BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.06.2021
CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI
CRP[MD]Nos.878, 879 & 880 of 2021
and
CMP[MD]Nos.4820, 4823 & 4825 of 2021

T.Jansirani ... Petitioner/Petitioner/Appellant in CRP(MD)No.878 of 2021

A.Philomine Packiyajothi ... Petitioner/Petitioner/Appellant in CRP(MD)No.879 of 2021

P.Kannimuthukumaran ... Petitioner/Petitioner/Appellant in CRP(MD)No.880 of 2021

Vs.

1.The Authorized Officer,
Tamilnadu Mercantile Bank Ltd.,
Muhavoor Branch,
29-C/4, Kasi Raja Main Road,
Muhavoor - 626 111,
Virudhunagar District.

2.The Branch Manager,
Tamilnadu Mercantile Bank Ltd.,
Muhavoor Branch,
29-C/4, Kasi Raja Main Road,
Muhavoor - 626 111,
Virudhunagar District.

3.The District Collector,
Collectorate Campus,
Virudhunagar.

4.The Tahsildar,
Rajapalayam Taluk,
Virudhunagar District. ... Respondents 1 to 4 /Respondents/ Respondents in all CRPs

5.A.Philomine Packiyajothi

6.P.Kannimuthukumaran
... Respondents 5 & 6/Respondents/Petitioners 1 & 3 in CRP(MD)No.878 of 2021

5.T.Jansirani

6.P.Kannimuthukumaran
... Respondents 5 & 6/Petitioner/Appellant 2 & 3 in CRP(MD)No.879 of 2021

5.A.Philomine Packiyajothi

6.T.Jansirani
... Respondents 5 & 6/Respondent/Petitioner 1 & 2 in CRP(MD)No.880 of 2021

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the order, dated 29.01.2021 passed by the Presiding Officer, Debt Recovery Tribunal, Madurai in IA.No.10 of 2021 in SA.No.2 of 2021.

in all CRPs

For Petitioner : Mrs.R.Hemalatha

For Respondents : Mr.N.Dilip Kumar for R1 & R2

Mr.R.Baskaran
Standing Counsel for Government
for R3 & R4

C O M M O N O R D E R

[Order of the Court was made by T.S.SIVAGNANAM, J.]

These Revision Petitions have been filed under Article 227 of the Constitution of India, challenging the order passed by the Debt Recovery Tribunal, Madurai (herein after called as 'Tribunal') in I.A.No.10 of 2021 in S.A.No.2 of 2021, dated 29.01.2021. By the impugned order, the Tribunal dismissed the stay petition filed by the petitioners in the appeal filed challenging the order passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as “the SARFAESI Act”).

2. We have elaborately heard Mrs.R.Hemalatha, learned counsel appearing for the petitioners, Mr. R.Baskaran, learned Standing counsel for the respondents 3 and 4 and Mr.N.Dilip Kumar, learned Standing Counsel appearing for the respondents 1 and 2/bank.

3. The learned counsel for the petitioners would submit that the order passed by the Tribunal is erroneous, as the Tribunal had failed to take into consideration that the order of the District Collector under Section 14 of the SARFAESI Act, is a non-speaking

order and liable to be interfered with. Therefore, it is submitted that the Tribunal should have taken note of the fact that the petitioners have made out a *prima facie* case for grant of stay. In support of her contention, the learned counsel appearing for the petitioners placed reliance on the Judgment of the Honourable Division Bench in the case of ***K.K.Dhanraj vs. The District Magistrate and District Collector and others*** reported in ***2018 SCC On-Line Madras 13527(DB).*** This decision is relied on to support her contention that the order passed by the District Collector under Section 14 of the SARFAESI Act should be a speaking order and should reflect satisfaction of the District Collector for ordering taking over of possession of the secured asset. Further, it is submitted that though repeatedly, the petitioners had submitted applications for One Time Settlement and the latest being on 19.03.2021, the respondent/Bank has not considered the same in accordance with the guidelines issued by the Reserve Bank of India.

4. On the contrary, they have stated that the One Time Settlement offer is not in accordance with the guidelines of the respondent/Bank, which guidelines has not been available in the Public Domain. Further, it is submitted that two of the guarantors are Government Servants and the respondent/Bank has issued notice threatening to attach their salary. Therefore, it is submitted that the order impugned is liable to be set aside.

