr.C.Vidhusan, Advocate, S.R.No.7692

+2cc to Mr.K.J.Parthasarathy, Advocate, S.R.No.8192

सत्यमेव जयते

WP.No.1648 of 2019

PP(CO)
CS/20/02/2020

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