IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.33341 of 2022

The South Indian Bank Ltd.,
Regional Office, 1st Floor,
70 Feet Road, Ellis Nagar,
Madurai-625 016
rep. by its Chief Manager. .. Petitioner

vs

1.The Chief Judicial Magistrate,
Salem.

2.R.M.Karuppiah
3.K.R.Azhagu
4.V.R.Kumar
5.K.R.Karthick Kumar .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the first respondent to dispose of the application filed under Section 14 of the SARFAESI Act on 29.9.2020 within a time frame pertaining to the secured properties belonging to the respondents 2,4 and 5.

For the Petitioner : Mr.M.L.Ganesh

ORDER

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

The South Indian Bank Limited, represented by its Chief Manager-cum-Authorized Officer, has filed this writ petition under Article 226 of the Constitution of India to direct the first respondent/Chief Judicial Magistrate, Salem, to dispose of the application dated 29.9.2020 filed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity, "*the Act of 2002*"] within a time frame pertaining to the secured property belonging to respondents 2, 4 and 5.

2. We have heard Mr.M.L.Ganesh, learned counsel for the petitioner and also perused the material papers available on record.

3. When this Court perused the averments set out in the

affidavit filed in support of the writ petition, it is seen that the petitioner bank had issued a demand notice under Section 13(2) of the Act of 2002 on 7.5.2019 directing respondents 2 to 5 to repay the loan amount within 60 days. Finding no response, the petitioner bank had issued a notice under Section 13(4) of the Act of 2002 on 27.8.2019. Thereafter, the petitioner bank had filed an application under Section 14 of the Act of 2002 before the learned Chief Judicial Magistrate, Salem on 29.9.2020 seeking assistance for taking physical possession of the secured asset belonging to respondents 2, 4, and 5.

4. Paragraph 8 of the affidavit filed in support of the writ petition shows that although application under Section 14 of the Act of 2002 was filed on 29.9.2020, the first respondent has not passed any order to enable the petitioner bank to take physical possession of the secured asset till date. It is stated in paragraph 9 of the affidavit that when the petitioner bank had represented before the first respondent to expedite Section 14 application in order to take physical possession of the secured property, there was no response.

Therefore, the petitioner bank has been advised to come to this Court.

5. Since an allegation has been made against the learned Chief Judicial Magistrate, Salem that after filing of the application under Section 14 of the Act of 2002 on 29.9.2020 seeking assistance for taking physical possession of the secured property belonging to respondents 2, 4 & 5, and according to the petitioner bank no response is forthcoming from the first respondent, on 12.12.2022, this Court directed the Registrar (Judicial) of this Court to call for remarks/explanation from the learned Chief Judicial Magistrate, Salem as to why the learned Chief Judicial Magistrate has not entertained the application filed by the petitioner bank and passed orders thereon.

6. Pursuant to the direction of this Court, the Registrar (Judicial) has called for an explanation from the learned Chief Judicial Magistrate, Salem. The learned Chief Judicial Magistrate, Salem has also submitted his remarks/explanation dated

13.12.2022 and the same has been placed before us today. In his remarks dated 13.12.2022, the learned Chief Judicial Magistrate, Salem, has stated as under:

> *".....*
>
> *1. I humbly submit that an application under Section 14 of the SARFEASI Act 2002 was filed by the South Indian Bank Ltd., represented through its authorised Officer Mr.K.Sunil Kumar, S/o.Kuttappan Naiar Aged 47 years, Office at Regional Office, 1st Floor YMCA Building, Opposite to Astoria Hotel, 70 feet Road, Ellis Nagar, Madurai-625 016 against Mr.R.M.Karupaiah, S/o.Rama Thevar and 3 others before this Court on 29.09.2020 and the same was ordered on 30.09.2020 as check and call on 16.10.2020.*
>
> *2. I further humbly submit that the application was returned on 16.10.2020 for certain defects as follows:-*
>
> *(i) Authorisation letter, E.C., to be produced.*
>
> *(ii) Statement of Accounts, 13 (4) Notice and Acknowledgment Card to be produced.*
>
> *(iii) Possession Notice affixed in the Property Photo to be filed along with petition.*

The application was represented on 12.08.2021 by the counsel for the applicant. The application was ordered on 13.08.2021 as check and call on 23.08.2021. On 23.08.2021, the application was again returned for the compliance of defects, since the account statement does not reveal the total outstanding amount and the disbursal amount and E.C. was not produced.

