IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2020

CORAM :

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

W.P.No.13552 of 2020
and
W.M.P.Nos.16799 & 16800 of 2020

Standard Chartered Bank,
A Banking Company incorporated
under the Royal Charter,
Represented by its Authorised Officer,
E.Rajendran,
Having its Principal Office at:
No.1, Basing Hall Avenue,
London, ECV2V5DD.
Commercial Clients Office at:
509, Red Rose Plaza, D.B. Road, R.S.Puram,
Coimbatore - 641 002.
And having its Branch Office at:
No.19, Rajaji Salai, Parrys,
Chennai - 600 001 ... Petitioner

Vs.

1.The District Collector cum District Magistrate,
Office of the Collectorate,
Coimbatore.

2.M/s.SPRK Agencies,
Represented by its Partners, SPRM Ramasamy
and Geetha Ramasaamy,
No.799 E, Mettupalayam Road,
RR Layout, RS Puram,
Coimbatore - 641 002
and Residing at : No.10/9, Maruthamalai Road,
Kalveerampalayam,
Coimbatore. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent impugned order bearing order no 18555/2017/E3 dated 17.10.2018 and to quash the same being in derogation of the statutory provisions and consequentially direct the 1st Respondent to pass appropriate order in the petitoner's appication dated 18.92017 filed under Section 14 of SARFAESI ACT rendering necessary assistance to the Petitioner for taking physical possession of the secured asset as set out therein.

For Petitioner	:	Mr.Edward James
For R1	:	Mr.Kamalesh Kannan Government Advocate
For R2	:	Mr.V.Bhagya Raj

O R D E R

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

The petitioner filed an application under Section 14 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ("SARFAESI Act" for brevity) before the 1st respondent for taking actual physical possession of the Secured Assets of the firm, viz., M/s.SPRK Agencies and others, and along with the said application, the following list of documents have been filed.

Sl. No.	Date	Description of the documents	Remarks
1	19.02.2016	Loan application	Photocopy
2	08.03.2016	Sanction Letter	Photocopy
3	27.08.1996	Sale Deed Doc. No.3994/1996	Photocopy
4	08.03.2016	Facility Agreement	Photocopy
5	10.05.2017	Notice under Section 13(2) of SARFAESI Act issued to the respondents along with Acknowledgment Card	Photocopy
6	24.07.2017	Possession Notice Section 13(4) SARFAESI Act sent to the respondents along with returned covers	Photocopy
7	28.07.2017	Publication of Possession Notice under Section 13(4) SARFAESI Act	Photocopy
8	21.08.2017	Encumbrance Certificate	Photocopy
9	12.07.2017	Statement of accounts	Photocopy

2.The learned counsel appearing for the petitioner would submit that the said application was entertained and notices to the borrowers were issued, but they did not respond to the said notices. It is the further submission of the learned counsel appearing for the petitioner that, since the said application has not been given disposal, the petitioner filed W.P.No.16015 of 2018 and vide order dated 29.06.2018, this Court directed the 1st respondent herein to consider and dispose of the said application within four weeks from the date of receipt of a copy of the order and further observed that, while doing so, the District Collector-cum-District Magistrate should act in accordance with Section 14 of the SARFAESI Act. The learned counsel appearing for the petitioner has drawn the attention of this Court to the impugned order, dated 17.10.2018, passed by the 1st respondent, and would submit that the 1st respondent has traversed beyond his jurisdiction and recorded a wholly untenable finding as to the nature of the land, despite the fact that he is precluded from doing so, and completely overlooked the list of documents filed along with the application filed under Section 14(1) of the SARFAESI Act, and therefore, prays for interference.

3.Per contra, Mr.Kamalesh Kannan, learned Government Advocate, appearing on behalf of the 1st respondent, would submit that the 1st respondent, taking into consideration the materials placed, has rightly reached the conclusion to reject the application, and prays for dismissal of the writ petition.

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

5.The Commissioner of Revenue Administration and Disaster Management, Chepauk, Chennai - 600 005, in compliance with the order passed in W.P.No.29760 of 2017, has issued the following circular and it is relevant to extract the same :

Commissionerate of
Revenue Administration and
Disaster Management,
Chepauk, Chennai 600 005.

