IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.3193 of 2020

1. M/s.Excel,
   A partnership firm,
   rep. by its Managing Partner K.Natarajan,
   S.F.No8/630A, Arulpuram,
   Palladam Road,
   Tirupur - 641 605.

2.K.Natarajan

3.N.Tamilselvi

4.P.Kumarasamy ..Petitioners

Vs.

1. The Authorised Officer,
   Corporation Bank,
   Tirupur SME Branch,
   No.15, Ganga Nagar 1st Street,
   Avinashi Road,
   Tirupur - 641 602.

2. The Secured Creditor,
   Corporation Bank,
   Tirupur SME Branch,
   No.15, Ganga Nagar 1st Street,
   Avinashi Road, Tirupur - 641 602.

3.T.Sivaganeshan

4.S.Pradeepa

5.N.Malarvizhi ..Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of the second respondent relating to the demand notice dated 20.11.2018 issued under Section 13(2) of the SARFAESI Act, 2002 and the consequential possession notice dated 06.12.2019 issued by the first respondent under Section 13(4) of the SARFAESI Act, 2002 and quash the same.

For Petitioners : Mr.E.Omprakash
Senior Counsel
for Mr.S.Thangavel

For Respondents : Mr.N.Sivabalan
for respondent No.1

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioners claim that due to no fault on the part of the petitioners, the account was shown to have become a non performing asset, but despite the subsequent discovery that a fraudulent bank official may have been the perpetrator for the erroneous entry, the bank has proceeded against the petitioners notwithstanding lodging a criminal complaint against the concerned official.

2. According to the petitioners, there was no significant default on the petitioners' part before a fictitious debit entry in the account engineered by a fraudulent bank employee rendered the account non performing. The petitioners say that contemporaneous correspondence exchanged between the parties would reveal that the petitioners were not at fault, but the bank purported to proceed under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The petitioners say that they were constrained to approach this Court and refer to the limited interim order passed on March 5, 2020 staying the further measures by the bank against the petitioners.

3. The petitioners say that they had offered a settlement to the bank and the Court should direct the bank to accept the settlement. The respondent bank, however, says that the petitioners' remedy lay elsewhere.

4. Whether the account turned NPA or not and whether the bank was entitled to resort to Section 13 of the Act of 2002 are issues that ought to have been carried by the petitioners herein to the appropriate Debts Recovery Tribunal exercising jurisdiction. Banker-constituent disputes involving complex accounts can hardly be brought before the Writ Court, particularly when there is a statutory remedy which is available to any person aggrieved by a secured creditor resorting to any of the measures under Section 13(4) of the Act of 2002.

5. On affidavit evidence in proceedings decided in a summary manner, it cannot be conveniently or conclusively assessed as to whether the petitioners' account turned NPA or whether by virtue of the alleged fraudulent entry by an erring bank official, the account was made to look non performing rather than it being one. Section 17 of the Act of 2002 permits any person aggrieved by any of the measures resorted to by a secured creditor under Section 13(4) thereof to carry the grievance to the appropriate Debts Recovery Tribunal. Section 34 of the Act prohibits civil Courts from entertaining matters or passing injunctions in respect of matters that are capable of adjudication by the Debts Recovery Tribunal or Appellate Tribunal in terms of the said Act of 2002. In view of the scheme of the Act of 2002, the Writ Court would be very slow to receive a complaint that ought to have been carried to the tribunal. There is no earth-shattering reason for an exception to be made in this case or for the self-imposed restraint not to be exercised by this Court.

6. Since involved questions pertaining to accounting issues arise that cannot be conveniently addressed in summary procedure, the petitioners are permitted to carry the disputes to the appropriate forum in accordance with law.

7. W.P.No.3193 of 2020 is dismissed without going into the merits of the disputes between the parties.

8. There will be no order as to costs. Consequently, W.M.P.Nos.3705 of 2020 and 5394 of 2021 are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1.The Authorised Officer,
Corporation Bank,
Tirupur SME Branch,
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Tirupur - 641 602.

2.The Secured Creditor,
Corporation Bank,
Tirupur SME Branch,
No.15, Ganga Nagar 1st Street,
Avinashi Road,
Tirupur - 641 602.

+1 CC to Mr.S. Sethuraman, Advocate sr 23350.
+1 CC to Mr.S. Thangavel, Advocate sr 23285.

GPL(CO)
SP(20/05/2021)