(i) Statement of account: Total disbursal, total outstanding amount not reflected in the Account Statement.

(ii)E.C. copy to be produced.

3. I further humbly submit that the above two defects were already mentioned in the earlier return order dated 16.10.2020. However, the application was represented after a laps (sic.) of 9 ½ months without complying the defects. Hence, this Court has returned the application on 23.08.2021. Again the application was represented on 26.04.2022 after a laps (sic.) of 08 months and the same was posted as check and call on 19.05.2022. On 19.05.2022 the application was taken on file as CMP.179/2022 and posted to 09.06.2022 for enquiry.

4. I further humbly submit that on 09.06.2022 PW1 filed Proof Affidavit Ex.P1 to P21 marked and posted for Orders on 16.06.2022. On 16.06.2022 the application was posted to 01.07.2022 as the Presiding Officer was on Earned Leave. On 01.07.2022 the application was suo-moto opened by this Court for producing detailed computerised Account Statement and posted to 08.07.2022. On 08.07.2022 counsel was not appeared and the application was adjourned to 04.08.2022 for the same reason. On 04.08.2022, the Petitioner's Counsel requested further time to filing the detailed Account Statement. Accordingly, the case was posted to 24.08.2022. However, on 24.08.2022 the detailed Account Statement was not produced by the petitioner's counsel. Further, the Petitioner's Counsel has neither present nor produced the detailed Account Statement on the subsequent hearings as Ordered by this Court. Since, the Account Statement was not produced and no representation by the counsel, the case was adjourned on various dates and lastly adjourned to 15.12.2022.

This for favour of Your Lordship's kind perused and consideration."

7. The perusal of remarks/explanation dated 13.12.2022 submitted by the learned Chief Judicial Magistrate, Salem, would show that since there were some defects in the application filed under Section 14 of the Act of 2002 by the petitioner bank, the learned Chief Judicial Magistrate, Salem has returned the application on 16.10.2020 indicating the following defects:

"(i) Authorisation letter, E.C., to be produced.

(ii) Statement of Accounts, 13 (4) Notice and Acknowledgment Card to be produced.

(iii) Possession Notice affixed in the Property Photo to be filed along with petition."

8. On a further perusal of the remarks/explanation, it is seen that the application was represented on 12.08.2021 by the petitioner and, by the order dated 13.08.2021, it was ordered to check and call on 23.08.2021. On 23.08.2021, the application was

taken up and finding that the defects were not curred, again, the application was returned for compliance of defects as the petitioner bank has failed to produce the statement of accounts qua total outstanding amount and the total disbursal amount and also a copy of the encumbrance certificate.

9. It is, in this context, Section 14 of the Act of 2002 is quoted hereunder for proper appreciation:

> *"**14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.** — (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets 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 assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured assets 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:

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 sub-clause (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 read 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 within a period of thirty days from the date of application:

Provided also 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 control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

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.

(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise 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.

(2) For the purpose of securing compliance with the 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 Magistrate1 [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority.

10. The first proviso to Section 14 of the Act of 2002 stipulates that the secured creditor/bank shall submit the affidavit containing the aggregate amount of financial assistance granted and the total claim of the bank as on the date of filing of the application. Since the Bank failed to reveal the total outstanding amount by filing an appropriate statements of accounts, on 23.08.2021, the application of the petitioner bank was again returned for compliance of defects by the learned Chief Judicial Magistrate, Salem. The

defects dated 23.8.2021 pointed out by the learned Chief Judicial Magistrate, Salem, are reproduced hereunder:

> *"(i) Statement of account: Total disbursal, total outstanding amount not reflected in the Account Statement.*
> *(ii) E.C. copy to be produced."*

