

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No. 8570 of 2020

Indian Overseas Bank
Asset Recovery Management Branch No.11/952
Cross Cut Road Coimbatore - 641 012.
Represented by its Chief Manager. Petitioner

Vs

- 1.The District Collector &
The District Magistrate,Coimbatore.
- 2.The Tahsildar,
Coimbatore South Taluk, Singanallur Firka,
Coimbatore.
- 3.M/S. Hi-Tech Minerals Industries Covai Pvt.Ltd
(In Liquidation),
Rep. by its Official Liquidator,
High Court,
Corporate Bhawan (UTI Building), 2nd Floor,
No.24, Rajaji Salai, Chennai - 600 001.
- 4.Mrs.Malliga
- 5.The Inspector of Police
Singanallur Police Station,
Singanallur, Coimbatore. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying a writ of mandamus directing the second Respondent to comply with the order passed by the first respondent vide Ref. No.K.Dis.19478/2014/E3 dated 05.12.2019 with an assistance of the 5th respondent.

For Petitioner .. Mr.M.L.Ganesh
For Respondents .. Mr.G.K.Muthukumar,
Spl GP for R1, R2 and R5
Mr.Ramachandran for R4

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

This writ petition has been filed by the petitioner seeking a direction to the second respondent to comply with the order passed by the first respondent dated 05.12.2019.

2. Respondents 3 and 4 borrowed money from the petitioner. The third respondent became non-functional from the year 2014. It was wound up and the Official Liquidator has been appointed. Thereafter, the petitioner invoked the provisions of the SARFAESI Act and issued notice under Section 13(2) of the Act on 21.02.2014.

3. Symbolic possession of the secured property has been taken by the petitioner by causing possession notice under Section 13 (4) of the Act on the aforesaid bank on 20.05.2014. The due as on 21.02.2014 was Rs.216,63,91,070.59. Accordingly, the petitioner filed an application under Section 14 of the Act on 17.10.2014 to take physical possession of the secured property mortgaged by the fourth respondent. Pending the aforesaid application, the petitioner caused a sale notice to bring the secured property belonging to the fourth respondent for sale through e-auction on 19.08.2019.

4. In the e-auction conducted, one Ms.S.Chitra was declared as a successful bidder for a sale consideration of Rs.4,50,90,000/-. The petitioner issued a sale certificate in favour of the auction purchaser on 10.09.2019.

5. Pursuant to the order passed by the first respondent dated 05.12.2019, the second respondent has taken possession of the secured property on 09.01.2020. The panchanama and inventories were prepared for the movables found in the secured property in the presence of the officials of the first and second respondents and the fourth respondent. They have been videographed accordingly. The list of inventory was also despatched to the fourth respondent by registered post and handed over to the counsel, who had appeared before the Debts Recovery Tribunal.

6.However, the fourth respondent has kept two vehicles outside the secured property blocking the access. Incidentally, the fourth respondent did not even remove the house hold articles which have been arranged by the petitioner by utilising the services of packers and movers on 29.01.2020.

7.As an afterthought, the fourth respondent challenged the proceedings in I.A.No No.110 of 2020 in S.A. No.20 of 2020. The said application filed in S.A.No.20 of 2020 was dismissed on 10.02.2020. The petitioner thereafter sent series of communications to the fifth respondent to do the needful by removing the obstruction made by the fourth respondent. However, no action was forthcoming and therefore the present writ petition has been filed pursuant to the last of such communication sent on 16.03.2020. It appears, the fourth respondent has also filed an application before the Debts Recovery Appellate Tribunal seeking exemption of the requisite pre-deposit as mandated under the Act which is still pending consideration.

8.Learned counsel appearing for the petitioner submitted that despite the efforts made and the issue having arisen way back in the year 2014, the petitioner is not able to do anything towards recovery of money. The due as on today is Rs.515.94 crores. The interest is also mounting. The facts as narrated above would clearly show the attitude of the fourth respondent. She has also given a criminal complaint against the officials of the petitioner. Therefore, appropriate orders will have to be passed in this regard.

9.Learned counsel appearing for the fourth respondent submitted that inasmuch as the appeal has been filed along with the application seeking waiver, no coercive action is required. Therefore, the writ petition will have to be dismissed.

10.We do not wish to say anything more than the facts narrated above. The facts speak for themselves. The due as on today Rs.515.94 crores. The due has arisen way back in the year 2014. The loan accounts were converted into NPA as early as 30.06.2013. Obviously, there is no intention at all on the part of the fourth respondent to make the payment. The property auctioned is an secured asset. This is the one mortgaged by the fourth respondent. In fact, by mortgaging this property, the fourth respondent got some more amount from the petitioner. At every stage, the fourth respondent bent upon preventing the

petitioner from getting the money. It is the fourth respondent who obtained a sum of Rs.54 crores by way of additional amount. This was done by her after the demise of her husband. As of now, the action taken by the petitioner stands and possession has also been taken and recorded. Third party interest has also stepped in. Deliberately, the fourth respondent is not willing to take her belongings.

11. In such view of the matter, the fifth respondent ought to have given effect to the order passed to facilitate the actual possession in favour of the auction purchaser, who is not even before us. As noted, the sale certificate has already been issued in favour of the auction purchaser - Chitra. We may further note that the property was purchased for a sum of Rs.4.5 crores out of the huge outstanding amount of Rs.515.94 crores. Thus, it is a clear case of the fourth respondent acting illegally with the sole intention to prevent the petitioner from taking possession. If the fourth respondent does not want to take her movables, it is her botheration. The fifth respondent is thus directed to take appropriate action on the representations made by the petitioner from 29.01.2020 to 16.03.2020 so as to facilitate the smooth handing over of possession in favour of the auction purchaser. The vehicles stated to be parked by the fourth respondent shall also be removed from the place so as to facilitate smooth ingress and egress to the property and the road. Appropriate action will have to be taken as aforesaid by the fifth respondent within a period of two weeks from the date of receipt of a copy of this order.

12. We have already recorded the fact that the inventories have already been taken in the presence of the fourth respondent and the revenue officials, exercising the process of videographing. They have also been served on the fourth respondent through counsel. At this juncture, learned counsel appearing for the fourth respondent submitted that further material, if any, may be permitted to be taken. We do not find any material that can possibly be available in the light of her clear intention as recorded above. However, as a final opportunity, the fourth respondent is also at liberty to get into the property and remove the other movables, if any, in the presence of the officials of the petitioner and the fifth respondent. This indulgence we give in view of the fervent plea made by the learned counsel for the fourth respondent and nothing else.

13.With the above observation, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector &
The District Magistrate,Coimbatore.

2.The Tahsildar,
Coimbatore South Taluk, Singanallur Firka,
Coimbatore.

3.The Inspector of Police
Singanallur Police Station,
Singanallur, Coimbatore.

+1cc to the Government Pleader Sr.24898

W.P.No.8570 of 2020

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