

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.12.2020

CORAM

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

WP.No.17167/2020 & WMP.Nos.21216, 21219 & 21222/2020

K.Thiyagarajan

..Petitioner

Versus

1. The Chief Judicial Magistrate
Bhagiyam Layout, Arts College Road
Combined Court Complex,
Gopalapuram, Coimbatore 641018.

2. The Authorised Officer
State Bank of India,
Coimbatore City Branch
Door No.718-719,
Oppanakkara Street
Coimbatore 641 001.

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating order dated 12.02.2020 in Cr1.MP.No.1232 of 2019 passed by the 1st respondent and quash the same and direct the 1st respondent to grant opportunity of personal hering and reply to the petitioner and to pass final orders upon Sec 14 or any other like proceedings initiated by the 2nd respondent Bank.

For Petitioner : Mr.P.V.S.Giridhar for
M/s.Giridhar and Sai

For R2 : Mr.M.L.Ganesh
Standing counsel

R1 : Court

ORDER

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

(1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.

(2) Mr.M.L.Ganesh, learned Standing counsel accepts notice on behalf of the 2nd respondent/Bank.

- (3) The petitioner availed financial assistance from the 2nd respondent/Bank for carrying on business in home appliances and due to vagaries of the business, he suffered loss. The 2nd respondent/Bank declared the Accounts of the petitioner has Non Performing Assets and thereafter, by invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 [in short 'SARFAESI Act'], has issued notice dated 29.01.2019 under Section 13[2] of the SARFAESI Act, calling upon the petitioner / borrower to settle the outstanding amount of Rs.52,88,309/- due as on 28.01.2019 within the stipulated period, failing which, further action would follow. It appears that the petitioner did not comply with the terms of the said notice and therefore, the 2nd respondent/Bank had issued the Possession Notice dated 06.07.2019.
- (4) The petitioner herein, aggrieved by the Possession Notice dated 06.07.2019, filed SA.No.392 of 2019 along with the prayer for interim relief and the same is pending before the Debts Recovery Tribunal, Coimbatore. In the meanwhile, the 2nd respondent/Bank has invoked the jurisdiction of the 1st respondent by filing an application under Section 14[1] of the SARFAESI Act for taking actual physical possession of the secured assets and it came to be ordered and an Advocate Commissioner was also appointed for taking actual physical possession and he has also issued Notice dated 20.03.2020 to the petitioner. The petitioner, aggrieved by the order of the 1st respondent dated 12.02.2020 in CrI.MP.No.1232/2019 passed u/s.14[1] of the SARFAESI Act, came forward to file the present writ petition.
- (5) The learned counsel for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that admittedly, the 1st respondent, before passing the impugned order, has failed to put the petitioner on notice and despite the fact that SA.No.392 of 2019 is pending along with the prayer for interim relief, on the file of the DRT, Coimbatore, it could not be taken up for want of Presiding Officer and very recently, the Presiding Officer has been posted and till such time the Tribunal dispose of the petition for interim relief, this Court may direct the 1st respondent to defer further action in terms of the impugned order. He would also submit on instructions that the actual physical possession of the secured assets is yet to be taken up by the learned Advocate Commissioner.
- (6) Per contra, Mr.M.L.Ganesh, learned Standing counsel appearing for the 2nd respondent/Bank has drawn the attention of this Court to the Judgment of the Hon'ble Supreme Court of India reported on 2019 SCC Online SC 1242 [Authorised Officer, Indian Bank V. D.Visalakshi and Another] as well as the decision rendered by a Division Bench of this Court reported in 2020 [2] WLR 493 : 2020 [6] CTC 582 [Tamil Nadu Mercantile Bank and Others Vs. The District Magistrate / District Collector, Tiruvallur and Others] and would that for invoking and passing orders u/s.14[1] of SARFAESI Act,

the 1st respondent need not put the borrower/petitioner herein on notice and since action has been taken strictly by resorting to due process of law, the petitioner cannot make any complaint/grievance and prays for dismissal of this writ petition with cost.

(7) This Court has considered the rival submissions and also perused the materials placed before it.

(8) In the light of the above well settled legal position as enunciated by the Apex Court of India which has been followed by the Division Bench of this Court in the above cited decision, the petitioner is not entitled to any prior notice before filing the application u/s.14[1] of the SARFAESI Act. However, this Court taking into consideration of the fact that SARFAESI Application in SA.No.392 of 2019 along with the petition for interim relief [paragraph No.XIV] is pending for quite long time, directs the Debts Recovery Tribunal, Coimbatore, to consider and dispose of the said prayer for interim relief in accordance with law as expeditiously as possible and not later than three weeks from the date of receipt of a copy of this order and till such time, the 1st respondent shall defer further decision in pursuant to the impugned order dated 12.02.2020. It is also made clear that the petitioner, till the disposal of SA.No.392 of 2019, shall not create any third party rights in respect of the secured assets.

(9) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate
Bhagiyam Layout, Arts College Road
Combined Court Complex,
Gopalapuram, Coimbatore 641019.

2. The Authorised Officer
State Bank of India,
Coimbatore City Branch
Door No.718-719,
Oppanakkara Street
Coimbatore 641 001.

Copy to: The Debts Recovery Tribunal, Coimbatore.

+1cc to M/s.Giridhar & Sai, Advocate, S.R.No.39390

WP.No.17167/2020

MJB(CO)

PY(31/12/2020)

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