

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.32852 of 2019
and W.M.P.Nos.33279 & 33281 of 2019

G.Balasubramaniam ... Petitioner

Versus

- 1.The District Magistrate/District Collector,
Coimbatore.
- 2.The Tahsildar,
Coimbatore North and Madukkari,
Coimbatore.
- 3.The Authorised Officer,
Indian Overseas Bank,
Oppanakara Street,
Coimbatore 641 001. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorari calling for the records pertaining to the impugned order dated 07.08.2019 in D.Dis.No.4623/2015/E3 on the file of 1st respondent and quash the same.

For Petitioner : Mr.C.T.Murugappan

For Respondents: Mr.R.Vijayakumar
Addl. Government Pleader
for R1 & R2
Ms.Ananda Gomathy for R3

ORDER

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

The petitioner is the partner of M/s.Jem Jewellers and the said firm had availed credit facilities for a sum of Rs.4.8 Crores in the year 2013 and for due repayment of the same, security in the form of immovable properties have also been made and it appears that the said Firm had committed default in payment of dues and therefore, action was initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act),

2. The petitioner made a challenge to the Possession notice issued under Section 13(4) of the SARFAESI Act dated 07.08.2019, filed SARFAESI Appeal and pending disposal of the same, had filed a petition for stay, praying for stay of the auction of the suit scheduled property, which is to be held on 20.03.2019 and sale notice dated 02.03.2019 and a conditional interim order of stay was passed and according to the learned counsel appearing for the petitioner, despite the petitioner was willing to comply with the condition, it was refused to be received by the Bank.

3. The 3rd respondent has also invoked Section 14(1) of the SARFAESI Act by filing application before the District Collector and District Magistrate, Coimbatore, who vide order dated 07.08.2019 has passed an order for assisting the 3rd respondent to take possession of the secured assets. The petitioner challenging the legality of the said order has filed this Writ Petition. The Writ Petition was entertained on 26.11.2019 and an order of interim stay for a period of four weeks was granted.

4. The learned counsel appearing for the petitioner would submit that despite the conditional interim order granted by the Tribunal as well as by this Court, a sale of the secured asset went on and therefore, the petitioner has also filed petition for Contempt before the Debts Recovery Tribunal, Coimbatore and he would further add that in the light of the judgment rendered by the Hon'ble Supreme Court of India in Indian Bank Vs. D.Visalakshi (2019 SCC Online SC 1242), the 1st respondent lacks jurisdiction and power under Section 14(1) of the SARFAEI Act and it can be exercised only by the Chief Judicial Magistrate, Coimbatore and hence prays for interference.

5. Per contra, Mr.Ananda Gomathy, learned standing counsel appearing for the 3rd respondent has invited the attention of this Court to the counter affidavit dated 06.01.2020 and would

submit that the property which stood in the name of the petitioner bearing Door No.160 C1 & C2, Podanur Main Road, Mile Stone Stop, Podanur, Coimbatore in S.F.No.451/1A, Patta No.1776 of Kurichi Village was e-auctioned on 20.03.2019 and sold for a sum of Rs.93,25,000/- and the sale certificate was issued in favour of the successful auction purchaser and it had been registered also.

6. The learned standing counsel appearing for the 3rd respondent on a legal plea has invited the attention of this Court to paragraph nos.54 and 56 of the said judgment and in the light of the said judgment, jurisdictional Chief Judicial Magistrate is also equally competent to exercise power under Section 14(1) of the SARFAESI Act and as such, the 1st respondent is equally competent to pass appropriate orders on the application filed under Section 14(1) of the SARFAESI Act and prays for dismissal of this Writ Petition with exemplary costs.

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

8. It is relevant to extract paragraph nos.54 and 56 of the above cited decision in Indian Bank Vs. D.Visalakshi (2019 SCC Online SC 1242):

54. Applying the principle underlying this decision, it must follow that substitution of functionaries (CMM as CJM) qua the administrative and executive or so to say non-judicial functions discharged by them in light of the provisions of Cr.P.C., would not be inconsistent with Section 14 of the 2002 Act; nay, it would be a permissible approach in the matter of interpretation thereof and would further the legislative intent having regard to the subject and object of the enactment. That would be a meaningful, purposive and contextual construction of Section 14 of the 2002 Act, to include CJM as being competent to assist the secured creditor to take possession of the secured asset.

56. To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (Banks).

9. As per the ratio laid down by the Hon'ble Supreme Court of India in the above cited decision, the jurisdictional Chief

Judicial Magistrate is equally competent to exercise power under Section 14(1) of the SARFAESI Act. Therefore, the submission made by the learned counsel appearing for the petitioner that the said official alone is competent to exercise power, is liable to be rejected. Factually also, the property in question had been sold in favour of a successful bidder and a Sale Certificate was also registered in his favour, in the light of the submission made in paragraph no.8 of the counter affidavit.

10. In the light of the above facts and circumstances coupled with the legal position, this Court is of the considered view that there is no merit in the Writ Petition and accordingly, the Writ Petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

11. After the disposal of the Writ Petition, the learned counsel appearing for the petitioner prays for appropriate direction, directing the 3rd respondent Bank to furnish the details of the auction purchaser, so as to enable him to work out his remedy.

12. The learned standing counsel appearing for the 3rd respondent has also undertakes to do the needful by instructing the 3rd respondent Bank to furnish the said particulars within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1.The District Magistrate/District Collector,
Coimbatore.

2.The Tahsildar,
Coimbatore North and Madukkari,
Coimbatore.

3.The Authorised Officer,
Indian Overseas Bank,
Oppanakara Street,
Coimbatore 641 001.

+2cc to Mr.C.T.Murugappan, Advocate SR.No.10562

+1cc to Government Pleader SR.No.11396

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SS (CO)
GMY (16/03/2020)



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