IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 06.01.2021
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN
WP.No.20457/2020 & WMP.No.25231/2020

[Video Conferencing]

M/s.Meliora Asset Reconstruction
Company Limited, rep.by its
Authorised Signatory
K.Srinivasan
106, Bharat Towers
5th Lane, Dwaraka Nagar
Vishakhapatinam-530 016. .. Petitioner

Versus

1.The District Magistrate
Krishnagiri District.

2.M/s.Leadage Metals Ltd.,
having its Registered Office at
No.715, 10th Main Road, 4th Block
Jayanagar, Bangalore-560 041.
and Administrative Office at
No.86, Chudagindally Village
Lakkur Hobli, Malur Taluk
Kolar District.
3.Mr.T.Raj Kumar
4.Mr.T.Arun Kumar
5.Mr.S.Madhusudan
6.Smt.A.B.Devi
7.M.Sampath
8.Nagaveni .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st respondent to pass orders on the petition filed by the petitioner under Section 14 of the Securitisation Act, 2002, within a time limit to be fixed by this Court.

For Petitioner : Mr.Jayesh B.Dolia for
M/s.Aiyar and Dolia
For R1 : Mr.R.VIjayakumar
Additional Government Pleader

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.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the 1st respondent.

(3) The affidavit filed in support of the present writ petition would disclose among other things that the 2nd respondent-Company had availed Cash Credit Facility for a sum of Rs.5 Crores from Andhra Bank, Koramangala Branch, Bangalore for business purposes and that apart, respondents 4 to 6 had also guaranteed payment of the Credit Facility by executing Agreement of Guarantee and respondents 6 and 7 had also mortgaged their immovable properties comprised in RS.NO.110/1A, 1B, 1E & 2, 111/6B, 117/1, 87/2 and 112/1 as security for due repayment of the loan availed by the 2nd respondent-Company by creating equitable mortgage. In lieu of the defaults committed by the 2nd respondent-Company, the assets of the Company were classified as Non Performing Assets on 29.02.2016 and the Andhra Bank had issued Demand Notice dated 01.03.2016 under Section1 3[2] of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short ''SARFAESI Act''] to respondents 2 to 8 calling upon them to pay a sum of Rs.5,07,01,044.56p. due as on 29.01.2016 with further interest and the persons who received the notice, did not respond to the same and it was followed by a Possession Notice under Section 13[4] of the SARFAESI Act dated 10.06.2016 and the paper publication of the Possession Notice was also effected in the News Daily on 12.06.2016. Subsequently, on 30.06.2017, the debts relating to respondents 2 to 8 were assigned in favour of the petitioner and an Assignment Agreement came into being on 30.06.2017. The petitioner - Asset Reconstruction Company, in order to take physical possession of the secured assets, filed an application under Section 14 of the SARFAESI Act, before the 1st respondent during February 2018 and it was entertained and vide notice dated 03.09.2019, the 1st respondent had fixed the date of enquiry on 09.09.2019. The petitioner-Company, on account of tardy progress, has also submitted a representation dated 20.02.2020 to the 1st respondent to expedite the enquiry and despite receipt and acknowledgment, nothing is moving forward and hence, the petitioner-Company came forward to file the present writ petition.

(4) Mr.Jayesh B.Dolia, learned counsel for the petitioner would submit that in the light of the compliance of the relevant provisions of the SARFAESI Act, there cannot be any impediment on the part of the 1st respondent to dispose of the application

dated February 2018, filed u/s.14 of the SARFAESI Act, in accordance with law at an early date and prays for appropriate orders.

(5) Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the 1st respondent would submit that the said application would be given disposal as expeditiously as possible.

(6) This Court has considered the rival submissions and also perused the materials placed before it.

(7) ItIt is relevant to extract the Circular of the Commissionerate of Revenue Administration and Disaster Management dated 01.03.2019:-

Commissionerate of
Revenue Administration
and Disaster
Management, Chepauk,
Chennai 600 005.

CIRCULAR

PRESENT: Dr. KORLAPATI SATYAGOPAI, I.A.S.,
Additional Chief Secretary/
Commissioner of Revenue Administration

Rc.No.RA.6(3)/6075/2019
Dated:01.03.2019

Sub:Writ Petition;W.P.No.29670 of 2017 filed by Vijaya Bank, Coimbatore ; to ensure ; strict compliance ; under ; Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002 ;
Instructions issued; Reg.

Ref: 1. Writ Petition W.P.No.29670 of 2017 filed by Vijaya Bank, Coimbatore.
2. Additional Chief Secretary to Government,
Finance Department D.O.Letter N0 .6888A/ Res.II/2019;1, dated 13.02.2019.

The Government in Finance Department, Secretariat Chennai; 600 009 in their D.O. letter 2nd cited it has informed that the Additional Government Pleader, High Court of Madras has stated that in the Writ Mandamus filed by Vijaya Bank, Coimbatore in W . P.No.29670/2017, the Division Bench of Madras High Court has directed State Government to issue suitable instructions to the District Collectors with regard to compliance regarding the time limit enumerated under Section 14 of the SARFAESI Act 2002 and requested this

Commissionerate to issue necessary instructions to all the District Collectors so as to adhere the provisions of the SARFAESI Act 2002.

2) Section;14 of the SARFAESI Act: Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset, states that

(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him;

(a) take possession of such asset and documents relating thereto; and

(b)forward such asset and documents to the secured creditor:

(2) For the purpose of securing compliance with provisions of sub section (1) the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used, such force, as may, in his opinion, be necessary

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority

3) In the amendment issued in Sub-section (1) for Section 14 of the SARFAESI Act, 2002, the following provisions have been inserted, namely

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that;

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security

interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in subclause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non;performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub;section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non;acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub;section (4) of section 13 rad with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

4) After sub;section (1) of Section 14 of the SARFAESI Act, 2002 the following sub;section has been inserted namely

(1;A) The District Magistrate or the Chief Metropolitan Magistrate may authorize any officer subordinate to him,;

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor (ie) the Banker

5) In the amendment issued in sub;section (1) of the Section 14 of the Principal Act,

(i) In the second proviso, after the words ?secured assets?, the words ? within a period of thirty days from the date of application? have been inserted (ii) after the second proviso, the following proviso has been inserted namely:;

Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his/her control, he/she should be recorded reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days?

6) The District Collectors are hereby directed to follow the above said instructions scrupulously and orders should be passed within the stipulated time limit. Any delay noticed in this regard will be viewed very seriously.

7) The District Collectors are also instructed a periodical report should be sent to this Commissionerate before 5th of every month on the following format.

District Name	Total No.of pending cases as on date	No.of cases order passed during the month	No of cases pending		
			More than 1 month	More than 2 months	More than 3 months

8) The receipt of the circular may be acknowledged by return post.

Sd/- K.SATYAGOPAL
Additional Chief Secretary/Commissioner of Revenue Administration.''

(8) This Court, taking into consideration, the limited scope of prayer sought for by the petitioner and without going into the merits of the same, directs the 1st respondent to consider and dispose of the application dated February 2018, filed under Section 14 of the SARFAESI Act, by the petitioner-Company, on merits and in accordance with law, as expeditiously as possible and not later than six weeks from the date of receipt of a copy of this order / uploading of the order in the website and communicate the decision taken, to the petitioner.

(9) The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1.The District Magistrate
Krishnagiri District.

WP.No.20457/2020

aa27/01/2021