



WP Nos.5845, 5852, 5854 and 5858 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2023

CORAM

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP Nos.5845, 5852, 5854 and 5858 of 2023
and WMP Nos.5846 , 5847, 5848, 5850, 5856, 5857,
5859, 5862, 5863 and 5865 of 2023

1. M/s.Subhashree Ram Garments
Pvt. Ltd., Rep. By its Authorized
Signatory, S.F.No.752/756,
Soosaiyapuram Colony Road,
Rayapuram, Tirupur 641601.

2. S.Ramasamy
3. R.Shanthi
4. S.Nachimuthu
5. N.Mohan Kumar
6. Ponnathal
7. Amuthavalli

.. Petitioners in
all WPs.

-VS-

1. The Authorized Officer,
Union Bank of India,
Asset Recovery Branch,
P.B.No.8, 235, Oppanakara Street,
Coimbatore 641 001.

2. The Assistant General Manager,
Union Bank of India (Former Corporation
Bank has been merged with Union Bank
of India), Tirupur Main Branch,
No.300/1, Mangalam Road, Tirupur 641 604.



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3. The Authorized Officer,
Union Bank of India, (Former Corporation
Bank has been merged with Union Bank
of India), Tirupur Main Branch,
No.300/1, Mangalam Road,
Tirupur 641 604.
4. The General Manager,
Field General Manager's office,
Union Bank Bhavan, 3rd Floor,
139, Broadway, Chennai 600 104.
5. The Regional Head,
Regional Office, Union Bank of India,
1087D, 3rd Floor, Krishna Towers,
Pappanaickanpalayam, Avinashi Road,
Coimbatore 641 037.

.. Respondents in
all WPs.

Prayer: Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus – (i) to call for the records leading to issuance of the impugned possession notice issued by the 3rd respondent under Rules 8 read with S.13(4) of the SARFAESI Act dated 16.03.2022 (WP.No.5845/2023); (ii) to call for the records leading to the issuance of the impugned demand notice under S.13(2) of the SARFAESI Act dated 29.09.2022 by the 1st respondent (WP. No.5852/2023); (iii) to call for the records leading to the issuance of the impugned demand notice under S.13(2) of the SARFAESI Act dated 25.01.2023 published in Tamil Daily Dinamani on 04.02.2023 by the 1st respondent (WP. No.5854/2023); and (iv) to call for the records leading to the issuance of the impugned demand notice under S.13(2) of the SARFAESI Act dated 25.01.2023 published in English Daily Indian Express on 04.02.2023 by the 1st respondent (WP. No.5858/2023) and quash the same and direct the respondents not to take any action under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for the fraudulent transaction with the connivance of the Bank Officials which is the subject-matter of C.C.No.302 of 2019 on the file of Chief Judicial Magistrate, Tirupur (Court Number 8, Judicial Magistrate-II).



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For the Petitioner
in all WPs.

: Mr.D.Prabhu Mukunth Arun Kumar

For the Respondents
in all WPs.

: Mr.Sarath babu

* * * * *

COMMON ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.D.Prabhu Mukunth Arun Kumar, learned counsel for the petitioners and Mr.Sarath Babu, learned counsel for the respondents.

2. The petitioners were sanctioned a credit facility by the respondent Bank. According to the petitioners, the account of the petitioners' company was erroneously debited for a sum of Rs.3.98 crores by discounting two bills without their knowledge. The correspondence took place between the parties. Eventually, a complaint is filed by the petitioners to the Commissioner of Police. The First Information Report bearing No.27/2018 is registered against three bank officials and one Rajesh Kanna, Senthilkumar and Priya. On or about 09.11.2018, the bank issued a notice under Section



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13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act'). The petitioners gave a reply. Possession notice is also issued under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002. Subsequently, again on 29.09.2022, the first respondent issued a fresh notice under Section 13(2) of the SARFAESI Act. The petitioners filed a reply to the said notice. Subsequently, on 25.01.2023 again a fresh notice has been issued. The said notice issued under Section 13(2) to the petitioners is the subject matter of the present writ petitions.

3. On earlier occasions, we had heard the learned Senior Advocate, Mr.Vijay Narayan, for the petitioners and today, we have heard Mr.D.Prabhu Mukunth Arun Kumar, learned counsel for the petitioners.

