IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2020

CORAM :

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

W.P.No.15895 of 2020
and
W.M.P.No.19756 of 2020

1.M.Mohammed Hussain
2.S.M.Ansar Alikhan
3.S.M.Mariyam Siddhika
4.S.M.Hassan Ibrahim ...Petitioners

Vs.

1. The Authorised Officer,
Tamil Nadu Mercantile Bank Limited,
Avadi Branch, Plot No.7, G.D. Nadar Complex,
60 Feet Road, TNHB, Avadi,
Chennai - 600 054.

2. Tamil Nadu Mercantile Bank Limited,
Chennai Regional Office,
No.45, Pulla Avenue, Shenoy Nagar,
Chennai - 600 030,
Represented by its Chief Manager
and Authorised Officer ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the Respondents, their officers, men, agents, representatives, assigns and / or anyone claiming under or through them or on their behalf to desist from in any manner taking any action or coercive steps so as to take physical possession of the property being land to an extent of 2,030 Sq. feet (600 Sq. feet + 700 Sq. feet + 480 Sq. feet) situated at Gramanatham S.No. 53, No. 25, Paruthipattu village, Poonamallee Taluk, Tiruvallur District and commercial building constructed thereat to the extent of 8,120 Sq. feet bearing Door No. 62, Nehru Bazaar Road, Avadi, standing in the name of the Petitioners 2 to 4, without awaiting the outcome of S.A. No. 97 of 2020 pending before the Hon'ble Debts Recovery Tribunal-III, Chennai and the S.A. to be filed therein by the petitioners challenging the order dated 20.10.2020 passed by the Chief Judicial Magistrate, Thiruvallur in Criminal Miscellaneous Petition No.2566 of 2020 filed by the 2nd respondent.

For Petitioners : Mr.Arun Anbumani

For Respondents : Mr.V.Chandrasekaran

ORDER

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

The petitioners availed loan assistance for a total sum of Rs.5,75,00,000/- from the respondent Bank spreading over to a sum of Rs.5,75,00,000/- for M/s.Abirami Silks, Rs.1,00,00,000/- each for M/s.Abirami Men's Wear, M/s.Abirami Readymade and Matching Centre, and M/s.Abirami Niagara, vide four loan accounts. The petitioners, for the due repayment of the loan, also created security by creating mortgaging in respect of immovable properties.

2.The respondent Bank, in view of the default committed by the petitioners, has declared the Assets as non-performing one and thereafter, initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for brevity) by issuing notice under Section 13(2) of the Act on 28.05.2019, followed by Possession Notice under Section 13(4) of the said Act, dated 22.08.2019.

3.According to the petitioners, only some of the petitioners received the said notices, and the said notices were followed by sale notices dated 25.10.2019 and 09.12.2019. Auction sale, which took place pursuant to the sale notices, did not fructify, and the petitioners, with an intention to settle the dues, also commenced negotiation which included 'One Time Settlement' also. The petitioners would further state that, though the negotiation proceeded in stages, the respondent Bank, without informing the petitioners, had proceeded with auction, based on a defective notice dated 31.12.2019 and also suppressed the outcome of the auction held on 27.01.2020. In this regard, the petitioners have also invoked the provisions of the Right to Information Act, 2005, seeking information about the auction proceedings. The Bank, in the response dated 30.06.2020, came out with an explanation that the said information is beyond the purview of the Right to Information Act, 2005, and the petitioners, not stopping with that, sent a representation dated 02.07.2020, seeking for necessary details and the respondent Bank, vide communication dated 02.07.2020, has informed the petitioners that the Secured Assets have been sold. The petitioners, on enquiry, came to know that the properties were sold out in favour of third parties in the auction sale held on 27.01.2020 and sale certificates have also been issued, dated 05.06.2020.

4.The petitioners made a challenge to the issuance of the sale certificates in favour of the auction purchasers by filing an application under SARFAESI Act in S.A.No.97 of 2020 before the Debts Recovery Tribunal-III, Chennai, ("DRT" for brevity) and also prayed for interim orders. Since the Bank has sought for time to file counter within a short span of time, the DRT did not consider the plea of interim orders. The petitioners, to their shock and surprise, came to know that the Bank officials as well as the Advocate Commissioner descended upon the petitioners' properties on 28.10.2020, on the ground that there was an order passed by the Court of Chief Judicial Magistrate, Thiruvallur, under Section 14 of the SARFAESI Act to take actual physical possession.

5.The petitioners engaged the services of a counsel to know about the details and came to know about the order passed under Section 14 of the SARFAESI Act, dated 20.10.2020. The primordial grievance expressed by the petitioners is that, though the order, which has not been communicated to the petitioners, would merely state about the appointment of Advocate Commissioner for taking physical possession, did not give any specific direction as to the breaking open of the lock and taking over delivery of the possession, and without getting any specific order, the respondent Bank along with Advocate Commissioner, had taken illegal possession of the Secured Assets.

