

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

W.P.No.2310 of 2020

WMP.No.2680/2020

Mr.G.Arun

...Petitioner

Versus

The Authorised Officer
State Bank of India,
Stressed Assets Recovery Branch,
Red Cross Buildings,
II nd Floor, No.32 Montieth Road,
Chennai 600 008.

...Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus directing the respondent/Bank to calculate the amount payable under the SBI OTS policy based on the account having turned NPA as on 12.02.2016 as per their own Section 13(2) Demand Notice and apply the same on equitable grounds.

For Petitioner : Mr.R.Prabakaramuthu

For Respondent : Mr.Shivakumar and Suresh

COMMON ORDER

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

The petitioner has availed financial assistance for commercial purpose from the State Bank of India and in view of the defaults committed by them, issued notice under Section 13 (2) of the Securitisation of Financial Assets and Enforcement of Security Interest Act, 2002, demanding a sum of Rs.9,19,36,980/- dated 06.01.2018 with subsequent interest etc.,. The petitioner did not respond to the said notice and it was followed by a Possession Notice dated 08.06.2018.

2. The learned counsel appearing for the petitioner has drawn the attention of this Court to the Scheme for One Time Settlement of NPAs and AUCAs with outstanding of above Rs.20 Laksh and up-to Rs.50 crores as on 31.03.2018 (SBI OTS 2018) and would submit that in the light of the said OTS scheme, the petitioner is entitled to avail the said benevolence and despite that it has not been extended to the petitioner, for the reasons best known to the respondent Bank and would further add that for taking the physical possession of the assets, the respondent has invoked the jurisdiction of the Collector of Vellore District under Section 14(1) of the SARFAESI Act and due to bifurcation, it was kept pending for quite some time and after its bifurcation, it was transferred to the Collector, Ranipet and the Collector without due and proper application of mind has passed an order and in terms of the order, the Tahsildar, Walaja vide notice dated 21.01.2020, called upon the petitioner to hand over the secured assets by 11.00 am on 30.01.2020.

3. The learned counsel appearing for the petitioner would submit that the petitioner also came to know that no supporting affidavit has been filed in respect of application under Section 14(1) of SARFAESI Act and the Collector, Ranipet District without due and proper application of mind has passed an urgent and cryptic order and that apart articles already manufactured have also kept under lock and seal and he is also entitled to get release of the same and prays for positive direction directing the respondent Bank to consider his case under the above cited OTS Scheme.

4. Per contra, Mr.Shivakumar, learned Standing Counsel who accepts notice on behalf of the respondent Bank, on instructions would submit that due statutory procedure and formalities have been complied with. Admittedly, the petitioner did not submit any application within the prescribed date on 30.09.2018 under the said OTS scheme and as such, the present Writ Petition lacks merits and prays for dismissal of the same with exemplary costs.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. A perusal of the above cited OTS scheme would disclose that it would be non discretionary scheme and the last date for the application was on 30.09.2018 and it is not clear from the materials placed that whether the petitioner has submitted the said application or not and the petitioner also collaterally makes a challenge to the orders passed by the Collector, Ranipet District under Section 14(1) of the SARFAESI Act and in the considered opinion of this Court, it cannot be put to challenge.

7. The petitioner also pleads factual circumstances by making attack to the orders passed by the Collector, Ranipet District under Section 14(1) of the SARFAESI Act and it is to be noted at this juncture that the petitioner in this Writ Petition needs consideration of his claim under the said OTS Scheme and now advance arguments as to the merits of the above cited proceedings of the Collector, Ranipet District and the petitioner is having an effective alternative remedy under Section 17 of the SARFAESI Act and that apart, the points urged by the learned counsel appearing for the petitioner would revolve around adjudication and disputed question of facts and the same cannot be done by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, however taking into consideration the predicament faced by the petitioner for non serving of the copy of the order passed under Section 14(1) of the SARFAESI Act, the petitioner is at liberty to apply for the copy of the order dated 13.01.2020 in Na.Ka.C1/21889/2019 passed by the Collector, Ranipet District and when such application is filed, it shall be disposed of on merits and in accordance with law within a period of one week from the date of receipt of such application.

8. In the result, the Writ Petition is dismissed and the petitioner is at liberty to invoke the appeal remedy available, in accordance with law. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The Authorised Officer
State Bank of India,
Stressed Assets Recovery Branch,
Red Cross Buildings,
II nd Floor, No.32 Montieth Road,
Chennai 600 008.

+2 ccs to M/s.D.Murugan Advocate sr7540

+1 cc to M/s.Shivakumar Advocate sr7507

W.P.No.2310 of 2020

cp(co)

aa04/03/2020