11. The perusal of paragraph 3 of the remarks/explanation submitted by the learned Chief Judicial Magistrate would show that the aforementioned two defects were already mentioned in the earlier return dated 16.10.2020 and without curing the said defects, after a lapse of 9½ months, the application has been represented on 12.08.2021. Finding that the defects were not cured, the learned Chief Judicial Magistrate had again returned the application on 23.08.2021. Once again, the petitioner bank represented the application on 26.4.2022 after a lapse of 8 months and the application was posted as check and call on 19.05.2022. On 19.05.2022, the application was taken on file as C.M.P.No.179 of 2022 and posted to 09.06.2022 for enquiry. On 09.06.2022 when the matter was taken up, proof affidavit of PW1 was filed and

Exs.P1 to P21 were marked and the matter was posted for orders on 16.06.2022. Since the Presiding Officer was on Earned Leave, the matter was directed to be listed on 01.07.2022 and on 01.07.2022, the learned Chief Judicial Magistrate, *suo motu*, opened C.M.P.No.179 of 2022 and directed the petitioner bank to produce a detailed computerized account statement on 08.7.2022. On 08.7.2022, when the matter was taken up learned counsel for the petitioner has not appeared and the matter was adjourned to 4.8.2022. When C.M.P.No.179 of 2022 was taken up on 4.8.2022, learned counsel for the petitioner appeared and took time for producing of a detailed account statement and accordingly, the matter was adjourned to 24.8.2022. Peculiarly, when the matter was called on 24.08.2022, neither learned counsel for the petitioner present, nor produced the account statement before the learned Chief Judicial Magistrate, Salem.

12. From the aforesaid factual scenario, we are unable to find any justification on the part of the petitioner bank to make a complaint against the learned Chief Judicial Magistrate, Salem in not

disposing of C.M.P.No.179 of 2022. More importantly, in paragraph 8 of the affidavit filed in support of the writ petition, the petitioner simply stated that although the application has been filed under Section 14 of the Act of 2002 on 29.09.2020 yet the first respondent had not passed any orders to enable the petitioner bank to take physical possession of the property till date. The aforesaid averment in paragraph 8 does not give the correct facts and the fact remains that the petitioner bank has purposefully omitted to narrate the return of the application by the first respondent and its representation in detail in the writ petition, which shows that the petitioner bank has approached this Court with unclean hands. The fact that the petitioner bank had taken more than 9 ½ months to comply the defects indicated by the Registry and failed to represent with the first return and 8 months to comply further defects and represent with the second return. It can be seen that the petition was filed even without filing the 13(4) notice and the Encumbrance Certificate. Even the affidavit said to have been filed under Section 14 by the bank is not produced before this Court. The above material facts as to the huge delay in representation of the papers in two occasions, being 9 ½ months and 8 months respectively is completely suppressed before this Court.

13. It can further be seen that even after the application was taken on file in the year 2022, except for one occasion when the Presiding Officer was on leave, on all the other occasions, it is the counsel of the petitioner bank who was either not present or was praying for time to produce statement of accounts.

14. At the cost of repetition, we reiterate that the petitioner bank has failed to produce the required details as per Section 14 of the Act of 2002 before the learned Chief Judicial Magistrate, Salem along with the application under Section 14. Therefore, the learned Chief Judicial Magistrate, Salem, in our considered view, was perfectly right in calling for the statement of accounts on the subsequent hearing dates and in fact the petitioner bank has failed to produce the account statement as per the statutory provision for passing further orders. Therefore, this Court is of the view that the petitioner bank cannot blame the learned Chief Judicial Magistrate,

Salem that the learned Chief Judicial Magistrate, Salem has not considered the application of the petitioner bank filed under Section 14 of the Act of 2002 for one reason or the other, when the petitioner bank itself was guilty of huge delay and committed palpable lapses indicated as above.

15. In view of the above, the writ petition fails and is dismissed with costs assessed at Rs.25,000/- (Rupees Twenty Five Thousand) payable by the petitioner bank to the credit of Madras High Court Advocate Clerks' Welfare Association within a period of two weeks from the date of receipt of a copy of this order.

(T.R., ACJ.) (D.B.C., J.)
16.12.2022

Index : Yes/No
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To:

The Chief Judicial Magistrate,
Salem.

T.RAJA, ACJ.
AND
D.BHARATHA CHAKRAVARTHY, J.

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W.P.No.33341 of 2022

16.12.2022