6.The learned counsel appearing for the petitioners, by drawing the attention of this Court to the materials placed, would submit that the action of the respondent Bank in resorting to such illegal methods is per se unsustainable, and admittedly, during the course of the proceedings initiated under Section 14 of the SARFAESI Act, all the petitioners have not been put on notice and he also intends to challenge the said order by filing an application under SARFAESI Act before the Tribunal, and till the limitation period is over, the Bank may be directed to defer further proceedings pursuant to the illegal action of taking possession of the Secured Assets. It is is also the submission of the learned counsel appearing for the petitioners that, even in the pending SARFAESI application in S.A.No.97 of 2020, the petitioners are having great chances of success and prays for appropriate orders.

7.Per contra, Mr.V.Chandrasekaran, learned counsel appearing for the respondents, would submit that, pursuant to the auction sale, which was knocked down in favour of the successful bidders, sale certificates were issued in favour of all of them and in order to hand over the actual physical possession of the Assets sold, steps have been taken by them to file an application under Section 14 of the SARFAESI Act and the Court of Chief Judicial Magistrate, Thiruvallur, on taking into consideration the materials placed and having satisfied with the reason that the measures under Sections 13(2) and 13(4) of the SARFAESI Act have been fully complied with, has rightly ordered the application in their favour, and therefore, with the aid of the Advocate Commissioner appointed pursuant to the said order, actual physical possession of the Assets have been taken, and he would further add that the remedy open to the petitioners, if any, is to make a challenge to the said order and in the light of the alternative remedy available to the petitioners, this writ petition is not maintainable, and therefore, prays for dismissal of the same.

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

9.The fact remains that the petitioners, challenging the sale certificate dated 05.06.2020 issued in favour of the auction purchasers, namely, R.Kannan, R.Kuppusamy, R.Ayyathurai, have filed S.A.No.97 of 2020 on the file of the Debts Recovery Tribunal-III at Chennai, and the same is still pending and counter has also been filed and Interlocutory Application is also still pending. It is also well settled position of law that the jurisdictional Court, while disposing of an application under Section 14 of the SARFAESI Act, need not hear the borrower, but the only requirement is the compliance of Sections 13(2) and 13(4) of the SARFAESI Act. The Court of Chief Judicial Magistrate, Thiruvallur, had passed a positive order in favour of the respondent Bank, while disposing of the said application and had also appointed Advocate Commissioner to take actual physical possession of the Assets, and according to the learned counsel for the petitioners, the Bank officials and the Advocate Commissioner had gone there, but the door was locked, and they broke open the lock and took actual physical possession and thereafter, to secure the Assets, they had put new locks.

10.Though it is the vehement submission of the learned counsel appearing for the petitioners that, without getting any order for breaking open, actual physical possession has been illegally taken, in the considered opinion of this Court, the issue cannot be gone into in a writ petition, for the reason that the petitioners are having an effective alternative remedy in the form of making a challenge to the order passed under Section 14 of the SARFAESI Act by the Chief Judicial Magistrate, Thiruvallur, and that apart, the application for interim injunction for staying the impugned sale certificate dated 05.06.2020 is pending adjudication in S.A.No.97 of 2020. Therefore, it is open to the petitioners to seek for earlier hearing of the Interlocutory Application, as well as to file an appeal challenging the order of the Chief Judicial Magistrate, Thiruvallur, passed under Section 14 of the SARFAESI Act. At this juncture, the learned counsel appearing for the petitioners would submit that this Court may issue appropriate directions directing the DRT to expedite the hearing of the prayer for interim relief in S.A.No.97 of 2020, for which, the learned counsel for the respondent Bank has no serious objections.

11.In the light of the effective alternative remedy available for making a challenge to the order under Section 14 of the SARFAESI Act, this Court is not in a position to come to the aid of the petitioners. However, taking into consideration the plea made by the petitioners, the Debts Recovery Tribunal-III at Chennai is directed to take up the prayer for interim relief in S.A.No.97 of 2020 at the first instance and give a disposal as expeditiously as possible, but not later than two weeks from the date of receipt of a copy of this order, and till such time, the respondent Bank shall defer any further decision pursuant to taking possession of the Secured Assets.

This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Presiding Officer,
   Debts Recovery Tribunal-III,
   Chennai.
2. The Authorised Officer,
   Tamil Nadu Mercantile Bank Limited,
   Avadi Branch, Plot No.7, G.D. Nadar Complex,
   60 Feet Road, TNHB, Avadi,
   Chennai - 600 054.
3. The Chief Manager and Authorised Officer,
   Tamil Nadu Mercantile Bank Limited,
   Chennai Regional Office,
   No.45, Pulla Avenue, Shenoy Nagar,
   Chennai - 600 030.

+3cc to Mr.Arun Anbumani, Advocate in SR.NO..36772

W.P.No.15895 of 2020

MG(CO)
RV(14/12/2020)