



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2021

CORAM :

WEB COPY

**THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.DURAI SWAMY**

W.P. (MD) No.17444 of 2020

and

W.M.P (MD) No.14593 of 2020

M/s.Essess Toolroom Services,
Rep. by its Partner P.S.Karthic,
S/o.P.K.Sitaraman

.. Petitioner

Vs

- 1.The District Collector and District Magistrate,
Tiruchirapalli,
Tiruchirapalli District.
- 2.The Tahsildar,
Taluk Office, Thiruverumbur Taluk,
Thiruverumbur,
Tiruchirapalli District.
- 3.The Authorized Officer,
Andhra Bank,
No.26, Warner's Road,
Cantonment,
Tiruchirapalli.
- 4.The Authorized Officer,
Union Bank of India,
No.26, Warner's Road, Cantonment,
Tiruchirapalli-620001.
5. The Regional Manager,
Union Bank of India,
Regional Office - RMD Department,
No.174, 1st Floor, Sivashakthi Complex,
Thillai Nagar, Tiruchirapalli-620018.
6. The Superintendent of Police,
Tiruchirapalli,
Tiruchirapalli District.



7. The Inspector of Police,
Navalpattu Police Station,
Tiruchirapalli District.

8. The Inspector of Police,
Thiruverumbur Police Station,
Tiruchirapalli District.

.. Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent made vide proceedings No.K.Dis.G5/22046/2018, dated 03.11.2020 and quash the same as illegal and unenforceable, direct for investigation for unauthorised operation of my Savings Account No.177510100020506 to the tune of Rs.1,83,45,000/- and direct the third respondent Bank for negotiating One Time Settlement with the petitioner.

For Petitioner : Mr.SU.Srinivasan
For Respondents : Mr.P.Thilak Kumar
Government Pleader
for R.1, R.2, R.6 to R.8
: Mr.V.S.Karthick
for R.3 to R.5

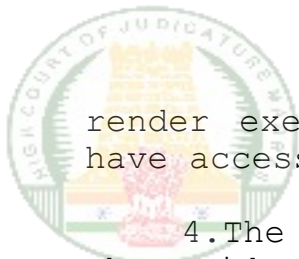
ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

The petition is as misconceived as they come and considerable time has been wasted in flogging a dead horse.

2.The petitioner has no defence to the claim of the bank and none is cited as a ground. However, the petitioner, true to the spirit of the Indian borrower who forgets to repay, has filed an application before the Debts Recovery Tribunal challenging the measures adopted by the respondent secured creditor in invoking Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The immediate grievance of the petitioner is upon the District Collector, Tiruchirappalli, passing an order on November 3, 2020, on the secured creditor's request under Section 14 of the said Act.

3.The petitioner refers to Section 14 of the Act, particularly to the first proviso thereto, that mandates that on receipt of an affidavit from the authorised officer of a secured creditor, the concerned authority "shall after satisfying the contents of the affidavit pass suitable orders...". The contention in such regard is that notwithstanding the concerned official not being required to undertake any process of adjudication, the official should satisfy himself that the conditions exist which require the official to



render executive assistance to the requesting secured creditor to have access to the secured assets or the papers pertaining thereto.

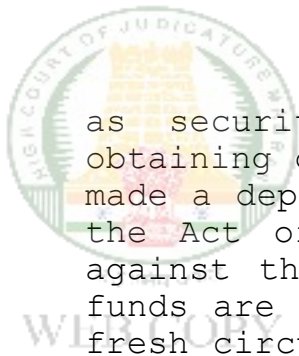
4.The order dated November 3, 2020 refers to Section 14(2) of the said Act and proceeds to issue the directions for assistance. The properties have been described by incorporating, possibly, the schedule to the application under Section 14 of the Act as a part of the order. The petitioner asserts that there is nothing in the order which indicates the application of the mind of the Collector to the matters in issue and no satisfaction of the conditions has been recorded in the order.

5.In support of the argument on such core, the petitioner places a recent judgment of the Supreme Court reported at AIR 2019 SC 4619 (*The Authorised Officer, Indian Bank v. D.Visalakshi*). The petitioner also relies on an unreported Division Bench judgment of this Court in W.P.No.10562 of 2018 delivered on June 22, 2018 (*K.K.Dhanraj v. The District Magistrate and District Collector*). The petitioner maintains that in view of the aforesaid judgments, it would not do for a District Collector or a Magistrate in receipt of a request under Section 14 of the Act to mechanically provide the assistance without applying his mind as to whether a case has been made out in such regard.

