IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.2027 of 2021

M/s. Velmurugan Traders
rep. by its Partner Renuka Palanisamy
W/o. Palanisamy
No.4/139, K P Karadu
Nethimedu
Salem 636 002. ... Petitioner

Vs.

The Authorised Officer
Indian Overseas Bank
Regional Office
Five Road
Salem 636 004. ... Respondent

Prayer: Petition under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the entire records pertaining to the Demand notice to the Borrower / Guarantor / Mortgagor under Sub-section (2) of Section 13 of the SARFAESI Act, 2002, RO/LAW/DN/12/2020-21 dated 18.08.2020 and quash the same and further entire proceedings initiated by the respondent bank including Possession Notice dated 27.11.2020 and impugned Sale Notice RO/LAW/AN/ /2020-21 dated 21.12.2020 issued by the respondent Bank and quash the same.

For Petitioner : Mr.V.Sivakumar

WEB COPY

ORDER
(Made by the Hon'ble Chief Justice)

This is a clear attempt by the writ petitioner to overreach.

2. According to the writ petitioner, a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 was

https://hcservices.ecourts.gov.in/hcservices/

issued at a stage when the account was in order and had not become a non-performing asset. The writ petitioner contends that despite a detailed reply being issued, the respondent-Bank did not take such reply into consideration and proceeded to take steps under Section 13(4) of the said Act.

3. It is elementary that what a secured creditor does upon a receipt of a reply to the notice under Section 13(2) of the Act is not justiciable. Sub-section (3A) was introduced into Section 13 of the Act only to ensure that an opportunity was afforded to a debtor to make a representation and so that such representation would be on the file and, hopefully, be considered by the secured creditor before the secured creditor resorted to taking measures under Section 13(4) of the Act. However, if the secured creditor proceeds to take measures after receiving the representation under Section 13(3A), it is for the debtor, if aggrieved, to take steps under Section 17 of the Act in respect of the measures taken under Section 13(4) thereof.

4. Since there is an efficacious alternative remedy available to the writ petitioner to approach a specified forum, cast with a duty to undertake an adjudication of the kind that the writ petitioner seeks, this extraordinary jurisdiction cannot, ordinarily, be invoked. For the reasons aforesaid, the writ petition is not entertained and the petitioner is left free to pursue the remedies in accordance with law.

W.P.No.2027 of 2021 is dismissed. However, there will be no order as to costs. As a consequence, WMP No.2298 of 2021 is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl
The Authorised Officer
Indian Overseas Bank
Regional Office
Five Road,Salem 636 004.

W.P.No.2027 of 2021

SRII(CO)
RMP(16/02/2021)

सत्यमेव जयते
WEB COPY
https://hcservices.ecourts.gov.in/hcservices/