4. The substratum of the petitioners' contentions is that criminal complaint is filed against the three bank officials and three other persons for siphoning off the funds of the petitioners and illegally debiting the account of the petitioners by discounting two



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bills purportedly for Rs.3.98 crores. The petitioners were never given the benefit of the said amount. The anticipatory bail application of these officers is rejected upto the Apex Court. According to the petitioners, the bank is also vicariously liable for the acts of its officers. In light of that, it is inappropriate on the part of the bank to declare the account of the petitioners as non-performing asset and issued the notice under Section 13(2) of the SARFAESI Act. Though in normal course notice under Section 13(2) is not subject matter of challenge, however, considering the facts of the present case, this Court may interfere and set aside the notice under Section 13(2) of the SARFAESI Act.

5. The bank has also filed Original Application seeking recovery from the petitioners. According to the learned counsel, the peculiar facts of this case warrant interference of this Court under Article 226 of the Constitution. A huge amount of Rs.3.98 crores has been debited to the account of the petitioners without their knowledge. The petitioners were never accorded benefit of the said amount. In such a scenario, this Court may consider the cause of the petitioners.



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6. According to the learned counsel for the respondents, the notice under Section 13(2) cannot be a subject-matter of challenge.

7. We have considered the submissions canvassed by the learned counsels for the parties.

8. There appears to be a dispute between the petitioners and the respondents with regard to a debit entry in the account of the petitioners totally amounting to Rs.3.98 crores. It is the case of the petitioners that the bank officials are involved in siphoning off the amount and for which a criminal case is also filed. We have been told that charge sheet has also been filed against the accused persons. The criminal law will take its own course.

9. If a notice under Section 13(2) is issued to the petitioners, the petitioners have a right to give reply to the said notice and before proceeding further, it is obligatory on the part of the bank to consider the said reply. The objection filed by the petitioners will have to be objectively considered by the bank before taking further recourse. The same is an obligation cast on the bank under Section 13(3-A) of



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the Act, 2002. Deciding the objection raised under Section 13(3-A) of the Act, 2002 is certainly not an empty formality, but all the grounds raised by the petitioners are required to be considered by the bank.

10. In case the bank rejects the objection and proceeds further, then the petitioners have a remedy to assail the measures undertaken by the bank and in that event, it is open to the petitioners to raise all the defences and the objections before the appropriate forum in the appropriate proceedings. Entertaining challenge to the notice under Section 13(2) at this stage would be premature. The petitioners may have grounds to agitate, however, the same will have to be considered at an appropriate stage in the appropriate proceedings.

11. Moreover, de hors objection under Section 13(3-A) of the SARFAESI Act, the petitioners are not without remedy. The petitioners may resort to such other proceedings as may be permissible under law. In that event, it will be open to the petitioners to agitate all the grounds available to them.



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12. In view of the fact that at this stage it would not be appropriate to consider challenge to the notice under Section 13(2) of the SARFAESI Act, that too without the same being decided by the bank and no further measures having been yet undertaken, we dispose of the writ petitions.

13. This Court had granted interim protection during the pendency of the writ petitions. In view of that, as we are disposing of the petitions, the petitioners are given liberty to file reply to the notice under Section 13(2) within fifteen days from today. If the reply is filed within fifteen days from today, the same shall be considered as if it is within the prescribed time and the said objection/reply may be decided on its own merits objectively. It is accepted by the learned counsel for the bank that except the impugned notice dated 25.01.2023, all earlier notices under Section 13(2) and 13(4) of the SARFAESI Act stand withdrawn.

14. The learned counsel for the petitioners submits that the petitioners have deposited with the respondent bank a sum of



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Rs.2.50 crores in an interest bearing lien account. Now, as the matters are being disposed of, the petitioners are allowed to withdraw the said amount along with interest accrued, if any and the respondent bank shall remit the said amount to the petitioners along with interest accrued, if any, within one week from today.

With the aforesaid observations, the writ petitions are disposed of. There will be no order as to costs. Consequently, miscellaneous petitions are closed.

(S.V.G., CJ.)

(D.B.C., J.)

17.11.2023

Index : Yes/No
Neutral Citation : Yes/No
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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

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Field General Manager's office,
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