IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2021

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.NO.25956 OF 2021
AND
W.M.P.NO.27420 OF 2021

A.P.Gopi Krishna

..Petitioner

Vs.

1. M/s. Shriram Transport Finance Company Limited
Rep. by its Managing Director
Sri Towers, Plot No.14A, South Phase
Industrial Estate, Guindy
Chennai
Tamil Nadu 600 032.

2. The Authorised Officer
M/s. Shriram Transport Finance Company Limited
Rep. by its Managing Director
Sri Towers, Plot No.14A, South Phase
Industrial Estate, Guindy
Chennai
Tamil Nadu 600 032.

3. The Reserve Bank of India
Rep. by its Regional Director
Fort Glacis
Chennai 600 009.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records pertaining to the demand notice dated 03.05.2021 issued purportedly under Section 13(2) of the SARFAESI Act and the consequent possession notice dated 19.10.2021 under Section 13 (4) of the SARFAESI Act issued by the second respondent and quash the same.

For the Petitioner : B.Mohan

ORDER

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

In this writ petition, a challenge is made to the notice under Section 13(2) of the SARFAESI Act, 2002. It is mainly on the ground that notice under Section 13(2) was issued on 03.05.2021 making the account to be non-performing asset with effect from 01.03.2021.

2. According to the petitioner, the aforesaid notice was in violation of the order passed by the Apex Court in the case of Gajendra Sharma v. Union of India [W.P.(Civil) No.825 of 2020 dated 03.09.2020], wherein, the Apex Court directed that the accounts not declared NPA till 31.08.2020 shall not be declared NPA till further orders. The aforesaid direction was subsequently vacated on 23.03.2021 and therefore, the notice under Section 13(2) of the Act dated 03.05.2021 declaring the petitioner's account to be NPA from 01.03.2021 is hit by the direction of the Apex Court.

3. Learned counsel for the petitioner submits that the petitioner was not required to submit a reply to the notice under Section 13(2) and to file an appeal to the notice under Section 13(4) of the Act of 2002, as the notice under Section 13 (2) of the Act deserves to be set aside, in the light of the order passed by the Apex Court and accordingly, the consequential order for taking possession of the property of the petitioner by issuing notice under Section 13(4) would also be set aside.

4. We have considered the submissions of learned counsel for the petitioner.

5. The facts on record shows that the notice under Section 13(2) of the Act of 2002 was issued on 03.05.2021, subsequent to the expiry of the interim order dated 03.09.2020 as it was vacated on 23.03.2021. The issue for consideration is as to whether an account could have been declared NPA with effect from 01.03.2021. We do not find any illegality in declaring an account as NPA for the reason that an action to declare an account as NPA was restrained till 23.03.2021 and not subsequent to it. In this case, notice was issued on 03.05.2021, which was

not during the life time of interim order. Furthermore, if at all the petitioner had an objection to the notice under Section 13(2), which provides an opportunity to send his objections to the notice, the petitioner ought to have sent his objections. However, the petitioner had not sent any reply or objection to the notice.

6. In view of the above, the second respondent proceeded to issue notice under Section 13(4), after the expiry of the period provided thereunder for sending a reply. Though the petitioner has stated that there is no necessity for him to send a reply to the notice under Section 13(2) in the light of the order passed by the Apex Court, we do not agree with the aforesaid proposition for the reasons that the impugned notice has been issued subsequent to the expiry of the order passed by the Apex Court.

7. In the light of the aforesaid, the bank was within its competence to issue notice under Section 13(4) of the Act of 2002. The challenge to the said notice has been made by way of this writ petition though a remedy by way of an appeal lies under Section 17 of the Act of 2002. The argument that when the notice under Section 13(2) has been challenged and if set aside, the notice under Section 13(4) of the Act of 2002 would go consequently would not apply to the facts of the case, as we are not inclined to set aside the notice under Section 13(2) of the Act of 2002. Thus, the question of setting aside the subsequent notice as a consequence thereof does not arise.

8. The writ petition, accordingly, fails and the same is dismissed. However, the petitioner would be at liberty to take remedy as per the provisions of law. The dismissal of the writ petition would not come in the way for it. Consequently, WMP No.27420 of 2021 is also dismissed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

kpl

To:

1. The Authorised Officer
M/s. Shriram Transport Finance Company Limited
Rep. by its Managing Director

Sri Towers, Plot No.14A, South Phase
Industrial Estate, Guindy
Chennai
Tamil Nadu 600 032.

2. The Regional Director
Reserve Bank of India
Fort Glacis
Chennai 600 009.

+1cc to Mr.B.Mohan, Advocate, S.R.No.65181

W.P.No.25956 of 2021

PL(CO)
RLP(14/12/2021)