

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
&
THE HONOURABLE MRS.JUSTICE R. HEMALATHA

W.P.No.3578 of 2020 &
WMP.Nos.4198 & 4202 of 2020

S.T. Prasad

... Petitioner

Vs.

1. Bank of India,
represented by its
authorised officer,
4th Floor, Tarapore Towers,
826, Anna Salai,
Chennai 600 002.
2. M/s. Sujana Universal Industries Ltd.,
Plot No.18, Nagarjuna Hills,
Panjagutta, Hyderabad 500 082.
3. Shri.Y.S.Chowdary,
S/o.Shri Y.Janaradhana Rao,
Plot No.29, Sagar Co-op. Housing Society,
Road No.2, Banjara Hills,
Hyderabad 500 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records with respect to the proceedings under Section 13(4) of the SARFAESI Act dated 09.05.2019 on the file of the 1st respondent taking possession of the petitioner is property situated at Sri Sai Nagar in S.No.160/1 and 160/2 of Koluthuvancherry Village, Sriperumbudur Taluk, Chengelpet District, admeasuring an extent of 7560 sq.ft. and to quash the same on the ground that the measures under section 13(4) of the SARFAESI Act, 2002 by the 1st respondent is beyond the limitation as prescribed under the Limitation Act, 1963 and consequently direct the 1st respondent to discharge the property of the petitioner.

For Petitioner : Mr. M. Vasanthakumar

O R D E R

The petitioner is arrayed as 7th defendant in O.A.No.134 of 2019 on the file of Debt Recovery Tribunal-II. The Banks namely, Bank of Baroda, Bank of India, Oriental Bank of Commerce and Indian Overseas Bank, had filed the said Original Application against the 14 defendants which include the petitioner herein (7th respondent) for recovery of Rs.7,37,65,824/- with the prayer against the defendants to direct the defendants 1, 2, 3 and 8 to pay a sum of Rs.71,37,65,824/- along with interest and expenses and with further direction, directing the defendants 1 to 11 therein, to pay a sum of Rs.314,53,04,400.14p with interest and subsequent costs. The petitioner who is arrayed as 7th defendant therein, has been served with notice and he is yet to file the reply/written statement.

2. The defendants 4, 5, 6 and 7 in the said original application had filed S.A.No.13 of 2020 against the Bank of India, M/s. Sujana Universal Industries Ltd., Mr.Y.S.Chowdary on the file of Debts Recovery Tribunal-II. challenging the impugned sale notice dated 6.12.2019. The said appeal has been entertained and conditional interim order has been passed and it has also been complied with and the appeal is still pending.

3. Learned counsel appearing for the petitioner, who is arrayed as 7th respondent in Original Application, would submit that there is no security interest, in so far as the immoveable property, for which, he has created an equitable mortgage, and as such, the measures under SARFAESI Act cannot be initiated against them.

4. Learned counsel appearing for the petitioner, further would contend that the 1st respondent has failed to obtain valid admission or acknowledgement or confirmation of balance from the petitioner for each and every borrowing or debts or for renewal beyond 30.4.2004 and as such, the claim is also hopelessly barred by limitation. It is also the submission of the learned counsel appearing for the petitioner that the personal guarantee/surety executed in favour of the 1st respondent on 30.7.2004 for the credit facilities availed by the 2nd respondent came to be varied without the consent of the petitioner and in the light of section 133 of Indian Contract Act 1872, the application on behalf of the petitioner, as guarantor/surety also stands discharged.

5. Learned counsel appearing for the petitioner would further submit that he has not been issued with notice under section 13(2) of SARFAESI Act as well as 13(4) of the Act and therefore, came forward to file this Writ Petition challenging the measures, initiated under section 13(4) of the Act.