6.The judgment in *D.Visalakshi* notices that no adjudication is undertaken by an official in receipt of a request under Section 14 of the Act, but says that due care and caution should be taken and a judicious approach must be adopted in ascertaining whether the assistance as sought ought to be extended to the relevant secured creditor.

7.In the scheme of the said Act of 2002, Section 14 is a pivotal provision. The said Act was brought in since public funds were not being recirculated in the market as they were blocked in huge non-performing assets. It may be recollected that in the early 1990s, the entire set of bank actions was taken out of the purview of the civil court's jurisdiction and parked with a specialised tribunal created, first, under an Ordinance and, then, under the Recovery of Debts due to Banks and Financial Institutions Act, 1993. The Ordinance and, thereafter, the Act came to be made following, first, a report by the Tiwari Commission and a further report by the Narasimhan Commission. However, in less than a decade of the Act of 1993 being in place, it was discovered that non-performing assets were not being recovered or the money blocked was not being liquidated with the degree of speed that was necessary for such money to refuel the economy.

8.After further studies were commissioned and their reports obtained, the NPA Act was conceived. Thus was born the said Act of 2002. So as to ensure that the secured assets that had been put up



as securities with the secured creditors for the purpose of obtaining credit facilities were quickly liquidated, the Act of 2002 made a departure from the usual procedure till then in vogue. Under the Act of 2002 secured creditors have the authority to proceed against the securities and liquidate the same so that the blocked funds are converted into liquid money and immediately available for fresh circulation. Indeed, the Act of 2002 has reversed the general order of adjudication before execution and, in a sense, secured creditors get to execute the claim, before the exercise of adjudication can be undertaken. Again, the adjudication may not be necessary, unless it is sought by any borrower or other person aggrieved by any measure adopted by the secured creditor under Section 13(4) of the Act.

9.Thus, in the scheme of the Act, upon an account turning NPA as per the Reserve Bank of India guidelines, the concerned secured creditor is obliged to issue a notice under Section 13(2) of the Act to the borrowers (which definition also includes guarantors) calling upon the borrowers to repay the amount due. The borrowers may respond to such notice, whereupon the secured creditor is obliged, by virtue of sub-section 3(A) being introduced in Section 13 of the Act following the judgment in *Mardia Chemicals Limited v. Union of India*, [(2004) 4 SCC 311], to consider the same and reply thereto. However, neither the notice under Section 13(2) of the Act nor the reply to the borrowers' response thereto is justiciable at such stage. Indeed, it is only upon of a measure taken by the secured creditor under Section 13(4) of the Act that any person aggrieved thereby, including a borrower, may approach the jurisdictional Debts Recovery Tribunal under Section 17 of the Act. At such stage, whatever objection may be available to the borrower or the person aggrieved may be carried and the Debts Recovery Tribunal is required to adjudicate thereupon.

10.Section 14 of the Act is placed, in the chronological order of how a secured creditor needs to proceed, immediately after Section 13 of the Act. Section 14 of the Act, in its present form, is more refined than what it was at the initial stage. In essence, such provision requires a secured creditor seeking executive assistance from an appropriate authority to furnish certain declarations by way of an affidavit. It is imperative that the official in receipt of the request must go through the declarations to ascertain whether the declarations have been appropriately made. However, the official cannot go into the legality or veracity of the declarations made, as long as the declarations appear to be in order and not completely absurd or outlandish.

11.Again, the second duty cast upon the official in receipt of the request under Section 14 of the Act is to provide appropriate assistance. The need to provide the assistance is to ensure that the secured asset may be sold and the funds unblocked as the non-



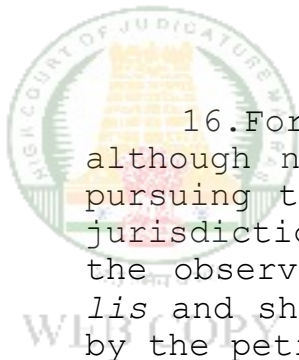
performing asset is liquidated as a consequence. The judicious approach that the authority in receipt of a request under Section 14 of the Act as to adopt, pertains to ascertaining whether the appropriate declarations have been furnished and rendering the adequate assistance which is necessary. If the relevant official goes overboard and makes an order in excess of what is sought or what may be adequate, surely the same would not pass muster. Again, if the official in receipt of a request under Section 14 of the Act does not refer to the declarations at all and does not even consider whether the person making a request is a secured creditor or not, the steps taken or the order made by the concerned official may be called into question.

