IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.33998 of 2019
and W.M.P.Nos.34594 & 2669/2020

S.Ranjitham ... Petitioner

Versus

The Authorized Officer,
State Bank of India,
Koothanallur Branch (02225),
Vadapathimangalam,
Koothanallur, Needamangalam,
Thiruvarur District. ... Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorari calling for the records from the respondent relating to the possession notice (for immovable properties) dated 14.10.2019 and quash the said notice as violative of Section 31 of the Securitization and Reconstruction of financial Assets and Enforcement of Security Interest Act, 2002 and Article 14,21 and 300-A of the Constitution.

For Petitioner : Mr.S.Ayyathurai

For Respondent : Mr.M.L.Ganesh

O R D E R

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

The petitioner being an agriculturalist had availed loan from the State Bank of India for the purchase of Tractor. The petitioner is unable to settle the loan and therefore action was initiated under the provisions of SARFAESI Act by issuing notice under Section 13(2) followed by Possession Notice under

Section 13(4) of the SARFAESI Act dated 14.10.2019 read with Rule 3 of the Security Interest (Enforcement) Rules, 2002, calling upon the petitioner to pay a sum of Rs.18,13,829/- as on 11.10.2019 with interest thereon from 12.10.2019 together with incidental expenses, cost, charges etc.,

2. The petitioner for the purpose of providing sufficient and adequate security for the due repayment of land had also created a mortgage upon the immovable property of land and building measuring an extent of 9768 sq.ft comprised in R.S.No.240B/1, an extent of 0.39 cents and R.S.No.240B/2 an extent of 0.14 cents, Door No.18 at Ramanathan Koil Revenue Village, Melkondazhi village, Needamangalam Taluk, Tiruvarur District. The petitioner through his lawyer sent reply dated 13.11.2019 by stating among other things that subsidy amount of Rs.10,00,000/- had been adjusted and a sum of Rs.25,00,000/- have been paid to the Company and the credit of subsidy amount was also made belatedly and therefore, the calculation of interest from the earlier date clearly was not correct. It is further stated that as per the notice affixed, as on 11.10.2019, accrued settlement amount due and payable was Rs.18,69,128/- whereas in the Bank Account, as on 28.10.2019, a sum of Rs.17,01,692/- alone was stated. Since there was a discrepancy in amount, the petitioner also pleaded that she is a poor agriculturalist and if they failed to drop action within one week from the date of notice, civil and criminal action will be taken. The petitioner challenging the legality of the impugned Possession Notice dated 14.10.2019, has filed this Writ Petition.

3. The Writ Petition was entertained and an interim order was granted. Mr.M.L.Ganesh has entered appearance on behalf of the respondent Bank. The respondent Bank has filed a counter affidavit dated 03.01.2020 and took a stand that since the land comprise a building also, it cannot be construed as an agricultural land and as such, the proceedings initiated under the SARFAESI Act are clearly in order and insofar as the plea made by the petitioner as to the discrepancy in the amount is concerned, the respondent Bank is ready to rectify and reconcile the same and there is no infirmity.

4. The petitioner has filed a reply to the counter statement reiterating the earlier stand and that apart also took a stand that the respondent cannot proceed against the collateral security namely the immovable property without selling the Tractor and as such the procedure followed by the respondent is primarily capricious, arbitrary, unreasonable and unfair. The petitioner also took a stand that the respondent Bank has failed to act in a fair, proper and reasonable manner, especially taking into account the occupation of the petitioner as an agriculturalist and prays for allowing of the Writ Petition.

5. Mr.S.Ayyathurai, learned counsel appearing for the petitioner vehemently made a contention that there was some discrepancy in the state of affairs and the petitioner cannot be held liable / responsible for the same and would further add that there is also some discrepancy in crediting the subsidy amount also and without appreciating the fact that the petitioner had availed Tractor loan for agricultural operation and the mortgaged immovable property is also in the nature of agricultural property, action cannot be initiated under Section 31(i) of the SARFAESI Act. It is also the submission of the learned counsel appearing for the petitioner that the respondent Bank being a Nationalised Bank is expected to act in a fair and reasonable manner and by initiating proceedings under the SARFAESI Act, they want to deprive the petitioner of her sole livelihood namely the agricultural operation and he has also invited the attention of this Court to the judgment rendered by the Honble Supreme Court of India in Chameli Singh and Others Vs. State of Uttar Pradesh and another (1996 (2) SCC 549 and Federal Bank Ltd., Vs. Sagar Thomas and Others (2003 (10) SCC 733) and Unique Engineering Works Vs. Union of India and Others (2003 SCC Online Utt 107).

