IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

WP Nos.796, 6418 and 17357 of 2023
and WMP Nos.741, 16502, 16503, 6446 and 6447 of 2023

Dr.G.Rajaramanan .. Petitioner in WPs.796 and 17357/2023

1. S.Deivanai
2. S.Vakisan .. Petitioners in WP.6418/2023

-vs-

1. State Bank of India,
Rep. by its Authorized Officer,
Retail Assets Central Processing Centre,
M.R.C.Nagar, Chennai 600 004.

2. State Bank of India,
Rep. by its Authorized Officer,
Asset Recovery Management Branch,
No.44, Eldams Road, 1st Floor,
Teynampet, Chennai 600 018. .. Respondents in WPs.796 and 17357/2023

1. The Authorized Officer/Assistant General Manager, State Bank of India, RACPC,
No.50, AR Plaza, Mount Poonamallee High Road, Iyyappanthangal, Chennai 600 056.

2. The Regional Officer,
Reserve Bank of India,
Fort Glacis, Rajaji Salai,
Chennai 600 001. .. Respondents in WP.6418/2023

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus - (i) WP.796/2023 - to call for the records of the 2nd respondent herein in Ref.No.SBI/ARMB/ SARFAESI.2022-23/741 dt. 03.11.2022 issued by the 2nd respondent herein and quash the same and further direct the respondent to reclassify the Facility in the nature of Housing Loan Account No.38155857285 and Suraksha Account No.38156519890 availed by the petitioner from the respondent as "Regular" and desist from taking any recovery action against the petitioner; (ii) WP.6418/2023 - to call for the records of the respondent No.1. in issue of impugned notice dated 14.12.2022 and quash the same and consequentially direct the respondent No.1 to regularize the loan account of the petitioners as per the moratorium granted on 25.06.2021; and (iii) WP.17357/2023 - to call for the records of the 2nd respondent herein in Interest Certificate dt.01.06.2023 issued by the 2nd respondent herein and quash the same and further direct the respondent to adjust the monthly EMI payments of Rs.4,30,000/- made by the petitioner from the month of April 2022 towards Principal and Interest and to continue to receive payment by way of ECS and adjust the same as monthly EMI towards repayment of Principal and Interest and desist from taking any recovery action against the petitioner.

For the Petitioner in WPs.796 and 17357 of 2023 : Mrs.Hema Muralikrishnan

For the Petitioner in WP.6418 of 2023 : Mr.S.Senthilnathan

For the Respondents in WPs.796 and

17357 of 2023	:	Mr.K.Chandrasekaran and Mr.B.Raghavalu Naidu
in WP.6418 of 2023	:	Mr.M.L.Ganesh for R-1
	:	No appearance for R-2

* * * * *

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

We have heard Mrs.Hema Muralikrishnan, learned counsel for the petitioner in W.P.Nos.796 and 17357 of 2023 and Mr.S.Senthilnathan, learned counsel for the petitioners in W.P.No.6418 of 2023 so also Mr.K.Chandrasekaran, Mr.B.Raghavalu Naidu and Mr.M.L.Ganesh, learned counsel for the respondents-Bank.

2. The petitioners assail the notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act') issued by the bank.

3. The challenge to the notice is on the count that the petitioners have not committed any default in repayment of their loan

instalments, as such, their account could not have been classified as a non-performing asset. The notice under Section 13(2) of the SARFAESI Act also did not give any reason for classifying the account of the petitioners as a non-performing asset. According to the learned counsel for the petitioners, unless and until a default in payment of instalments is committed, the account can never be declared as non-performing asset, inter alia, the provisions of Section 13(2) of the SARFAESI Act cannot be invoked.

4. According to the learned counsel for the respondents-bank, in all these three matters, the promoter is one and the same and has defrauded the bank. The amount has been siphoned off and the account was declared as fraud account. The security has been over-valued. The investigation is now with the Central Bureau of Investigation (CBI).

5. According to the learned counsel for the petitioners, the aspect of over-valuing the security or otherwise cannot be the subject matter of issuing a notice under Section 13(2) nor can it be cause of declaring the account as a non-performing asset.

6. The respondents have relied upon the judgment of the Apex Court in a case of ***KESHAVLAL KHEMCHAND AND SONS PVT. vs. UNION OF INDIA AND OTHERS*** reported in ***(2015) 4 SCC 770***. According to the learned counsel for the petitioners, the said judgment will have to be read in the context in which the same has been delivered. In the said judgment, the constitutional validity of the amended definition of 'non-performing asset' was the subject matter of challenge.

7. There cannot be any dispute with the proposition that the judgments of this Court and the Apex Court cannot be read as Euclid's Theorem and the judgment will have to be read in the context in which it has been delivered.

8. Be that as it may, the petitioners have approached this Court at the stage of notice issued under Section 13(2) of the SARFAESI Act. The objection raised by the petitioners is rejected. Whether the account of the petitioners is a fraud account, whether the security has been over-valued and whether the promoter only has raised all the finances and siphoned off the funds are matters which would require

detailed enquiry. Moreover, the petitioners have an avenue open, as yet no action under Section 13(4) of the SARFAESI Act has been undertaken. Action under Section 13(4) of the SARFAESI Act would only include symbolic possession and not physical possession of the property. If action under Section 13(4) is initiated by the bank, the petitioners would have remedy before the Debts Recovery Tribunal (DRT) under Section 17 of the SARFAESI Act. In that event, all these contentions can be raised by the petitioners.

9. In light of that, we are not inclined at present to entertain the writ petitions. As and when the cause arises, the petitioners may approach the DRT and in that event, all contentions raised in these writ petitions are kept open for the petitioners to canvass.

10. In W.P.No.17357 of 2023, the grievance of the petitioner is that pursuant to the interim orders passed in W.P.No.796 of 2023, the instalments were deposited. However, the respondent bank has appropriated the entire amount of instalments towards interest and not in tune with the order passed by this Court.

11. It is not disputed that the petitioner deposited the instalments as per the orders of this Court. This Court directed the petitioner to deposit the instalments as was regularly deposited. In light of that, the bank is required to adjust the amount of deposit which was under the interim orders of the Court as per the agreement between the parties, that is, towards principal and interest till this date.

12. With the aforesaid observations, the writ petitions stand disposed of. There will be no order as to costs.

13. W.M.P.No.6446 of 2023 in W.P.No.6418 of 2023 filed seeking to permit the petitioners to file a single writ petition stands allowed.

All other connected miscellaneous petitions are closed.

(S.V.G., CJ.) **(P.D.A., J.)**
27.06.2023

Index : yes/no
Neutral Citation : Yes/No
sra

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU, J.

(sra)

To:

1. The Authorized Officer,
   State Bank of India, Retail Assets Central
   Processing Centre, M.R.C.Nagar, Chennai 600 004.
2. The Authorized Officer,
   State Bank of India, Asset Recovery Management
   Branch, No.44, Eldams Road, 1st Floor,
   Teynampet, Chennai 600 018.
3. The Authorized Officer/Assistant General
   Manager, State Bank of India, RACPC,
   No.50, AR Plaza, Mount Poonamallee
   High Road, Iyyappanthangal, Chennai 600 056.
4. The Regional Officer,
   Reserve Bank of India,
   Fort Glacis, Rajaji Salai, Chennai 600 001.

WP Nos.796, 6418 and
17357 of 2023

27.06.2023