



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2021

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

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

W.P.No.24862 of 2021 & WMP.No.26164 of 2021

M/s.Edge Qube Trading Private
Limited, rep.by its Director
Mrs.Shilpa Darshan Kumar

...Petitioner

Vs

The Authorized Officer, Religere
Finvest Limited, Bascon IT Park,
12th Floor, New No.10/2, Old No.56L,
Venkat Narayana Road, T.Nagar,
Chennai-17.

...Respondent

Prayer: Petition filed under Article 226 of The Constitution of India for a Writ of Declaration to declare that the claim of the respondent NFBC is barred by limitation vide application of Article 137 of the Limitation Act prescribing a period of three years for any Special Act read with Section 36 of the SARFAESI Act and that the respondent NFBC cannot issue a Section 13(4) possession notice over a property already in their possession and there is no dichotomy in either symbolic/physical possession.

For the Petitioner : Mr.R.Gurumurthy

ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

The writ petition has been filed to challenge the notice under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is in reference to Article 137 of the Limitation Act.



2. According to the petitioner, the notice under Section 13 (4) is hit by the provisions of Article 137 of the Limitation Act and deserves to be quashed. It is mainly on the ground that the provisions of the Limitation Act would apply for notice under Section 13(4) of the Act of 2002, being a Special Act. In view of the above, the petitioner was not required to invoke Section 17 of the Act of 2002 and the writ petition is maintainable. The period of limitation has been taken from the date the petitioner was declared to be a non performing asset.

3. We have considered the submissions made by the learned counsel for the petitioner and perused the records.

4. It is settled law that the remedy against the notice under Section 13(4) of the Act of 2002 is available under Section 17 of the said Act. An appeal can be maintained to challenge the notice under Section 13(4) on all the available grounds taken by the petitioner. We do not find any exceptional ground so as to entertain this writ petition despite availability of a statutory remedy. It is more so when the Apex Court in the judgments in United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 and State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85 has categorically observed that Sarfaesi Act is a complete code in itself and when the remedy under Section 17 of the Act is available before the Tribunal, considering the statutory scheme, the object and purpose of the legislation, a writ petition challenging the notice under Section 13(4) of the Act ought not to be entertained.

5. In view of the above, we are not inclined to entertain this writ petition. Rather, it is dismissed, however, with liberty to the petitioner to file an appeal under Section 17 of the Act before the concerned Debts Recovery Tribunal, if the petitioner so wishes. The dismissal of this writ petition would not come in the way of the petitioner for it. Consequently, the connected WMP is also dismissed.

There will be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar



RS

To:

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The Authorized Officer,
Religere Finvest Limited,
Bascon IT Park,
12th Floor, New No.10/2, Old No.56L,
Venkat Narayana Road, T.Nagar,
Chennai-17.

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NSK 02/12/2021