6. In response to the said submission, Mr.N.L.Ganesh, learned Standing counsel appearing for the respondent Bank would submit that the points urged by the learned counsel appearing for the petitioner would definitely revolve around adjudication on disputed questions of fact and though the petitioner is having an effective alternative remedy under Section 17 of the SARFAESI Act, he straight away approached this Court and would further add that the Writ Petition lacks merit and substance and prayed for dismissal of the same.

7. The learned counsel appearing for the petitioner apart from raising the said plea, also took a stand that Section 13(2) notice has not at all been served on him and refuting the same, the learned Standing Counsel has produced the postal receipt as to the despatch of Section 13(2) notice on 08.08.2019 as well as the acknowledgment.

8. The learned counsel appearing for the petitioner has produced the admitted signature of the person, who signed the acknowledgment receipt and would submit that the signature found, admittedly, was not that of the petitioner and somebody had signed and it cannot be deemed to be an appropriate and sufficient acknowledgment for serving the notice under Section 13(2) of the SARFAESI Act and in the light of the same, further Possession Notice is also unsustainable in the eye of law.

9. This Court paid it's anxious consideration to the rival

submissions and also perused the materials placed before it.

10. It is not in serious dispute that the notice was addressed to the petitioner in respect of address given in the security document and the said fact is not seriously disputed by the learned counsel appearing for the petitioner. It is also the primordial stand of the learned counsel appearing for the petitioner that when Section 13(2) notice has not been served upon the petitioner, further proceedings would be deemed to be non est in the eye of law. This Court is not inclined to accept the said submission for the reason that admittedly Section 13(2) notice has been addressed to the address given in the security documents and once proper postage is failed and materials has been shown that it has been sent through Registered Post, presumption under Section 27 of the General Clause Act will come into operation and therefore, this Court is of the view that Section 13(2) notice has been served upon the petitioner.

11. Once this Court holds that Section 13(2) notice has been served upon the petitioner, it is open to the petitioner to submit his response and however, the petitioner did not respond to the same. Now a challenge has been made to the impugned notice issued under Section 13(4) of the Act and the petitioner is having effective alternative remedy under Section 17 of the SARFAESI Act and however, the petitioner has straight away made a challenge to the said notice by filing the Writ Petition by taking a stand that the accounts have not been properly reconciled so also belated credit of subsidy amount and further took a stand that instead of the respondent proceeding against the collateral security, they would have proceeded to auction the Tractor. When this Court has put a specific question as to the person, who is in possession of the Tractor, the learned counsel appearing for the petitioner on instructions would state that the petitioner continues to remain in possession of the Tractor and by using the same, he is going to harvest the crops soon.

12. The respondent Bank is at option either to proceed against the hypothicated property namely, the Tractor or the immovable property. At this juncture, the learned counsel appearing for the petitioner would submit that since harvesting is going to be done very soon, the respondent Bank may defer further proceedings till such time and it is being done for the reason that the hypothicated property, namely the Tractor to be used for that purpose. However, this Court is not inclined to express any opinion or observation with regard to the said plea made by the petitioner for the reason that it is for the respondent Bank to act in accordance with law.

13. The decisions relied on by the learned counsel appearing

for the petitioner have no strict application to the case on hand, for the reason that the action is initiated strictly within the ambit of the SARFAESI Act and in the event of any infraction, Section 30A of the SARFAESI Act would always come to the aid of the petitioner and the petitioner is also having the effective alternative and efficacious remedy under Section 17 of the SARFAESI Act, wherein, the issues which require factual adjudication, can also be done.

14. This Court, on a careful scrutiny of the materials and consideration of the arguments advanced and materials placed, is of the considered view that there is no merit in this Writ Petition and it deserves dismissal. Accordingly, the Writ Petition is dismissed. No costs. Consequently connected miscellaneous petitions are dismissed.

15. After the disposal of the Writ Petition, the learned counsel appearing for the petitioner prays for return of the impugned order, so as to enable him to avail the alternative remedy. Registry is directed to return the original impugned notice to the learned counsel appearing for the petitioner under due and proper acknowledgment.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Authorized Officer,
State Bank of India,
Koothanallur Branch(02225),
Vadapathimangalam,
Koothanallur,Needamangalam,
Thiruvarur District.

+1cc to Mr.M.L.Ganesh, Advocate, Sr.No.8676
+1cc to Mr.S.Ayyathurai, Advocate, Sr.No.8529

WP.No.33998 of 2019

BS(CO)
GS(01/06/2020)