



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS. JUSTICE S.ANANTHI

W.P. (MD)No.7178 of 2021

and WMP (MD) No.5474 of 2021

(Through Video Conferencing)

Prabhu Spinning Mills (P) Limited
represented by its Authorized Representative
G.Ayyappan : Petitioner

Vs.

1.The District Collector/
The District Magistrate
Tirunelveli.

2.The Deputy General Manager/Chief Manager,
South Indian Bank,
Madurai Regional Office,
1st Floor, YMCA Buildings,
Opposite to Astoria Hotels
70 Feet Road, Ellis Nagar
Madurai

3.The Branch Manager,
South Indian Bank
Tirunelveli Junction Branch
Tirunelveli

4.M/s.Jayaram Textiles
Represented by its Proprietor
C.Kumarasamy @ Jayaraman : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 1st respondent in K.dis.D4/17778/2019 dated 26.10.2020 and the impugned order of the 3rd respondent in REF No.MDU/RO/DNT/242/2020-21 dated 09.03.21 and quash the same insofar as the goods owned by the petitioner is concerned and consequently direct the 3rd respondent bank to release the goods owned by the petitioner, available within the premises of the 4th respondent factory, after verifying all the documents within a time stipulated by this Court.



For Petitioner : Mr.H.Arumugam
For Respondents : Mr.N.Shanmugaselvam for R1
Additional Government Pleader.

Mr.R.Pandiveli for R2 & R3

WEB COPY

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner, who is claiming to be a Contractor doing job work with the borrower, has come forward to file this writ petition challenging the order passed under Section 14 of the SARFAESI Act along with a consequential order of the respondent No.3, by which, the request of the petitioner to take back the goods available in the premises taken possession of was rejected on the ground that they are mortgaged with the bank.

2.The learned counsel for the petitioner submitted that the petitioner cannot invoke the jurisdiction of the Tribunal. The materials available would indicate that the goods inside the premises taken possession of belong to the petitioner.

3. The learned counsel for the respondents 2 and 3 submitted that the remedy open to the petitioner is to approach the jurisdictional Tribunal.

4. The goods are hypothecated with the respondents 2 and 3. The borrower, namely, the respondent No.4 already approached this Court challenging Section 14 notification, which was dismissed. Thereafter, they again approached the Tribunal and the matter is to be taken up for hearing tomorrow - 31.03.2021.

5. Section 17 of the SARFAESI Act deals with the application against measures to be taken for the secured debts. It starts with the word, "any person aggrieved". Therefore, if the petitioner has got any remedy, he can only approach the jurisdictional Tribunal. We only reiterate though Sections 17 (1) and (3) are couched in wider language by stating 'aggrieved persons', the application itself can be filed against any measures by the secured creditor. Further more, in the case on hand, the petitioner does not want repossession, but only his materials stated to be inside the premises. The borrower has also filed an application challenging the order passed under Section 14 of the Act. Above all, the order passed by the respondent No.3 not being amenable to Article 14, the petitioner cannot invoke Article 226. If it is a writ petition challenging the order passed under Section 14, even then, the writ petition is not maintainable. Thus, looking from any perspective,



we are not inclined to entertain this writ petition.

6. Accordingly, the writ petition is dismissed. However, liberty is given to the petitioner to approach the jurisdictional Tribunal within four weeks from the date of receipt of a copy of this order or to implead in the pending proceedings. No costs. Consequently connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector/
The District Magistrate
Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-14871[F] dated 31/03/2021)

Order made in
W.P. (MD)No.7178 of 2021
Dated: 30.03.2021

GS(21.04.2021) 3P 3C