IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15907 of 2020

The Star Cars Private Limited
No.90, Kamaraj Salai
Thattanchavady
Puducherry 605 009
rep. by its Managing Director
Wahitha Shajahan ... Petitioner

Vs.

The UCO Bank
The Assistant General Manager and Branch head
Pondicherry Main Branch
7, Rue Made De Labourdannais
Pondicherry 605 001. ... Respondent

Prayer: Petition under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records on the file of the respondent in notices under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dated 17.10.2020 and 19.10.2020 and quash the same which have been issued in relation to respondent's notices in REF:MISC:2019-20/REC/ dated 08.11.2019 and consequent notice in UCO/PONDY/2019-20/SARFAESI/ dated 09.12.2019.

For Petitioner	:	Mr.AR.L.Sundaresan, S.C. For Mr.M.R.Ramasubramaniam Raja
For Respondent	:	Mr.T.Ravichandran For M/s. Shree Law Services

ORDER

(Made by the Hon'ble Chief Justice)

The writ petition was entertained, possibly on an impression given to this Court that the writ petitioner's reply to the notice issued by the secured creditor under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 may not have been considered.

2. Indeed, it appears on a reading of the order dated October 01, 2020 passed on a previous petition of the same petitioner, W.P.No.5688 of 2020, that till the time such order was pronounced, the respondent secured creditor had not replied to the objections raised under Section 13(3A) of the Act by the borrower following the receipt of the secured creditor's notice under Section 13(2) of the Act.

3. However, it is evident from the papers relied upon by the petitioner that the notice under Section 13(2) of the Act was issued by the secured creditor on December 09, 2019 and the petitioner responded to such notice by its letter of February 07, 2020. The petitioner's letter of February 07, 2020 was acknowledged by the secured creditor's letter of February 20, 2020, wherein the secured creditor indicated, inter alia, that the relevant account had been declared an NPA by the Central Statutory Auditors of the secured creditor as on September 30, 2019. The Auditors made the observation apparently on November 05, 2019.

4. Ordinarily, when there is a statutory remedy provided for a particular course of action, the Writ Court is slow to receive a grievance without the statutory remedy being exhausted. Though there are notable exceptions, particularly when the proceedings are said to be without jurisdiction or in gross breach of the principles of natural justice or patently absurd, but this is not a case which meets such high test. The simple grievance of the petitioner is that before even the time afforded to the borrower to make the payment had run out, a notice under Section 13(2) of the Act was issued by the secured creditor threatening to take measures under Section 13(4) of the Act.

5. It is well established now that the obligation of the secured creditor is merely to consider the borrower's response to a notice issued under Section 13(2) of the Act and the creditor's dealing with such response or the borrower's objection is not immediately justiciable. The borrower has to wait for the secured creditor to take measures under Section 13

(4) of the Act, whereupon the borrower's right to challenge the bank's action is triggered off, so to say, and the borrower is entitled to approach the Debts Recovery Tribunal exercising jurisdiction.

6. Since the grievance here involves voluminous documents and protracted accounts pertaining to a sizable sum of money and such matters cannot be conveniently addressed on affidavit evidence in summary proceedings, the writ petition cannot be carried forward.

7. Accordingly, W.P.No.15907 of 2020 is disposed of by permitting the petitioner to carry the grievances to the appropriate Debts Recovery Tribunal in accordance with law. It will be open to the petitioner to cite the pendency of the proceedings in this Court while seeking to explain the presumed delay in approaching the Tribunal. It is made clear that the merits of the disputes have not been gone into.

8. The subsisting interim order will continue for a period of a fortnight from date, whereupon it will dissolve without any further act or deed.

9. There will be no order as to costs. As a consequence, WMP No.19772 of 2020 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl

+1cc to Mr.Ramasubramaniam, Advocate SR.18814

PM(CO)
CB(31/03/2021)