12.However, in the everyday matter under Section 14 of the Act, where the authority is satisfied that the assistance has been appropriately sought by a secured creditor and the authority goes about extending the assistance which is necessary, *inter alia*, by issuing directions to the revenue or police officials, a writ court when presented with such kind of an order may not be minded to interfere therewith.

13.There is no doubt that the steps taken by a secured creditor, including the assistance sought under Section 14 of the Act, would ultimately be justiciable in course of proceedings under Section 17 of the Act. Equally, there is no doubt that when an official authorised under Section 14 of the Act to receive a request and deal with the same, acts completely without jurisdiction or in a manner which may be wholly arbitrary or unreasonable, even the writ court might be excited to entertain a petition thereagainst and deal with the order in the appropriate case. But the mere failure of an official to specify in the order passed under Section 14 of the Act that he had satisfied himself that the preconditions existed for the exercise of jurisdiction under such provision may not, by itself, be a ground to challenge the order in the extraordinary jurisdiction under Article 226 of the Constitution, unless a corollary or resultant prejudice suffered by the petitioner is indicated.

14.In the unreported judgment of the Division Bench of this Court relied upon by the petitioner, the case that was clearly made out was that the secured asset was a coparcenary property and no security in such regard could have been furnished. As a result, the writ court was minded to go into the matter since it went to the root of the security being furnished to the secured creditor in that case.

15.In the present case, the petitioner cannot indicate any prejudice suffered except that his perceived fundamental right, to obtain credit facilities and not repay, may have been infringed.



16. For the reasons aforesaid, there is no merit in the petition although nothing in this order will prejudice the petitioner from pursuing the petitioner's remedy in accordance with law before the jurisdictional Debts Recovery Tribunal. It is also made clear that the observations herein are limited for the purpose of the present *lis* and should not unduly weigh with any other authority approached by the petitioner herein.

17. Since, at this stage, the petitioner makes a request for shifting the functioning operations from the secured assets within a month from date, the secured creditor would do well to consider such request charitably and allow reasonable time to the writ petitioner to enable the writ petitioner to relocate its business.

18. W.P(MD)No.17444 of 2020 is disposed of without interfering with the order impugned. The petitioner should pay costs of Rs.5,000/- (Rupees five thousand only) to the Madurai Advocates Welfare Society. Consequently, W.M.P(MD)No.14593 of 2020 is closed.

Sd/-

Assistant Registrar (CS-I)

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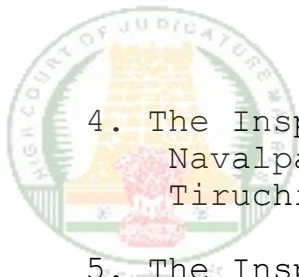
Sub Assistant Registrar(CS)

ps/pkn

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 and District Magistrate,
Tiruchirapalli,
Tiruchirapalli District.
2. The Tahsildar,
Taluk Office, Thiruverumbur Taluk,
Thiruverumbur,
Tiruchirapalli District.
3. The Superintendent of Police,
Tiruchirapalli,
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4. The Inspector of Police,
Navalpattu Police Station,
Tiruchirapalli District.

5. The Inspector of Police,
Thiruverumbur Police Station,
Tiruchirapalli District.

6. The Co-ordinator,
Madurai Advocate, Welfare Society,
Madurai Bench of Madras High Court,
Welfare Fund Trust,
High Court Building
Madurai 625 107
A/C.No. 7087208431
Indian Bank, High Court, Madurai

+1 CC to M/s.V.S.KARTHI ASSOCIATES, Advocate (SR-30536[F] dated
28/09/2021)

+1 CC to M/s.SU.SRINIVASAN, Advocate (SR-30298[F] dated
27/09/2021)

W.P. (MD) No.17444 of 2020
27.09.2021

SRR(CO)
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