



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

C.R.P.No.947 of 2020

1. M/s. Periyannayagi Seed Processing Unit
Main Road, Gunamangalam Village
Srimushnam Taluk
Cuddalore District 608 703.

2. A.Ramesh

3. T.Gunaseelan

4. B.Baskaran

5. R.Velayutham

.. Petitioners

Vs.

1. The Authorised Officer - Branch Manager
Indian Bank, Annamalainagar Branch
K.R.M. Building, Annamalai Nagar
Chidambaram, Cuddalore District.

2. Sivakumar

3. L.Kolanthinathan

4. The Chairman & Managing Director
Indian Bank
Head Office 254-260, Avvai Shanmugam Salai
Royapettai, Chennai 600 014.

.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 29.01.2020 passed in S.A.SR No.7227 of 2019 on the file of the Debts Recovery Tribunal I, Chennai.

For Petitioner : Mr.T.Sundaranathan

For Respondents: Mr.P.M.Surendhar
for respondent-1

R2 to R4 : No Appearance

ORDER

(Made by the Hon'ble Chief Justice)

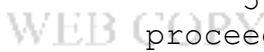
The matter arises out of the rather strange and hyper-



2. As to whether a particular matter can be carried to the Tribunal or not or whether it pertains to the jurisdiction of the Tribunal, has to be decided by the Presiding Officer of the Tribunal and not by Registrars or other officials working in the office. In this case, however, it is the Presiding Officer of the Debts Recovery Tribunal I, Chennai who has passed the impugned order on January 29, 2020 that reads as follows:

Matter called again. The application since contained the prayer to set aside the demand notice u/s 13(2) of SARFAESI Act as well as the measure under section 13(4) of the SARFAESI Act, the Registry has taken objection on maintainability of the SAs, as against the demand notice. Heard the Ld. Counsel for the applicant. It is needless to say that an application under section 17(1) of the SARFAESI Act, lies only against the measure if any initiated under section 13(4) of the SARFAESI Act. Notice u/s 13 (2) of the Act is not a measure. Thus, no application against the demand notice would lie in terms of section 17(1) of the Act. Therefore, the Registry's objection in so far as the maintainability of the application as against the demand notice is proper. Hence sustained."

4. It is possible, in a particular case, that the Reserve Bank of India guidelines for declaring a particular account as a non-performing asset may not have been adhered to by the secured creditor. At least, a theoretical possibility in such regard has always to be accepted. Even in such a scenario, when the borrower is in receipt of a notice under Section 13(2) of the Act, when it clearly appears that the secured creditor may have jumped the gun as the account may not have turned NPA as per the



5. If the secured creditor disregards the objection and proceeds to take a measure under Section 13(4) of the Act, Section 17 of the Act is triggered off and the borrower may approach the jurisdictional Debts Recovery Tribunal in such regard. However, it is open to the borrower at such stage to indicate to the Debts Recovery Tribunal that the notice under Section 13(2) of the Act may not have been in order since the relevant account had not turned non-performing in accordance with the tenor of the RBI guidelines. Even if the objection taken in such regard after receipt of the notice under Section 13(2) of the Act is disregarded by the secured creditor, the borrower is entitled to take the point at the time that the borrower is entitled to approach the Debts Recovery Tribunal under Section 17 of the Act.

7. Thus, the objection or the challenge on such ground has to be addressed on merits and not merely because a notice under Section 13(2) may not be immediately justiciable. The words in Section 17 of the Act are "Any person aggrieved". To boot, a person aggrieved, within the meaning of the relevant expression in Section 17 of the Act may be anyone at all, including a borrower, as the words in parentheses used in such provision indicate.

9. The matter may be understood with the help of an example. In a hypothetical case, where the NPA guidelines issued by the RBI exempts a class of borrowers, a secured creditor may issue a notice under Section 13(2) of the Act by failing to notice the exemption. Whether or not an objection to the notice



under Section 13(2) of the Act is taken, once there is an exemption, it is a valuable right that the borrower enjoys.

10. In such a scenario, when the secured creditor purports to adopt a measure under Section 13(4) of the Act, it is open to the borrower to complain to the jurisdictional DRT that the account could not have been treated as an NPA and no measure under Section 13(4) of the Act could have followed. In such sense, the borrower challenges the notice under Section 13(2) of the Act and questions the very authority of the secured creditor to resort to any consequential measure under the said Act. Thus, the merit of the objection must be seen and the letter of the statute - to the effect that it permits a measure under Section 13(4) to be challenged and not a notice under Section 13(2) of the Act to be questioned - is of no relevance.

11. A case in point would be the order dated March 3, 2021 passed in W.P.No.33133 of 2019 (S.P.Ganesan v. The Authorised Officer, Repco Bank) where Repco Bank issued a notice under Section 13(2) of the Act and then proceeded to take measures under Section 13(4) thereof. It was permissible for the noticee to invoke Section 17 of the Act and complain that no notice could have been issued by Repco Bank under Section 13(2) of the Act since Repco Bank did not satisfy any condition to be regarded as a secured creditor within the meaning of the relevant definition pertaining to "secured creditor" in the Act of 2002. The noticee in such case need not go as far as challenging the measure under Section 13(4) of the Act, because the concerned creditor would not be entitled to invoke the provisions of the Act itself.

12. For the reasons aforesaid, the order impugned dated January 29, 2020 is set aside and the matter remanded before the relevant Tribunal for it to consider the same in accordance with law. The Debts Recovery Tribunal I, Chennai will immediately allot a number to the petitioner's securitisation application before it and decide the matter on merits.

13. In the event the Debts Recovery Tribunal finds that the challenge to the notice under Section 13(2) is baseless, the petitioner will be liable to pay costs assessed at Rs.50,000/- in addition to whatever other liabilities of the petitioner may be ascertained.

C.R.P.No.947 of 2020 is disposed of. CMP Nos.5082 and 5084 of 2020 are closed. There will be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

kpl



To:

1.The Authorised Officer - Branch Manager
Indian Bank, Annamalainagar Branch
K.R.M. Building, Annamalai Nagar
Chidambaram, Cuddalore District.

2.The Debts Recovery Tribunal I,
Chennai.

+2cc to Mr.T.Sundaranathan, Advocate, S.R.No. 37580

C.R.P.No.947 of 2020.

PVS (CO)
GN(09/08/2021)