BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2024

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.P(MD)No.8777 of 2024
and
W.M.P.(MD)Nos.8007 and 8008 of 2024

Hakkim ... Petitioner

vs

1.The Regional Director,
Reserve Bank of India,
16, Rajaji Salai, Fort Glacis,
Chennai – 600 001.

2.M/s.Shriram Transport Company Limited,
No.4, Mookambika Complex,
Lady Desika Road, Mylapore,
Chennai – 600 004.

3.The Authorized Officer,
M/s.Shriram Finance Limited,
Upstairs of Indian Bank,
Barathi Nagar,
Ramanathapuram, Ramanathapuram District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned possession notice, dated 20.04.2023 passed by the third Respondent under Section 13(4) of SARFAESI Act, 2002 and to quash the same and consequently, to direct the Respondents 2 and 3 to accept the Petitioner's One Time Settlement offer.

For Petitioner : Mr.R.Murugappan

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ORDER

(Order of this Court was made by **G.ARUL MURUGAN, J.**)

The Writ Petition is filed challenging the impugned possession notice, dated 20.04.2023 passed by the third respondent under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”) and to quash the same and consequently, to direct the second and third respondents to accept the one time settlement offered by the petitioner.

2.According to the petitioner, on 27.06.2017, he had mortgaged the property with the second and third respondents and has availed a sum of Rs.20,00,000/- and he was paying the interest upto 2020 and thereafter, due to COVID-19 pandemic, he was not able to repay the loan amounts and therefore, he had approached the Bank for one time settlement. But, however, on 20.04.2023, the third respondent issued a notice under Section 13(4) of the Act for taking possession of the property for the due amount of Rs.41,26,078/-. Challenging the same, the petitioner is before this Court.

3.The learned Counsel appearing for the petitioner argued that though the petitioner had given the offer for one time settlement, the Bank has not considered the same and therefore, they have come with the present Writ Petition challenging the possession notice issued under Section 13(4) of the Act.

4.It could be seen from the records that the petitioner, having availed the loan amount from the second and third respondents Bank, have not repaid the dues regularly and as the account was classified as non performing asset, the second respondent issued a notice under Section 13(2) of the Act on 29.12.2021 calling upon the petitioner to pay a sum of Rs.41,26,078/- within sixty days and since the petitioner did not make the payment, the impugned notice under Section 13(4) of the Act was issued on 20.04.2023 taking symbolic possession of the property.

5.In fact, the petitioner had earlier filed a Writ Petition in W.P.(MD)No.11538 of 2023 challenging the very same notice under Section 13(4) of the Act and the Division Bench of this Court, by order, dated 28.11.2023, has disposed of the Writ Petition by observing that if the petitioner is ready to settle the amount, it is for the petitioner to approach the Bank with concrete proposal and it is for the Bank to consider the proposal on its own merits. Since only symbolic possession was to be taken by issuance of the impugned possession notice, the Bank has to resort to Section 14 of the Act for taking possession and if any such order is passed, it is open to the petitioner to assail the same in the appropriate forum.

6.However, the petitioner now without pursuing his request of one time settlement, if any, had once again filed the present Writ Petition challenging the very same impugned notice under Section 13(4) of the Act, dated 20.04.2023. This approach of the petitioner is depricated and when already the impugned notice has been challenged and an order has been passed by the earlier Division Bench, the petitioner has chosen to again challenge the very same impugned notice and as such, we feel that the Writ Petition has to be dismissed by imposing costs.

7.If the petitioner is aggrieved by the possession notice issued under Section 13(4) of the Act, then his remedy is only by filing necessary application under Section 17 of the Act before the Debts Recovery Tribunal and further, if any order is passed on the application filed by the secured creditor Bank by the District Collector or the Chief Judicial Magistrate, even then, the petitioner has an effective and alternative remedy to approach the Tribunal under Section 17 of the Act. In fact, the same has been recorded in the earlier order and it also has been observed that if the petitioner has any concrete proposal for settlement, it is for him to approach the Bank with such proposal and it is for the Bank to consider the same.

8.The petitioner has not even averred as to what is the settlement that is offered by him and whether he has approached the Bank with any settlement and on the contrary, he has chosen to file the present Writ Petition by challenging the very same possession notice issued under Section 13(4) of the Act, which was the subject matter of the earlier Writ Petition. Under such circumstances, the Writ Petition is dismissed with a cost of Rs.10,000/-. Consequently, connected Miscellaneous Petitions are closed.

[R.S.K., J] & [G.A.M., J]
08.04.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

cmr

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.8777 of 2024

08.04.2024