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

7. The defence now projected by the petitioner, in this writ petition can be raised and adjudicated in the pending O.A.No.134 of 2019 as well as in SARFAESI Second Appeal No.13 of 2020 pending on the file of Debt Recovery Tribunal II at Chennai. At this juncture, learned counsel appearing for the petitioner would submit that in the event of a sale not taken place, there is likelihood of the above second appeal becomes infructuous.

8. In the considered opinion of the Court, it is always open to the petitioner to urge before the Debt Recovery Tribunal at Chennai to give a disposal of the said Second Appeal No.13 of 2020 on merits for the reason that similar grounds raised in this Writ Petition have also been raised in the said appeal.

9. As already pointed out, it is open to the petitioner to file reply statement/written statement in the pending O.A.No.134 of 2019 to raise the plea.

10. The grounds urged by the learned counsel for the writ petitioner in this writ petition would revolve around adjudication on disputed questions of fact and this court, in exercise of its jurisdiction under Article 226 of Constitution of India, is not inclined to do such an exercise.

11. In the result, the writ petition is dismissed and the petitioner is at liberty to urge all the defences open to him, in the pending O.A.No.134 of 2019 as well as SARFAESI Second Appeal No. 13 of 2020 and the jurisdictional tribunal is expected to give disposal to the said pending proceedings on its own merits depending upon the quality of the materials being placed. No costs. Consequently, connected W.M.P.Nos.4202 and 4198 of 2020 are closed.

Sd/-

Asst.Registrar (CS III)

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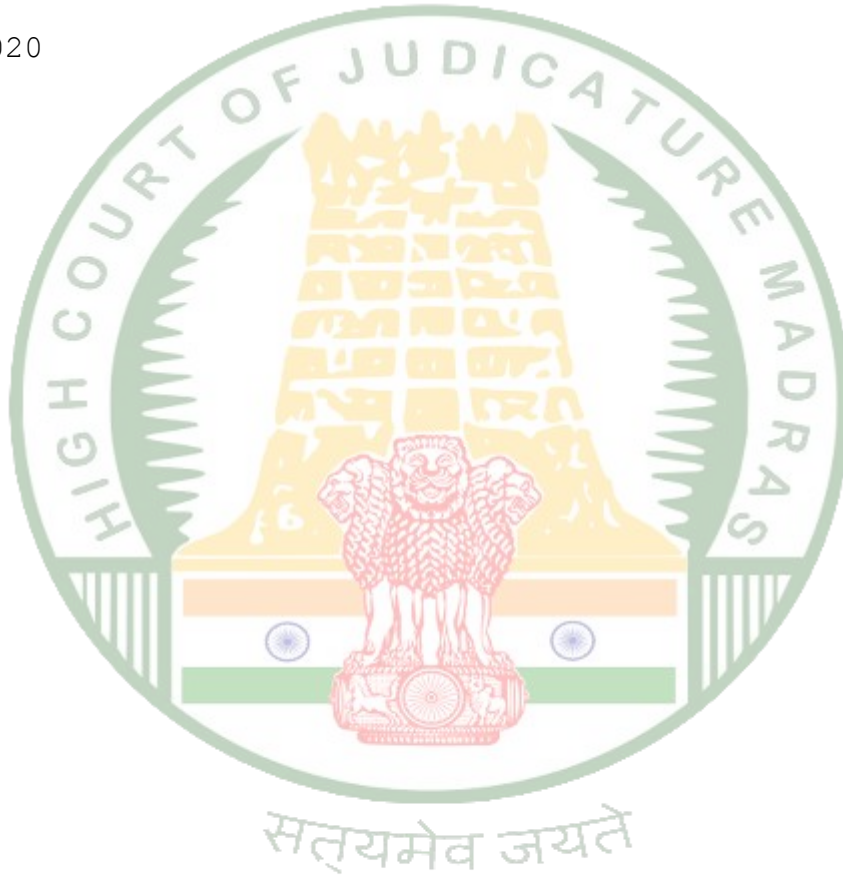
Sub Asst. Registrar

msr

+1 cc to M/s.K.Jayasudha Advocate sr13581

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