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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2022

CORAM

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

Writ Petition (MD) No. 24132 of 2022

The Authorised Officer
Indian Overseas Bank
Regional Office
Nagercoil
Kanyakumari District .. Petitioner

Versus

1. The Chief Judicial Magistrate
   Nagercoil
   Kanyakumari District

2. M/s. Gherkins Agro Exports Indiana Pvt Ltd.,
   389/2, 49/2, Kulathur Road
   Vedasandur Taluk
   Dindigul 624 001

3. Mr. JMA Salman
   Director
   M/s. Gherkins Agro Exports Indiana Pvt Ltd.,
   Plot No. 19, 20, 21, 22, 23, Ward 6
   Perarignar Anna Kasimalli Nagar
   Adiyanuthu Village
   Dindigul

4. Mr. C. Ashok Rose
   Director
   M/s. Gherkins Agro Exports Indiana Pvt Ltd.,

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Plot No. 5, 6, Ward 6
Perarignar Anna Kasimalli Nagar
Adiyanuthu Village
Dindigul

5. Mrs. Jabeenabanu
Wife of Mr. JMA Salman
Director
M/s. Gherkins Agro Exports Indiana Pvt Ltd.,
Plot No. 19, 20, 21, 22, 23, Ward 6
Perarignar Anna Kasimalli Nagar
Adiyanuthu Village, Dindigul

6. Mrs. Adela Asok
Wife of Mr. Asok Rose
Director
M/s. Gherkins Agro Exports Indiana Pvt Ltd.,
Plot No. 5, 6 Ward 6
Perarignar Anna Kasimalli Nagar
Adiyanuthu Village, Dindigul

7. Mr. Jamal Yusuf
43, Anna Nagar
Dindigul

8. Mrs. Tahira Yusuf
Wife of Mr. Jamal Yusuf
43, Anna Nagar
Dindigul

9. Mrs. Esther Ruby
Wife of Mr. Gnanaprakasham
37/1, Water Tank Road
Nagercoil
Kanyakumari District .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus and quash the order dated 21.09.2022 passed by the first respondent in Crl.M.P. Sr.No.569 of 2022 and consequently direct the first respondent to number and hear Crl.M.P. Sr.No.569 of 2022 within a time frame stipulated by this Court.

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For Appellant	:	Mr. M. Ananda Gomathy Murugesan
For Respondents	:	Ms. H. Lakshmi Shankar for RR2, 3 and 4 No appearance for RR5 to 9

ORDER

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

The Authorised Officer of Indian Overseas Bank, Nagercoil, Kanyakumari District has come forward with this writ petition assailing the order dated 21.09.2022 passed by the first respondent/Chief Judicial Magistrate, Nagercoil, refusing to entertain the application filed under Section 14 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) Act.

2. The respondents 2 to 9 herein are borrowers, who have availed credit facility to the tune of Rs.21.65 crores from the petitioner bank. The borrowers have executed various documents and also mortgaged the properties stood in their name, in favour of the bank. To be specific, the 9th respondent herein had executed a mortgage deed in respect of the property bearing Door No. 37/1, Water Tank Road, Vadaserry South Village, Nagercoil. After availing the credit facilities, the borrowers committed default in repayment and therefore, their loan account was classified as "Non-performing Asset" (NPA) on 30.09.2016. The Bank also issued a demand notice dated 20.01.2017 and took symbolic possession of the property of the 9th respondent on 13.03.2019.

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The property was thereafter brought on public auction on 26.02.2021 to realise the dues. In the public auction, one Mr. Rajaiah Christopher had purchased the property mentioned above and a sale certificate was also executed by the Bank in his favour which was registered as document No. 2554 of 2021. Pursuant to such sale, the auction purchaser demanded physical possession of the property sold to him. Therefore, the bank has filed an application under Section 14 of the SARFAESI Act before the first respondent herein on 02.05.2022. The Registry of the first respondent, after scrutiny, returned the application on 10.05.2022 by stating that the Bank has no *locus standi* to maintain the application after sale of the property in favour of the auction purchaser. The Bank re-presented the application by placing reliance on the order passed by this Court in WP (MD) No. 8476 of 2020. Thereafter, the application was once again returned on 27.07.2022 for rectifying certain defects and the same were complied with and re-presented by the bank on 21.09.2022. Upon such re-presentation, the first respondent returned the application on the ground that the proceedings initiated by the bank has already been quashed by this Court in WP (MD) No. 10062 of 2019 filed by the borrowers and by suppressing the same, the Bank has filed the application under Section 14 of the SARFAESI Act. Aggrieved by the order dated 21.09.2022, the present writ petition is filed.

