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WP.No.39049 of 2024

In the High Court of Judicature at Madras

Dated : 21.12.2024

Coram :

The Honourable Ms.Justice P.T.ASHA

Writ Petition No.39049 of 2024

SMFG India Credit Co.Ltd.
(formerly Fullerton India
Credit Co.Ltd.), rep.by its
Authorized Officer

...Petitioner

Vs

1.The Special District Revenue
Officer, Land Acquisition,
Chennai Peripheral Ring Road
Project, Chennai-58.

2.The Special Tahsildar (Land
Survey), Chennai Border
Road Unit 5, Kanchipuram.

3.R.Sekar

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the 1st and 2nd Respondents to pay the compensation amount under Award No.09/2024/Se.A.Sa.Thi/(Pulam Vari and Nabar Vari No.45/53) dated 22.7.2024 with accrued interest to the petitioner without insistence of no objection certificate/consent from the borrower - 3rd respondent herein.



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For Petitioner : Mr.K.J.Parthasarathy
For R1 & R2 : Mr.A.Selvendran, SGP

ORDER

The petitioner, which is a credit company, has come forward with this writ petition seeking to direct respondents 1 and 2 to pay the compensation amount under the award dated 22.7.2024 together with accrued interest without insisting to produce a no objection certificate from the third respondent, who is a borrower.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader accepting notice for respondents 1 and 2.

3. The facts leading to filing of this writ petition are briefly stated herein below :

(i) The third respondent was carrying on business under the names and styles of Hotel Harish, Harish Bavan and Harish Stores at Sriperumbudur. He availed a loan of Rs.1,27,32,000/- on 30.11.2019 from the petitioner and executed a loan agreement dated 27.11.2019 agreeing to repay the said sum in 160 equal monthly instalments to the tune of Rs.1,50,764/- per month. He also availed an additional loan to the tune of Rs.19 lakhs on 18.12.2020 and executed another loan agreement dated 15.12.2020 agreeing to repay the said sum of



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Rs.19 lakhs in 48 equal monthly instalments to the tune of Rs.22,167/- per month. As a security for the said loans, the third respondent executed a memorandum of deposit of title deeds dated 16.12.2020 in favour of the petitioner containing three items of properties.

(ii) Later, the third respondent committed default in paying the monthly instalments and hence, on 31.3.2022, the loan accounts of the third respondent were classified as non performing assets. Thereafter, the petitioner initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the SARFAESI Act) and took symbolic possession of the secured assets on 16.7.2022. Subsequently, the petitioner filed C.M.P.No.7656 of 2022 on the file of the Chief Judicial Magistrate, Chengalpat under Section 14 of the SARFAESI Act and it was ordered on 22.8.2022. Pursuant to that, the vacant possession of the secured assets was handed over to the petitioner on 29.12.2022.

(iii) In order to realise the debt, the petitioner caused an e-auction sale notice dated 09.6.2023 fixing the sale on 27.6.2023. Challenging the said sale notice, the third respondent filed S.A.No.329 of 2023 on the file of the Debts Recovery Tribunal-III, Chennai, in which, a counter has been filed by the petitioner and it is still pending adjudication. The sale, which was scheduled on 27.6.2023, failed for



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want of bidders. The subsequent sale notice dated 13.10.2023 fixing the sale on 31.10.2023 also failed for want of bidders.

(iv) Meanwhile, the petitioner came to know about the acquisition proceedings, which have been initiated in respect of one of the secured assets for the purpose of laying highway from Ennore Port to Mahabalipuram under the Highways Act. Immediately, the petitioner sent a representation dated 04.8.2023 to the second respondent requesting him not to remit the compensation amount to the account of the third respondent. Further, on receipt of the notice dated 09.2.2024 issued for the award inquiry, which was scheduled on 22.2.2024, the authorized representative of the petitioner also appeared, furnished the relevant records and established their right to receive the compensation. The petitioner also sent a representation dated 05.4.2024 to the second respondent seeking payment of compensation.

(v) Ultimately, the first respondent passed the award dated 22.7.2024 fixing the compensation at Rs.49,48,035/-. In the award passed, the first respondent also recorded the claim made by the petitioner. However, the first respondent insisted upon the petitioner to get a no objection certificate from the third respondent. In deference to this direction, the petitioner sent a communication dated 02.8.2024 to the third respondent to issue the no objection certificate



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for the purpose of releasing the award amount in favour of the petitioner. Despite receipt of the said communication, the third respondent has not sent a reply nor issued the no objection certificate. Hence, the petitioner sent another representation dated 05.9.2024 to the first respondent seeking to release the award amount without insisting upon the no objection certificate from the third respondent. However, no action has been taken on the same. Therefore, the petitioner has come forward with this writ petition.

4. The learned counsel for the petitioner has merely reiterated the contentions raised in the affidavit filed in support of this writ petition.

5. On the other hand, the learned Special Government Pleader appearing for respondents 1 and 2 would submit that the amount should be kept in deposit till the parties sort out their dispute.

6. Upon hearing the submissions of the learned counsel on either side and after perusing the records, it is clearly seen that the petitioner has established their right to recover money from their borrower namely the third respondent. The proceedings under the SARFAESI Act have been initiated and possession was taken by the



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petitioner by exercising their right under Section 14 of the SARFAESI Act. The third respondent challenged the e-auction sale notice dated 09.6.2023 under the SARFAESI Act and the same is pending adjudication. The petitioner's claim against the third respondent has been established by them during the award inquiry held by the first respondent. The award dated 22.7.2024 also reaffirms the said fact. Despite that, the third respondent had shown reluctance in making payment to the petitioner namely the creditor. Had the amounts been paid, the dues of the third respondent would have come down. Further, the third respondent has not obtained any orders of court restraining disbursement of compensation to the petitioner and more particularly when the first respondent held an inquiry, in which, the authorized representative of the petitioner also appeared and staked their claim to the compensation amount.

7. Section 73(2) of the Transfer of Property Act reads as follows:

"73. Right to proceeds of revenue sale or compensation on acquisition

(1)

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894 (1 of 1894), or any other enactment for the time being in force providing for the compulsory acquisition of



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immoveable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation."

8. In the light of the above factual and legal position, the writ petition is allowed and a Mandamus is issued to respondents 1 and 2 to pay the compensation to the petitioner. The petitioner shall furnish all the details to respondents 1 and 2 and the amount shall be disbursed to the petitioner within a period of five weeks from the date of receipt of a copy of this order. It is needless to state that the amount to be paid to the petitioner shall be adjusted towards the dues of the third respondent. The payment of compensation to the petitioner does not, in any way, preclude the third respondent from seeking enhancement of compensation as provided under the statute. No costs.

21.12.2024

To

- 1.The Special District Revenue Officer, Land Acquisition, Chennai Peripheral Ring Road Project, Chennai-58.
- 2.The Special Tahsildar (Land Survey), Chennai Border Road Unit 5, Kanchipuram.



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P.T.ASHA,J

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