BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2024

CORAM

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

W.P(MD)No.9749 of 2024

State Bank of India,
represented by its Chief Manager,
Stressed Asset Recovery Branch,
No.377/1, Dr.Nanjappa Road,
Coimbatore – 641 018. ... Petitioner

vs

1.The District Collector cum District Magistrate,
Tuticorin District.

2.M/s.PSV Sea Foods Private Limited,
Tuticorin.

3.P.S.Velayudham
4.V.Manickarasi
5.V.Ramasankari ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the first respondent to dispose of the application filed under Section 14 of SARFAESI Act on 21.05.2019 within a time frame.

For Petitioner	: Mr.M.L.Ganesh
For R1	: Mr.S.Saji Bino Special Government Pleader

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ORDER

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

The Writ Petition is filed by the petitioner/secured creditor to direct the first respondent to dispose of the application filed under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") on 21.05.2019 within a time frame to be fixed by this Court.

2.By consent, this Writ Petition is taken up for final disposal at the stage of admission itself. Notice to the respondents 2 to 5 is dispensed with in view of the order that is proposed to be passed.

3.According to the petitioner Bank, they have sanctioned overall credit limit of Rs.7,61,46,456.78/- towards cash credit and term loan facilities to the second respondent private limited company for which, the respondents 2 to 5, who are borrowers/guarantors and also mortgagors, have mortgaged immovable properties as security. The respondents 2 to 5 had executed memorandum of deposit of title deeds and submitted original title deeds to the petitioner Bank. Since the respondents 2 to 5 defaulted in repayment of the loan amount, the loan account was classified as non-performing asset on 27.06.2017 and proceedings under SARFAESI Act was initiated.

4.The petitioner Bank had issued demand notice under Section 13(2) of SARFAESI Act on 03.01.2018 calling upon the respondents 2 to 5 to repay the outstanding loan amount of Rs.7,61,46,456.78/- within a period of sixty days and since there was no response, the petitioner Bank had issued possession notice under Section 13(4) of SARFAESI Act on 20.06.2018 by taking symbolic possession of the property. Pursuant to which, the petitioner had filed an application under Section 14 of SARFAESI Act before the first respondent on 21.05.2019 seeking for assistance to take physical possession of the secured properties.

5.Even though such application was filed as early as on 21.05.2019, it seems that the first respondent till date had not passed any orders to enable the secured creditor to take physical possession of the secured asset. The first respondent instead of passing order, has been going on sending notice to the borrowers asking them to settle the loan amount and had been asking for queries from the petitioner Bank, which has been replied then and there. Since the first respondent has not complied with the mandatory provisions and has failed to pass any orders in the application filed under Section 14 of SARFAESI Act, the above Writ Petition has been filed.

6.Mr.M.L.Ganesh, learned Counsel appearing for the petitioner reiterating the averments made in the affidavit contended that when proper proceedings has been initiated under SARFAESI Act and the petitioner Bank being the secured creditor has filed an application under Section 14 of SARFAESI Act, the first respondent had not followed the mandatory provisions and is simply keeping the application pending without passing any orders, but has been only insisting the borrowers to repay the loan amount for which, the first respondent does not have any authority.

7.The learned Special Government Pleader appearing for the first respondent submitted that the first respondent had only asked for queries and also wanted to ensure the borrowers to settle the loan amount and further contented that in the application filed by the petitioner, suitable orders will be passed within a time frame, as may be fixed by this Court.

8.Heard the learned Counsels on either side and perused the materials available on record.

9.Admittedly, the respondents 2 to 5 have availed cash credit and term loan facility from the petitioner Bank for a sum of Rs.7,61,46,456.78/- for which, they have mortgaged immovable properties by executing registered memorandum of title deeds. As there was default in the repayment of the loan amount, the account was classified as non performing asset on 27.06.2017 and thereafter, the petitioner Bank had issued a demand notice under Section 13(2) of SARFAESI Act on 03.01.2018 and since the payment was not made within a period of sixty days, further possession notice under Section 13(4) of SARFAESI Act was issued on 20.06.2018, whereby, taking symbolic possession of the property.