5. Mr.N.Dilip Kumar, learned counsel appearing for the respondent/Bank submitted that the Tribunal had taken note of the entire facts and circumstances of the case and that the loan account became a Non-Performing Asset (NPA) as early as in the year 2016 and thereafter, action was not initiated under the provisions of the SARFAESI Act and the petitioners did not take any steps to question the measures taken by the respondent/Bank under the provisions of the SARFAESI Act, they did not approach the Tribunal at an earlier point of time. Further, the respondent/Bank has issued five sale notices and they are not able to make any headway and therefore, the Tribunal rightly took note of all the facts and held that the petitioners have not come to the Tribunal with clean hands. The learned counsel placed reliance on the recent decision of the Honourable First Bench in the case of ***Karvy Financial Services Limited Vs. The District Magistrate and District Collector, Chennai and others*** reported in ***2021 3 CTC 383***, wherein, it has been held that the Authority exercising power under Section 14 of the SARFAESI Act, once notices the relevant declarations, which have been furnished, such Authority has to accept the same at the face value and not question the same or seek to adjudicate thereupon. This finding has been rendered on the premise that the order passed under Section 14 of the Act is not an order, which requires adjudication. Therefore, it is submitted that the order passed by the Tribunal does not call for interference.

6. After elaborately hearing the learned counsel for the parties, we are of the view that the present Civil Revision Petitions are not maintainable before this Court on the ground that the petitioners have an effective alternate remedy before the Debts Recovery Appellate Tribunal and the said remedy is not only efficacious but effective as well. The Appellate Tribunal will be able to re-appreciate the facts, which is not expected to be done in a Civil Revision Petition under Article 227 of Constitution of India. Therefore, the proper Forum before which the petitioners have to agitate their rights is the Debts Recovery Appellate Tribunal. This would be sufficient to dismiss the Civil Revision Petitions. So far as the manner in which the District Collector has to act under Section 14 of the Act has been clearly spelt out in the recent decision in the case of ***Karvy Financial Services Limited versus The District Magistrate and District Collector and others*** reported in ***2021 3 CTC 383***, wherein, it has been held that the order is not an adjudicatory order. The relevant portion of the order reads as follows:-

> *"7. It is not necessary to go beyond such stage for the purpose of the present proceedings since the operation of Section 14 of the Act comes at such stage where the secured creditor requires executive assistance for the purpose of obtaining possession of the secured asset or documents pertaining thereto. Section 14 of the Act permits certain classes of officials to receive a request under Section 14 of the Act. The extent of the assistance that may be sought would pertain to obtaining possession of any immovable property or possession of or access to certain documents. The authority approached under Section 14 of the Act has only to look into the documents filed by the relevant secured creditor in support of the request. One of such documents ought to be the various declarations as required to be furnished under Section 14 of the Act. Once the authority notices the relevant declarations to have been furnished, such authority has to accept the same at face value and not question the same or seek to adjudicate thereupon."*

7. In fact, in the decision of the Hon'ble Division Bench in the case of ***K.K.Dhanraj vs. The District Magistrate and District Collector and others*** reported in ***2018 SCC OnLine Madras 13527(DB),*** referred to by the learned counsel appearing for the petitioners, the Court does accept the fact that the order passed under Section 14 of the Act, does not require adjudication.

8. Therefore, we are of the view that there is no conflicting view between the two decisions of the Hon'ble Division Bench. In any event, we did not proceed to make any further observation in this

regard being conscious of the fact that the order impugned in these Civil Revision petitions is an order in an interlocutory application and the main appeal is still pending before the Debt Recovery Appellate Tribunal. So far as the allegation that there is a threat of attachment of salary of the two guarantors, we are informed by the learned counsel for the respondent Bank that unless the respondent Bank moves the Tribunal and files appropriate original application and seeks for attachment, such orders will not be passed. This submission is placed on record.

9. For all the above reasons, the Civil Revision Petitions are dismissed, giving liberty to the petitioners to file an appeal before the Debt Recovery Appellate Tribunal. Parallely, the petitioners are given liberty to submit a genuine One Time Settlement proposal with the respondent Bank, which shall be considered in accordance with the norms and guidelines, which are prevalent in force, as on date, more particularly, when the respondent Bank in their communication, dated 30.03.2021, addressed to the petitioners/borrowers has stated that the value of the property given by the borrowers, is inadequate to cover the loan liability. Bearing this aspect in mind, the respondent Bank can take a conscious decision in the application to be submitted for One Time Settlement, provided there is a bonafide and genuinity in such an offer.

10. Since we have granted liberty to the petitioners to submit a genuine offer for One Time Settlement and also taking note of the pandemic situation prevailing as on date and one of the secured assets being a dwelling house, we direct the respondent Bank not to initiate any coercive action against the dwelling house for a period of 30 days from today (i.e. 09.06.2021). However, this protection will enure to the petitioners only if they submit the genuine One Time Settlement offer within seven days from today (i.e. 09.06.2021).

11.With the above observations, these Civil Revision Petitions are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mbi/rm

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,
Collectorate Campus,
Virudhunagar.

2.The Tahsildar,
Rajapalayam Taluk,
Virudhunagar District.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-19133[F] dated 10/06/2021)

CRP[MD]Nos.878, 879 & 880 of 2021
09.06.2021

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TR(16.06.2021) 6P 4C