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3. The learned counsel appearing for the petitioner-Bank submits that the order dated 12.08.2022 passed by this Court in WP (MD) No. 10062 of 2019 filed by the second respondent herein, has nothing to do with the property sold by the bank in public auction. Even otherwise, the application under Section 14 of the SARFAESI Act has been filed on 02.05.2022 and after three months, the order dated 12.08.2022 has been passed by this Court. While so, the observation of the first respondent that the petitioner had suppressed the order dated 12.08.2022 while filing the application under Section 14 of the SARFAESI Act is untenable. In any event, the order dated 12.08.2022 was passed by this Court setting aside the orders passed by the petitioner bank refusing to re-structure the loan at the instance of the borrowers. On the other hand, the application under Section 14 of the SARFAESI Act has been filed to take possession of the secured asset after it was sold in public auction. Therefore, the learned counsel for the petitioner would contend that the first respondent, without application of mind, refused to entertain the application filed by the petitioner bank under Section 14 of the SARFAESI Act and prayed to allow this writ petition by setting aside the order passed by the first respondent with a consequential direction to the first respondent to entertain the application filed under Section 14 of the SARFAESI Act.

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4. On the other hand, the learned counsel appearing for the respondents 2, 3 and 4 would submit that the petitioner bank had extended various financial facilities to the second respondent company from the year 2004 to 2016. It is true that the property in question was mortgaged with the petitioner bank. However, the learned counsel would contend that the Bank has not followed the norms while declaring the loan account as NPA. In this regard, the learned counsel submitted that Reserve Bank of India has issued various guidelines applicable to MSME under a scheme called Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises, 2016 dated 17.03.2016. As per the norms and guidelines fixed by the Reserve Bank of India, before classifying the loan account as NPA, sufficient and reasonable opportunity has to be given to the borrowers but it was not done in this case. It is also stated that the respondents/borrowers have submitted an application for re-structuring the loan based on which a Techno Economical Valuation (TEV) study was conducted by the panel of experts approved by the Bank. The panel also submitted a report on 10.04.2018, however, the petitioner bank rejected the report submitted by the expert panel as unviable. Challenging the order of rejection, the second respondent filed WP (MD) No. 10062 of 2019 and the same was allowed by this Court. Thus, the order passed by this Court would show that the petitioner bank acted in complete disregard to the guidelines issued by the Reserve Bank of India from time to time. The second

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respondent is entitled to the benefits conferred under the framework dated 17.03.2016 and the entitlement of the second respondent is yet to be decided by the Bank after the order dated 12.08.2022 was passed by this Court. When the respondents/borrowers submitted an application to get the benefits under the scheme framed for rehabilitation and it was pending, the petitioner bank had sold one of the mortgaged properties in auction. Thus, the sale of the property by the petitioner bank is contrary to the guidelines framed by the Reserve Bank of India and it will not bind the respondents-borrowers. The petitioner bank has not disclosed the correct facts while filing the application under Section 14 of the SARFAESI Act and therefore, the first respondent has rightly refused to entertain the application. Pursuant to the order passed by this Court on 12.08.2022 in WP (MD) No. 10062 of 2019, the petitioner bank had taken steps to constitute a committee to consider the application for rehabilitation filed by the respondents-borrowers. On the other hand, the petitioner is bank is attempting to take possession of one of the secured assets. Thus, it is submitted that the petitioner bank has not followed the various guidelines issued by the Reserve Bank of India from time to time and thus, the learned counsel for the respondents-borrowers prayed for dismissal of the writ petition.

5. We have heard the learned counsel for the petitioner-bank and the

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learned counsel for the respondents 2 to 4 and perused the materials placed on record.

