

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.32664 of 2019
and W.M.P.No.33069 of 2019

K.Neyasadin

... Petitioner

Vs

1.The District Magistrate
and District Collector,
Tiruppur.

2.The Indian Overseas Bank,
Rep. by Authorized Officer
Kolinjiwadi Branch,
157, TS 34/1, Sri Vinayaga Plaza,
1st Floor, Palani Bypass,
Dharapuram Taluk,
Tiruppur District.

... Respondents

Prayer : Writ Petition filed under 226 of the Constitution of India to issue a writ of certiorari calling for the records in Na.Ka.No.13365/2018/C3, dated 22.10.2019 of the first respondent and quash the same.

For Petitioner : Mr.B.Kumarasamy

Mr.B.Anand,

For Respondents : Government Advocate for R1
Mrs.Ananda Gomathy for R2

ORDER

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

The petitioner, being the borrower has come forward to file this writ petition, challenging the proceedings of the first respondent dated 22.10.2019 by which the application filed by the second respondent in Na.Ka.No.13365/2018/C3 was allowed by handing over the possession.

2.As the petitioner defaulted in making the payment, after obtaining a sum of Rs.7 crores, proceedings were initiated by the second respondent and in the application filed for taking possession invoking Section 14 of SARFAESI Act, 2002, summons were issued by the first respondent to the petitioner. Though he received two of the said summons, the petitioner sought for further time. The third summons was received by the petitioner on 26.10.2019. However, the order was passed on 22.10.2019 as the notice dated 10.10.2019 was served belatedly.

3.This Court granted an interim order on condition that the petitioner shall pay a sum of Rs.1 crore to the second respondent within a period of four weeks from the date of receipt of a copy of the order out of the amount payable. It appears that the petitioner has not complied with the same, though filed an application for extension now. The said application has also not been numbered. The petitioner has also sent a complaint to the Deputy Superintendent of Police against the second respondent against the non-compliance of the order followed by a legal notice dated 24.02.2020. A reply has also been given by the second respondent's counsel on 29.02.2020, inter alia, alleging that the conditional order has not been complied with.

4.Learned counsel appearing for the petitioner submitted that after issuing notice, the first respondent ought to have waited and taken up the matter after the service was effected. The petitioner has filed a petition for extension stating the reasons for non-compliance. Contrary to the order passed, the second respondent proceeded further and executed the sale certificate. Therefore, the order requires interference.

5.Learned counsel appearing for the second respondent submits that the petitioner has not placed the correct facts before the Court. Earlier summons were served on the petitioner and he did appear. He took time only for making the payments. The impugned order was passed in view of the fact that the petitioner was damaging the property sought to be taken possession of. Even before the order passed by this Court, the sale has been confirmed. The sale certificate has been issued recently as the petitioner has not complied with the conditional order passed. Therefore, there is no interim order now in the eye of law. In any case, the remedy of writ petition is not available as the remedy open to the petitioner is only to approach the Debts Recovery Tribunal. In law, there is no need for issuance of notice to the petitioner. Hence, the writ petition will have to be dismissed.

6.We find considerable force in the submission made by the learned counsel appearing for the second respondent. It is not

as if the petitioner was not aware of the hearing. On the last two occasions, he did appear. It appears that time has been sought for only for compliance. The role of the first respondent in a proceeding under Section 14 of the SARFAESI Act is very limited. The petitioner has been given sufficient time. In fact, the earlier summons were issued on 03.05.2019 and 01.07.2019. The impugned order was passed only on 22.10.2019. Thus, the petitioner has not availed the opportunities given to him. There is no mandate in law for issuance of notice.

7. Even before the petitioner approached this Court, the sale has been confirmed. Therefore, the third party right has crept in. The sale certificate has been issued as the interim order has worked itself out due to the non-compliance by the petitioner. It appears that the petitioner is neither interested in complying with the interim order nor protected the property. Though the learned counsel for the second respondent has stated that the petitioner is causing damage, we are not inclined to go into the same. Suffice it to state that there is no ground made out to interfere with the order passed by the first respondent as the power of judicial review is rather limited.

8. With the above observation, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I MDU)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

The District Magistrate and District Collector,
Tiruppur.

+1cc to Mr.B.Kumarasamy, Advocate, S.R.No. 24216
+1cc to Mr.Ananda Gomathy, Advocate, S.R.No. 23980
+1cc to the Government Pleader, S.R.No. 24484

W.P.No.32664 of 2019

PVS (CO)
GN(16/07/2020)