



WEB COPY



WP No.18399 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM :

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

AND

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

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M/s.Ganekar & Col.
Proprietor V.Elangovan
No.71, Elaya Mudali Street,
Old Washermanpet,
Chennai 600021

.. Petitioner

versus

1.The Authorised Officer,
Canara Bank, Tondiarpet Branch,
No.50, G.A.Road, Tondairpet,
Chennai 21.

2.R.Raju

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of Debt Recovery Appellate Tribunal in the impugned order dated 08.09.2023 in RA (SA) No.129 of 2018 confirming the order dated 25.10.2017 passed by Debts Recovery Tribunal II, Chennai, in SA No.57 of 2017 to quash the same and consequently declare that



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measure taken under Section 13(4) SARFAESI Act relating to possession notice dated 08.02.2017 and consequential measure as illegal, arbitrary and against the provisions of SARFAESI Act and rules made thereunder.

For the Petitioner : Mr.S.Ramesh,
for Mr.R.Chandrasudan

For the Respondents : Mr.S.Kesavan,
for the first respondent

ORDER

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

We have heard Mr.S.Ramesh, learned counsel for the petitioner and Mr.S.Kesavan, learned counsel for the first respondent.

2. The petitioner challenges the order of the Debt Recovery Appellate Tribunal, Chennai, thereby dismissing the appeal and confirming the order of Debts Recovery Tribunal No.II, Chennai.

3. The petitioner had challenged the action under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and



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Enforcement of Security Interest Act, 2002, (hereinafter referred to as 'the Act') before the Debts Recovery Tribunal.

4. Learned counsel for the petitioner submits that first demand notice was issued to the petitioner on 03.07.2015. The petitioner replied the said notice. Thereafter, the second demand notice under Section 13(2) of the Act was issued on 24.06.2016. The petitioner replied the same on 26.08.2016 specifically raising the ground that the account has not become non-performing asset. It had also raised the ground with regard to the exorbitant and illegal levy of interest, penalty interest. The application also raised the ground of novation of contract, limitation and security interest not being properly created. The objection raised by the petitioner was not considered and without assigning any reason, the bank rejected the objection of the petitioner. Section 13(3A) of the Act was not complied with.

5. Thereafter, action under Section 13(4) of the Act was initiated. The petitioner challenged the same before the Debts Recovery Tribunal. The Debts Recovery Tribunal did not consider the objections raised by the petitioner to the notice under Section 13(2) of the Act, and also without assigning any reasons, rejected the



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applications filed under Section 17 of the Act. The learned counsel for the petitioner submits that in a challenge to an action under Section 13(4) of the Act, the petitioner can raise the grounds of non consideration of his objection under Section 13(3A) of the Act. The Debts Recovery Tribunal and Debt Recovery Appellate Tribunal were bound to consider the objections raised by the petitioner and the fact remains that the same has not been considered by the bank while deciding under Section 13(3A) of the Act. The learned counsel relies on the decision of Division Bench of this Court in the case of *Periyamayagi Seed Processing Unit and Ors. vs. Authorised Officer, Branch Manager, Indian Bank and Ors.*, (2021) 6 MLJ 1.

6. We have considered the submissions canvassed by the learned counsel for the petitioner. We need not go to the first notice, as a second notice under Section 13(2) of the Act was issued on 24.06.2016. The Debts Recovery Tribunal has observed that the reply by the petitioner to the said notice under Section 13(2) of the Act was not issued within sixty days. The petitioner replied on 26.08.2016. However, we may not enter into the said debate. The *prima donna* consideration at the time of issuance of notice under Section 13(2) of the Act is to consider whether the account was non-performing asset.



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According to the learned counsel for the petitioner, the CC Limit was sanctioned to the petitioner to the tune of Rs.20 Lakh. When the notice was issued on 24.06.2016, an amount of more than Rs.34 Lakh was outstanding in the account of the petitioner. It is for the petitioner to demonstrate as to how the account was not a non-performing asset when the amount outstanding was much more than the CC Limit. We do not find such an explanation coming forth from the objection raised by the petitioner. Merely stating that the account was not a non-performing asset would not be sufficient. The petitioner was required to demonstrate through the grounds raised by him as to why the account is not to be treated as a non-performing asset. The fact that the CC limit had exceeded itself is sufficient to prima facie come to the conclusion that the account had become a non-performing asset. The petitioner had not placed on record the amounts deposited and how the amount outstanding could have been said to be within the prescribed CC limit. Some cash deposits are said to have been made. Still the amount outstanding is much more than the sanctioned limit.

7. In view of that, the petitioner could not establish that the account is not a non-performing asset. It was futile on his part to suggest that the objections were not properly decided. It appears that



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subsequently, the property is also sold. The petitioner has challenged the same by filing a securitisation application.

8. In light of all the aforesaid facts, we do not find that the petitioner has made out a case for invoking our extraordinary and supervisory jurisdiction over the orders of the Debts Recovery Tribunal and Debt Recovery Appellate Tribunal.

9. The writ petition as such is dismissed. No costs.

(S.V.G., CJ.)

(P.D.A., J.)

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Index : yes/no
Neutral Citation : Yes/No
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