



WEB COPY

Cont.P.No.417 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2021

PRONOUNCED ON : 08.12.2021

CORAM

THE HONOURABLE MR. JUSTICE **P.N.PRAKASH**
AND
THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Cont.P.No.417 of 2021

M/s.Varshini Equipments,
Represented by its Sole Proprietrix
G.Umamaheswari,
No.13/1-C, Echanari Madukarai Road,
Madukarai Post,
Coimbatore - 641 105.

.. Petitioner

Vs.

1.The General Manager, Indian Bank,
Corporate Office,
254-260 Avvai Shanmugam Salai,
Chennai – 600 014.

2.D.Sivasubramanian,
Authorised Officer-cum-Chief Manager,
Indian Bank,
Stressed Assets Management Branch,
No.31, Varsity Hall Road,
Coimbatore – 641 001.

.. Respondents

Contempt Petition filed under Section 15(1)(a) of the Contempt of
Courts Act, 1971, to punish D.Sivasubramanian, the Authorised Officer of



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the 2nd respondent Bank for committing criminal contempt.

For Petitioner : Mr.V.Ramamurthy
for Ms.D.Kamatchi
For Respondents : Mr.Jayesh B Dolia

ORDER

P.N.PRAKASH, J.

This contempt petition has been filed seeking to punish D.Sivasubramanian, the Authorised Officer of the 2nd respondent Bank for allegedly committing criminal contempt.

2. Admittedly, the petitioner had borrowed around a sum of Rs.92.80 lakhs as term loan and Rs.1.35 crores as working capital from the Indian Bank, Ram Nagar Branch, Coimbatore, sometime in the year 2010 and later, in the year 2013, the petitioner's account became a Non-Performing Asset (NPA) and recovery action was initiated by the bank against the petitioner under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity “the SARFAESI Act”).

3. The petitioner approached the Debt Recovery Tribunal-II (for brevity “the DRT-II”), Chennai, in S.A.No.240 of 2019 for certain reliefs against the bank.



4. The DRT-II, Chennai passed an order dated 02.07.2019, the operative portion of which, is the fulcrum of this contempt proceedings and the same reads as under:

“There shall be an interim stay of physical dispossession of the applicant from the application schedule mentioned property for a period of 30 days except by taking recourse to the procedure contemplated under SARFAESI Act and Rules made thereunder subject to the condition that the petitioners shall deposit a sum of Rs.50,000,000/- (Rupees Fifty Lakhs only) as follows:

- (i) Rs.25,00,000/- within one week from the date of this order;*
- (ii) remaining Rs.25,00,000/- within 21 days thereafter;*
- (iii) In default to comply with any one of the above conditions (a) & (b), the interim stay shall stand vacated automatically.*

The petitioners shall take notice to the respondents and file proof of service by next hearing date. Call on 01.08.2019.” *(emphasis supplied)*

5. Subsequently, the said interim order was extended from time to time and on 13.09.2019, the interim order was “extended till further orders” as the bank remained *ex parte*.



6. It is the case of the petitioner that the bank approached the District Collector, Coimbatore, under Section 14 of the SARFAESI Act, for taking possession of the property that was mortgaged by the petitioner, but, did not prosecute the same and withdrew it on 21.01.2020.

7. While that being so, it is the further case of the petitioner that the bank filed a fresh application in CrI.M.P.No.1152 of 2019 under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate (for brevity “the CJM), Coimbatore, without disclosing the filing of a similar petition before the District Collector, Coimbatore and the interim order that was passed by the DRT-II, Chennai, in S.A.No.240 of 2019 on 02.07.2019.

8. The learned CJM, Coimbatore, by order dated 02.01.2020 in CrI.M.P.No.1152 of 2019, appointed an Advocate Commissioner for taking physical possession of the mortgaged property.

9. Alleging that the bank has committed an act of criminal contempt, the petitioner filed a petition for consent under Section 15 of the Contempt of Courts Act, 1971 (for brevity “the CC Act”) before the Advocate General, State of Tamil Nadu and the learned Advocate General, by order dated 04.01.2021, has granted consent.

10. Consequently, this contempt petition was taken on file and statutory notice was issued to the respondents.



11. Sivasubramanian, second respondent, has filed a detailed counter affidavit dated 01.06.2021 refuting the allegations of the petitioner.

12. It is the defence of the bank that the petitioner had failed to comply with the deposit directions that were issued by the DRT-II, Chennai, in S.A.No.240 of 2019. The bank has also stated that they had approached the District Collector, Coimbatore, under Section 14 of the SARFAESI Act by submitting an application on 2.12.2016 and the Collector did not pass any order thereon for about four years; however, after the judgment of the Supreme Court in *The Authorised Officer, Indian Bank Vs. D.Visalakshi and Another*¹, wherein, it has been held that the bank can approach either the District Collector or the jurisdictional CJM, the bank decided to withdraw the petition that was filed before the District Collector, Coimbatore and opted to approach the CJM, Coimbatore.

