IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

WP.No.16660/2020

The Authorised Officer .. Petitioner
South Indian Bank Ltd.,
Regional Office, PB No.3868,
Trichy Road, Sungam,
Coimbatore 641018.

Vs

The District Collector, .. Respondent
[District Magistrate]
Salem.

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondent to pass appropriate orders in the petitioner's application dated 22.09.2017 submitted under Section 14 of the SARFAESI Act to take vacant physical possession of the secured asset as set out therein.

For Petitioner : Mr.R.Imayavaramban for M/s.Ramalingam & Associates
For Respondent : Mr.R.Vijayakumar Additional Government Pleader

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.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the respondent.

(3)The petitioner-Bank granted financial assistance to M/s.Sri Silk and Traders represented by its Partners, viz., Tvl.P.Venkatesan and P.Srinivasan and they availed the following loan facilities from the petitioner-Bank:-

S.No.	Nature of Facility	Limit
1.	CCOL	Rs.35,60,000/-
2.	FSL[O]	Rs.5,00,000/-

(4)The borrowers, for the due repayment of the loan facilities availed by them, had also hypothecated the stock in trade as primary security and both partners had also mortgaged their immovable properties situate at Neikkarapatti Village, Salem Taluk and District, by executing a Memorandum of Deposit of Title Deeds registered as Doc.No.3551 of 2015 dated 19.10.2015 on the file of the office of the Sub Registrar, Veerapandi. The borrowers committed default in repayment of dues and therefore, they have been declared as Non Performing Asset and it was followed by a Notice dated 23.02.2017 issued under Section 13[2] of the SARFAESI Act and since the borrowers did not comply with the requirements of the notice, Possession Notice dated 08.08.2017 also came to be issued. Thereafter, the petitioner-Bank filed a Criminal Miscellaneous Petition on the file of the respondent dated 22.09.2017 for taking actual physical possession of the secured immovable assets.

(5)The learned counsel for the petitioner would submit that despite a lapse of nearly three years and odd, the said petition submitted before the respondent has not been considered at all and left with no other option only, the petitioner is constrained to approach this Court by filing this writ petition.

(6)The Court heard the submissions of Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondent and also perused the materials placed before it.

(7)It is relevant to extract the Circular of the Commissionerate of Revenue Administration and Disaster Management dated 01.03.2019:-

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 non;performing 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.''

(8)It *prima facie* appears that the respondent has failed to exercise the statutory obligation cast upon him/her in terms of Section 14[1] of the SARFAESI Act and that apart, he/she appears to have disobeyed the above Circular of the superior official. Therefore, the **Principal Secretary to Government, Revenue Department, Secretariat, Chennai 600 009, is directed to look into the matter and if any deliberate inaction or infraction is noted on the part of the respondent or the subordinate officials or both, shall take appropriate action in this regard.**

(9)This Court, taking into consideration, the above facts and circumstances and also the limited scope of prayer sought for by the petitioner, directs the respondents to consider and dispose of the petition/application dated 22.09.2017 filed by the petitioner under Section 14[1] of the SARFAESI Act in accordance with law as expeditiously as possible and not later than six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

(10)The writ petition stands disposed of accordingly. No costs.

-sd/-
Assistant Registrar (cs)

//True Copy//

Sub Assistant Registrar

AP

To

1.The District Collector,
[District Magistrate]
Salem.

2.The Principal Secretary to Government,
Revenue Department,
Secretariat,
Chennai-600 009.

+2 C.C.to M/S.RAMALINGAM AND ASSOCIATES ,ADVOCATE SR.NO.38456

WP.No.16660/2020

SV (CO)
UMY (19/12/2020)