

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**W.P.(MD) No.13380 of 2020
and
W.M.P(MD) No.11164 of 2020**

Bank of India
Door No.44,
Chairman Shanmugam Road,
Sivakasi – 626 123
Rep. through its Chief Manager

... Petitioner

-VS-

1.The District Magistrate / District Collector,
Virudhunagar.

2.N.Venkatesh

3.M/s.Sorna Print Pack
Rep. by Managing Partner N.Venkatesh

4.N.Venkatesh, Partner, M/s.Sorna Print Pack

5.V.Subha, Partner, M/s.Sorna Print Pack

6.M/s.Sorna Print Pack
Rep. by Managing Partner N.Venkatesh

7.N.Venkatesh, Partner,
M/s.Sorna Packaging Industries

8.V.Subha, Partner,
M/s.Sorna Packaging Industries

9.M/s.Sorna Arts Crafts
Rep. by Managing Partner N.Venkatesh

10.M/s.Sorna Arts Crafts
Rep. by Partner N.Venkatesh

11.M/s.Sorna Arts Crafts
Rep. by Partner V.Subha

12.V.Subha, Proprietor,
M/s.Ganesh Colour Pack

13.Srikanth
Proprietor,
M/s.Sri Murugan Colour Pack

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order made in Roc.No.C3/2972/2017 dated 13.08.2020 passed by the first respondent and quash the same and consequently direct the first respondent to take physical possession of the secured assets annexed in application of the petitioner Bank dated 15.12.2016 within the time stipulated by this Hon'ble Court.

For Petitioner : Pala Ramasamy

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader
for R1
Mr.V.Veera Pandian for R2 to R13

ORDER

(Order of the Court was made by R.MAHADEVAN, J.)

The present writ petition has been filed challenging the order dated 13.08.2020 passed by the first respondent and consequently to

direct the first respondent to take physical possession of the secured assets annexed in application of the petitioner Bank dated 15.12.2016, within a time frame.

2. The case of the petitioner is that the petitioner – Bank had sanctioned loan to the respondents 2 to 13 and they committed default to the tune of Rs.17,52,27,394 as on 29.02.2020. Therefore, the petitioner – Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short “SARFAESI Act”] and filed an application before the first respondent under Section 14 of the SARFAESI Act, to take physical possession of the secured assets on 15.12.2016. The first respondent by impugned order dated 13.08.2020, rejected the application of the petitioner – Bank concluding that the petitioner's Bank has not given sufficient records for their claim and has given contradictory statement during trial and therefore the case is not fit for further trial. Aggrieved over the same, the bank filed W.P(MD) No.7076 of 2020 and this Court, *vide* order dated 14.08.2020, disposed of the the writ petition and has held as follows:-

“8. It is a well settled position of law that at the time of consideration of the application filed under Section 14 of the SARFAESI Act, the only obligation cast upon the first respondent is as to whether the measures initiated by the petitioner/bank under Sections 13(2) and 13(4) of the SARFAESI Act are in order and not beyond that. It may not be necessary to hear the borrowers also.

9. In the considered opinion of this Court, the delay on the part of the first respondent, in the absence of any affidavit, is unsustainable and whatever the nature of the order, the said official is going to pass, he should have passed the same within a reasonable time.”

Hence, this writ petition.

3. The learned counsel for the petitioner – Bank submitted that the first respondent without considering the submissions of the petitioner and the documents produced by the petitioner in proper perspective, passed the impugned order concluding that as per Section 14(1) of the SARFAESI Act, the petitioner – Bank has not given sufficient records for their claim and has given contradictory statement during the trial, and hence, the case is not fit for further trial. Thus, the learned counsel would

pray for setting aside that order with consequential directions.

4. Mr.G.V.Vairam Santhosh, learned Additional Government Pleader appearing for the first respondent submitted that the petitioner – Bank had not produced the sufficient records to prove their claim and therefore, the first respondent rightly rejected the application under Section 14 of the SARFAESI Act. He further submitted that now the matter is pending before the Debts Recovery Tribunal, Madurai, in O.A.No.890/2017.

5. Since the matter is now pending before the DRT, Madurai, in O.A.No.890/2017, this writ petition is disposed of with liberty to the petitioner – Bank to pursue its remedy in O.A.No.890/2017 on the file of the Debts Recovery Tribunal, Madurai. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [J.S.N.P., J.]
21.09.2022

Index : Yes / No
Internet : Yes / No
pkn

W.P(MD) No.13380 of 2020

R.MAHADEVAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

pkn

To:

The District Magistrate / District Collector,
Virudhunagar.

W.P.(MD) No.13380 of 2020

21.09.2022