13. When we asked Mr.V.Ramamurthy, learned counsel for the petitioner, the penal provision, under which, charges could be framed against the respondents, he referred to Section 2 (c) (iii) of the CC Act and submitted that the act of the bank in not disclosing the interim order of the DRT-II, Chennai, before the CJM, Coimbatore, would amount to interfering



with the administration of justice in any other manner.

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14. In support of his contention, Mr.V.Ramamurthy, learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in *Chandra Shashi vs. Anil Kumar Verma*² and contended that suppression would amount to criminal contempt.

15. In response to the above submission, Mr.Jayesh B Dolia, learned counsel for the respondents submitted that the petitioner had filed civil contempt proceedings in Cont.P.No.572 of 2020, in which, he had raised the same point, but, a Division Bench of this Court, by order dated 15.10.2020, transferred the contempt petition to the DRT-II, Chennai, to be dealt with in accordance with the provisions of the SARFAESI Act.

16. The learned counsel for the respondents brought to the notice of this Court a subsequent development in this case viz., the proceedings in W.P.Nos.35854 of 2019 and 8291 of 2020.

17. Those two writ petitions were filed by the petitioner herein to quash the certificate of sale bearing Doc.No.4749/2019 dated 08.07.2019 on the file of the Sub-Registrar, Madukarai and also to quash the warrant dated 02.01.2020 issued by the CJM, Coimbatore, in CrI.M.P.No.1152 of 2019 that was filed by the bank under Section 14 of the SARFAESI Act.



18. A Division Bench of this Court by order dated 25.01.2021, has dismissed both the writ petitions and returned the following finding in paragraph no.12:

“12. A perusal of the interim order dated 02.07.2019 in I.A.No.715/2019, would read among other things that the conditional order of interim stay was granted for a period of 30 days subject to deposit of Rs.50,00,000/- except by taking recourse to the procedure contemplated under SARFAESI Act and Rules. In the light of the same, there is no blanket interim order and an exception has been carved out by granting liberty to the Bank to proceed under the provisions of the SARFAESI Act and accordingly, they have invoked Section 14(1) and 14 (2) of the SARFAESI Act by filing Crl.M.P.No.1152 of 2019, on the file of the Chief Judicial Magistrate, Coimbatore and it was also ordered on 02.01.2020 and it is not yet challenged.”

.... (emphasis supplied)

19. From the beginning, we were pointing out to Mr.Ramamurthy, learned counsel for the petitioner that the wordings in the order dated 02.07.2019 that was passed by the DRT-II, Chennai, in S.A.No.240 of 2019, which we have extracted above in paragraph no.4, and explained to him that the said interim order, in no uncertain terms, states that the bank can take recourse to the procedure contemplated under the SARFAESI Act and the



Rules made thereunder.

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20. To this, the learned counsel for the petitioner submitted that the bank had not understood the order in that manner as could be seen from the counter affidavit filed by them and therefore, when they have understood the said order as an order of interim stay, they approaching the District Collector and the CJM under Section 14 of the SARFAESI Act, would clearly attract criminal contempt.

21. We gave our anxious consideration to the aforesaid submission.

22. The order dated 02.07.2019 passed by the DRT-II, Chennai, in S.A.No.240 of 2019 clearly states that there will not be physical dispossession of the petitioner for a period of 30 days, except by taking recourse to the procedure contemplated under the SARFAESI Act and the Rules made thereunder. The interpretation of this order by a coordinate Division Bench in W.P.Nos.35854 of 2019 and 8291 of 2020 dated 25.01.2021 has been extracted above in paragraph no.18 and we are bound by that.

23. The bank has not attempted to dispossess the petitioner by adopting illegal methods. They had approached the District Collector, Coimbatore and the CJM, Coimbatore, under the Section 14 of the



SARFAESI Act, which has been permitted by the order dated 02.07.2019 of the DRT-II, Chennai.

24. According to the bank, the proceedings before the District Collector, Coimbatore, was withdrawn on 20.11.2019 and only thereafter, the bank had approached the CJM, Coimbatore, but, information obtained by the petitioner under the Right to Information Act, 2005, shows that the petition was withdrawn only on 20.01.2020.

25. Be that as it may, the filing of a petition before the CJM, Coimbatore, during the pendency of a similar petition before the District Collector, Coimbatore, under Section 14 of the SARFAESI Act by the bank, can, at the most amount to an irregularity and would not amount to criminal contempt.

26. The principles governing benefit of doubt are also available to an alleged contemnor in a criminal contempt proceedings. Therefore, the benefit of doubt arising from the interpretation of the order dated 02.07.2019 of the DRT-II, Chennai, permitting the bank to take recourse to the procedure contemplated under the SARFAESI Act and the Rules made thereunder de hors the conditional order of interim stay of physical dispossession, would enure to the respondent.



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In the result, this contempt petition fails and is accordingly dismissed.

As a sequitur, the respondents are discharged from this contempt proceedings.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

nsd

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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Gs/16/02/2022