6. It is not in dispute that the property in question belonged to the 9th respondent herein. The ninth respondent herein has admittedly mortgaged the property in favour of the petitioner bank to avail certain loan facilities for and on behalf of the second respondent company. The respondents-borrowers have committed default in payment of the loan amount, which resulted in the loan account being declared as NPA by the Bank. Even though it is contended on behalf of the respondents-borrowers that the classification of their loan account as NPA is not proper, we are not going into the correctness of the same in this writ petition.

7. In view of the default committed by the respondents-borrowers, the petitioner bank had brought one of the secured assets for public auction. Admittedly, the respondents-borrowers did not question the auction sale resorted to by the petitioner bank. The auction sale was completed and sale certificate was also issued by the petitioner bank in favour of the auction purchaser. In order to take physical possession of the property covered under the sale certificate, the petitioner bank has filed the instant application under Section 14 of the SARFAESI Act. However, the first respondent refused to

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entertain the application filed by the bank by citing an order dated 12.08.2022 passed by this Court in WP (MD) No. 10062 of 2019 filed by the second respondent herein. On perusal of the order dated 12.08.2022, this Court is of the view that it has got nothing to do with the application filed by the petitioner bank under Section 14 of the SARFAESI Act. For ready reference, the order dated 12.08.2022 is extracted hereunder:-

> "Heard the learned counsel on either side.
>
> 2. The petitioner had availed loan from the respondent bank. The petitioner submitted an application for re-structuring the loan. The third respondent by the impugned communication informed the petitioner that they are not eligible for such re-structuring. Questioning the same, this writ petition came to be filed.
>
> 3. It is beyond dispute that when a request of this nature is placed before the bank, it has to be considered by a properly constituted committee. In this case, such a committee does not appear to have taken a decision. Therefore, on this ground, the impugned proceedings of the third respondent are quashed. The matter is remitted to the file of the second respondent. The second respondent shall form an appropriate committee as per the existing guidelines. Thereafter, a decision will be taken on the petitioner's request on merits and in accordance with law within a period of twelve weeks from the date of receipt of copy of this order. This writ petition is allowed. No costs. Connected miscellaneous petitions are closed."

8. Thus, it is evident that WP (MD) No. 10062 of 2019 has been filed by the respondents-borrowers challenging the refusal of the petitioner bank to re-structure the loan account. However, by placing reliance on the order dated 12.08.2022, the first respondent refused to entertain the application filed by the petitioner-bank under Section 14 of the SARFAESI Act. The

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order dated 21.09.2022, passed by the first respondent, which is impugned in this writ petition, reads as follows:-

> "1. As per the representation given on behalf of third respondent along with order copy of The Hon'ble Madurai Bench of Madras High Court dated 12.08.2022 in WP (MD) No. 10062 of 2019 and WMP (MD) No. 7831, 7832, 7833 and 7956 of 2019, proceedings of the authorised officer has been quashed by Hon'ble High Court. Hence, how this petition U/s. 14 of SARFAESI Act filed by the authorised officer, who is third respondent in the above writ petition is maintainable to be explained.
>
> 2. Authorised officer not mentioned the details of above said order in the affidavit.
>
> Hence returned.
>
> Time one month."

9. As mentioned above, the order passed by this Court in WP (MD) No. 10062 of 2019 has nothing to do with the auction sale of one of the secured assets resorted to by the petitioner bank. However, the first respondent, by placing reliance on the order dated 12.08.2022 has refused to entertain the application filed by the petitioner bank under Section 14 of SARFAESI Act. It is also to be stated that the application under Section 14 of SARFAESI Act has been filed on 02.05.2022 by the Bank. However, in the impugned order, the first respondent has stated that the petitioner bank failed to disclose the subsequent order dated 12.08.2022 in the application filed under Section 14 of the SARFAESI Act. Thus, the order dated 21.09.2022 has been passed by the first respondent with total non-application of mind and it is

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liable to be set aside.

10. In the result, the order dated 21.09.2022 passed by the first respondent is set aside and the writ petition is disposed of. The first respondent is directed to entertain the application filed by the petitioner bank under Section 14 of the SARFAESI Act and decide the same on merits and in accordance with law. No costs.

(R.M.D., J) (J.S.N.P. J)
16.11.2022

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Index : Yes / No
Internet : Yes / No

To
The Chief Judicial Magistrate
Nagercoil
Kanyakumari District

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

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