10.Thereafter, the petitioner Bank/secured creditor had filed an application under Section 14 of SARFAESI Act before the first respondent on 21.05.2019, seeking assistance for taking physical possession of the property. The first respondent, who has no authority to adjudicate on issue, but only has to pass orders by satisfying the contents of the affidavit filed for the purpose of taking physical possession of the secured asset, which also has to be passed within a period of thirty days from the date of application and in fact, for any delay beyond the period of thirty days, the first respondent has to record the reasons in writing, but, however, that delay cannot exceed in aggregate of sixty days, the action of the first respondent by keeping the application pending for nearly five years is in gross violation of the mandatory provisions.

11.Section 14 of SARFAESI Act reads as follows:

> *14. **Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset**.—*
> *(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall,*

on such request being made to him—

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that— (i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii)above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with: Provided further that on receipt of the affidavit from the Authorised Officer, the District

Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets [within a period of thirty days from the date of application]:
Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.]

(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.]

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.
(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority."

12.From the above provisions, it is clear that on receipt of the affidavit from the authorised officer, the District Magistrate or Chief Metropolitan Magistrate, as the case may be, shall, after verifying the contents of the affidavit, pass orders for the purpose of taking physical possession within a period of thirty days from the date of application and further, any delay beyond thirty days, an order recording the reasons in writing has to be made and thereafter, order has to be passed, which shall not exceed the aggregate period of sixty days. While so, in the instant case, even though the application under Section 14 of SARFAESI Act has been filed as early as on 21.05.2019, it could be seen that the first respondent without complying with the mandatory provisions by passing an order, has been making communications to the borrowers directing them to make payments by repaying the loan amount and thereafter, had been communicating the petitioner Bank calling upon them for details, as if proceedings has been challenged and as to whether there is an order operating against them. Even though the same has been replied by the petitioner Bank, the first respondent has not passed any orders, as contemplated under the provisions of SARFAESI Act, which action cannot be justified.

13.In fact when an application under Section 14 of SARFAESI Act is filed, it is not required for the first respondent to adjudicate on the merits of any issue and on the other hand, it is the for the first respondent to only satisfy from the affidavit that proper notices has been issued and the proceedings under the SARFAESI Act has been complied with and when once the same has been satisfied, it is mandatory on the part of the first respondent to pass orders, thereby, enabling the secured creditor to take physical possession of the property. It is seen that as on 31.03.2024, a sum of Rs.11,47,96,891.26/- is due and payable by the respondents 2 to 5 to the petitioner Bank.

14.The law on this aspect has been clearly well settled that it is not required on the part of the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, to conduct a detailed adjudication on the contentious issues, but only verify the compliances referred under Section 14 of SARFAESI Act. It will be useful to refer the judgment of the Hon'ble Supreme Court in the case of ***The Authorised Officer, Indian Bank vs D.Visalatchi and another***, reported in ***(2019) 20 SCC 47***. The relevant portion is extracted hereunder:

> *“**44.**Be it noted that Section 14 of the 2002 Act is not a provision dealing with the jurisdiction of the Court as such. It is a remedial measure available to the secured creditor, who intends to take assistance of the authorised officer for taking possession of the secured asset in furtherance of enforcement of security furnished by the borrower. The authorised officer essentially exercises administrative or*

executive functions, to provide assistance to the secured creditor in terms of the State's coercive power to effectuate the underlying legislative intent of speeding the recovery of the outstanding dues receivable by the secured creditor. At best, the exercise of power by the authorised officer may partake the colour of quasi-judicial function, which can be discharged even by the Executive Magistrate. The authorised officer is not expected to adjudicate the contentious issues raised by the parties concerned but only verify the compliances referred to in the first proviso of Section 14; and being satisfied in that behalf, proceed to pass an order to facilitate taking over possession of the secured assets."

15.In view of the same, as the application filed by the petitioner Bank/secured creditor as early as on 21.05.2019, is still kept pending, we feel that that it would be suffice to direct the first respondent to pass orders on the application filed by the petitioner Bank, dated 21.05.2019 under Section 14 of SARFAESI Act to enable the petitioner Bank to take physical possession of the property within a period of four weeks from the date of receipt of a copy of this order.

16.With the above directions, the Writ Petition is disposed of. However, there shall be no order as to costs.

[R.S.K., J] & [G.A.M., J]
22.04.2024

Index :Yes/No
NCC :Yes/No
cmr

To

The District Collector cum District Magistrate,
Tuticorin District.

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.9749 of 2024

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