

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.1408/2021

[Video Conferencing]

Annapoorani Yarns
rep.by its Parther
Mr.R.Jayachandran

.. Petitioner

Versus

M/s.Central Bank of India
rep.by its Authorised Officer
No.2, Court Street
Tirupur 641 601.

.. Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus forbearing the respondent, their men, officers, Agents, servants, representative or any one claiming through or under them or any other person from proceeding any further in terms of Possession Notice dated 05.08.2019 till such time the appeal to be disposed by the Debts Recovery Tribunal at Coimbatore in SA.No.264 of 2020.

For Petitioner	:	Mr.K.Paramaraj
For Respondent	:	Mr.M.L.Ganesh
		Standing counsel

ORDER

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

- (1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2)Mr.M.L.Ganesh, learned Standing counsel accepts notice on behalf of the respondent.
- (3)The writ petitioner is a Partnership Firm and the deponent of the affidavit as well as his wife, are the partners and the said Firm has availed Cash Credit Facility to the tune of Rs.10 Crores from the respondent-Bank and for due repayment of the

loan, hypothecation of the movable and mortgage of the immovable properties were also done. The deponent would further aver that on account of introduction of GST coupled with the vagaries of business and also due to market condition, they started incurring loss.

- (4) The respondent-Bank has invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, [in short 'SARFAESI Act'] and issued a Demand Notice dated 01.06.2019 u/s.13[2] of the SARFAESI Act followed by the Possession Notice dated 05.08.2019 u/s.13[4] of the Act and a Sale Notice was also issued on 24.03.2020 and in the said notice, the schedule mentioned property was included as Item No.3. The petitioner would further state that the said property has been sold for a very low price and making a challenge to the said Sale Notice, SA.No.264 of 2020 has also been filed and the same is pending on the file of the Debts Recovery Tribunal at Coimbatore. The respondent-Bank has also filed an application u/s.14[1] and [2] of the SARFAESI Act, before the Court of the Chief Judicial Magistrate, at Coimbatore in CrI.MP.No.22/2020 and obtained an order on 26.02.2020 for taking physical possession of the assets.
- (5) The learned counsel for the petitioner would submit that in the light of the fact that SA.No.264/2020 has been filed for setting aside the Sale Notice dated 07.07.2020 as well as the auction sale held on 24.03.2020 and the same has been kept pending even without disposal of the prayer for interim relief and that the respondent-Bank is taking emergent steps to get the actual physical possession of the secured assets, prays for appropriate orders.
- (6) *Per contra*, Mr.M.L.Ganesh, learned Standing counsel for the respondent-Bank would submit that the petitioner, on an earlier occasion, filed WP.No.15909/2020 challenging the Possession Notice dated 05.08.2019 and it came to be disposed of on 05.11.2020 with certain directions for expediting the disposal of SA.No.264/2020 and the said material fact has not been disclosed by the petitioner in the affidavit filed in support of the present writ petition and also drawn the attention of this Court to the communication of the respondent-Bank dated 09.10.2020, in and by which, the request of the petitioner for One Time Settlement, also came to be rejected and therefore, prays for dismissal of this writ petition with exemplary cost.
- (7) This Court has considered the rival submissions and also perused the materials placed before it.

(8)A perusal of the affidavit filed in support of this writ petition did not reveal the fact of filing WP.No.15909/2020, challenging the Possession Notice dated 05.08.2019 and that apart, vide final order dated 05.11.2020 made in WP.No.15909/2020, this Court directed expeditious disposal of SA.No.264/2020. It is also to be noted at this juncture that the order dated 26.02.2020 passed by the Court of the Chief Judicial Magistrate at Tiruppur, in CrI.MP.No.22/2020 u/s.14[1] and [2] of the SARFAESI Act, have also not been put to challenge and moreover, the request for One Time Settlement submitted by the petitioner also came to be rejected on 09.10.2020.

(9)In the light of the above facts and circumstances and the reasons assigned above, this Court is of the considered view that there is no merit in this writ petition.

(10)In the result, the writ petition is dismissed. However, if the petitioner is so advised and if it is available to them under law, they are always at liberty to work out their remedies in accordance withlaw before the Competent Forum. No costs.

Sd/-

Assistant Registrar(C.S.II)

/True Copy/

Sub Assistant Registrar

To

1.The Debts Recovery Tribunal
Coimbatore.

2.The Authorised Officer,
M/s.Central Bank of India
No.2, Court Street
Tirupur 641 601.

AKM/12.02.2021/3P-3C/

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