CIRCULAR

PRESENT: Dr. KORLAPATI SATYAGOPAI, I.A.S.,
Additional Chief Secretary/
Commissioner of Revenue Administration

Rc.No.RA.6(3)/6075/2019 Dated:01.03.2019

Sub: Writ Petition-W.P.No.29670 of 2017 filed by Vijaya Bank, Coimbatore - to ensure - strict compliance - under - Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002 - Instructions issued- Reg.

Ref: 1.Writ Petition W.P.No.29670 of 2017 filed by Vijaya Bank, Coimbatore.

2.Additional Chief Secretary to Government, Finance Department D.O.Letter N0 .6888A/Res.II/2019-1, dated 13.02.2019.

The Government in Finance Department, Secretariat Chennai- 600 009 in their D.O. letter 2nd cited it has informed that the Additional Government Pleader, High Court of Madras has stated that in the Writ Mandamus filed by Vijaya Bank, Coimbatore in W.P.No.29670/2017, the Division Bench of Madras High Court has directed State Government to issue suitable instructions to the District Collectors with regard to compliance regarding the time limit enumerated under Section 14 of the SARFAESI Act 2002 and requested this Commissionerate to issue necessary instructions to all the District Collectors so as to adhere the provisions of the SARFAESI Act 2002.

2) Section-14 of the SARFAESI Act: Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset, states that

(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

(2) For the purpose of securing compliance with provisions of sub section (1) the Chief

Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used, such force, as may, in his opinion, be necessary

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

3) In the amendment issued in Sub-section (1) for Section 14 of the SARFAESI Act, 2002, the following provisions have been inserted, namely

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that-

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in subclause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a nonperforming asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 rad with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

4) After sub-section (1) of Section 14 of the SARFAESI Act, 2002 the following sub-section has been inserted namely

(1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorize any officer subordinate to him,-

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor (ie) the Banker

5) In the amendment issued in sub-section (1) of the Section 14 of the Principal Act,

(i) In the second proviso, after the words "secured assets", the words " within a period of thirty days from the date of application" have been inserted (ii) after the second proviso, the following proviso has been inserted namely:-

" Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his/her control, he/she should be recorded reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days"

6) The District Collectors are hereby directed to follow the above said instructions scrupulously and orders should be passed within the stipulated time limit. Any delay noticed in this regard will be viewed very seriously.

7) The District Collectors are also instructed a periodical report should be sent to this Commissionerate before 5th of every month on the following format.

District Name	Total No. Of pending cases as on date	No of cases order passed during the month	No of cases pending		
			More than 1 month	More than 2 months	More than 3 months

8) The receipt of the circular may be acknowledged by return post.

Sd/- K.SATYAGOPAL
Additional Chief Secretary/
Commissioner of Revenue Administration

6.It is well settled position of law that the 1^{st} respondent, while considering the application under Section 14 (1) of the SARFAESI Act, has to look into the compliance of the notices under Sections 13(2) and 13(4) of the said Act, and as rightly pointed out by the learned counsel appearing for the petitioner, the 1^{st} respondent has traversed beyond his jurisdiction and has rendered a finding that the Secured Assets are agricultural lands. In the considered opinion of this Court, it is not open to the 1^{st} respondent to record such a finding as it may involve adjudication of disputed question of facts, and that apart, despite the relevant documents having been filed along with the application filed under Section 14(1) of the SARFAESI Act, the same have not been considered by the 1^{st} respondent, and proceeded on the footing that no such documents have been filed.

7.In the light of the infirmity pointed out above, the impugned order passed by the 1^{st} respondent warrants interference. In the result, this writ petition is allowed and the impugned order, dated 17.10.2018, passed by the 1^{st} respondent, is set aside and the matter is remitted back to the 1^{st} respondent for fresh consideration in accordance with Section 14(1) of the SARFAESI Act and also in the light of the above cited circular, and the said exercised shall be completed within a period of six weeks from the date of receipt of a copy of this order, and the 1^{st} respondent shall communicate the decision taken to the petitioner. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

The District Collector cum District Magistrate,
Collectorate, Coimbatore.

+1cc to Mr.Edward James, Advocate SR.NO.38351

+1cc to Mr.V.Bhagyaraj Advocate SR.NO.38110

+1cc to the Government Pleader SR.NO.38246

W.P.No.13552 of 2020

NMI CO
SDR 17/12/2020