

(2016) 02 MAD CK 0082

In the Madras High Court

Case No : Writ Petition (MD) No. 20892 of 2015 and M.P. (MD) No. 1 of 2015

A. Rajakafur

APPELLANT

Vs

The District Magistrate and Collector, Virudhunagar District
and Others

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 14, Section 14(1), Section 14(1A), Section 17, Section 18, Section 18(1)

Citation : (2016) 02 MAD CK 0082

Hon'ble Judges : S. Manikumar and C.T. Selvam, JJ.

Bench : Division Bench

Advocate : J. John, for the Appellant; N. Manohar, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. In W.P(MD)No.16009 of 2015, third respondent herein/auction purchaser of the property, subject matter of sale certificate dated 29.03.2014 issued by the Indian Bank, Sivakasi Branch, Virudhunagar District, has sought for a Writ of Mandamus, directing the respondents to 5 therein, to take physical possession of the said property and hand over the same, to the writ petitioner, by implementing the order made by the District Collector and District Magistrate, Virudhunagar District, first respondent therein, in Roc.No.E3/24710/2014 dated 02.12.2014.

2. Material on record discloses that pursuant to the sale certificate dated 29.03.2014, issued by the Indian Bank to Mr.N.Mariappan, the writ petitioner in W.P(MD)No.16009 of 2015, on 07.04.2014, a sale deed has been executed. On 14.08.2014, the District Magistrate and District Collector, Virudhunagar District, has passed an order, under Section 14 of the SARFAESI Act 2002, directing the Tahsildar, Sivakasi and the Assistant Superintendent of Police, Sivakasi, to take

physical possession of the secured properties and documents relating thereto, and to forward the same to the Authorised Officer of the Secured Creditor/Chief Manager, Indian Bank, Sivakasi Branch, Sivakasi, under appropriate acknowledgement, within a period of one month, from the date of receipt of the letter dated 14.08.2014 of the District Collector under Section 14 of the Act.

3. The Tahsildar, Sivakasi, has been requested to submit a report of compliance, after executing the abovesaid order. The Superintendent of Police, Virudhunagar, and the Revenue Divisional Officer, Sivakasi, have been requested to see that the order passed by the District Magistrate and District Collector, Virudhunagar District, is executed, in accordance with the provisions of the SARFAESI Act, by rendering assistance and protection for the same.

4. Subsequently, as against the statutory action, the borrower has filed an appeal under Section 17 of the Act before the Debts Recovery Tribunal at Madurai. He has also sought for stay of all proceedings. Order dated 14.08.2014 of the District Magistrate cum District Collector, has been kept in abeyance. The Bank has moved the Debts Recovery Tribunal at Madurai, and after hearing the parties therein, I.A.SR.No.6814 of 2014 in S.A.SR.No.6813 of 2014 has been dismissed on 12.09.2014, by observing that after the dismissal of the I.A. by the Tribunal, there is no legal impediment to execute the order dated 14.08.2014 passed under Section 14(1A) of the Act, and directions have been issued to the Tahsildar, Sivakasi, and Assistant Superintendent of Police, Sivakasi, to take appropriate action for immediate execution of the order passed under Section 14(1) of the Act, and to submit a report. The Superintendent of Police, Virudhunagar and Assistant Collector, Sivakasi, have been requested to see that the order passed on 14.08.2014 has been executed in accordance with the provisions of the SARFAESI Act, by rendering necessary assistance and protection.

5. Material on record discloses that the borrower has preferred an appeal against the order dated 12.09.2014 passed by the Debts Recovery Tribunal, Madurai. The appellate Tribunal has disposed of M.A(SA)No. 133 of 2014, without granting any injunction and thus, by order dated 02.12.2014, has confirmed the order dated 12.09.2014 of the Debts Recovery Tribunal, Madurai. Thereafter, the Debts Recovery Tribunal, Madurai, has dismissed S.A. No.303/2014, filed to set aside the order of the District Magistrate and Collector dated 14.08.2014. As against the said order, an appeal has been filed, under Section 18(1) of the SARFAESI Act, 2002, in AIR.No.650 of 2015 before the Debt Recovery Appellate Tribunal at Chennai.

6. The petitioner herein/Borrower has filed W.P. No.27679 of 2015, for a Writ of Mandamus, forbearing the Tahsildar, Sivakasi, Virudhunagar District, the 4th respondent therein, from implementing the order dated 25.08.2015 made in Roc.No.A1/12966/2014 passed under Section 14 of the SARFAESI Act. In the said writ petition, the petitioner has contended that questioning the order dated 21.07.2015 passed by the Debts Recovery Tribunal, Madurai, in S.A.

No.198/2014 whereunder, the petitioner's application filed against the bank has been rejected, and that the petitioner has filed an appeal under Section 18 of the Act and pending disposal of the same, the Tahsildar has issued proceedings dated 25.08.2015. In the abovesaid circumstances, Writ of Certiorari has been filed, to quash the abovesaid proceedings.

7. Subsequently, the Tahsildar, Sivakasi, has issued a proceedings dated 09.10.2015, in Roc.No.A1/ 12966/2014, directing that possession should be handed over, failing which, action would be initiated with the assistance of the Police Department. This proceeding is the subject matter of W.P. No.32715 of 2015, wherein, the petitioner has sought for a Writ of Mandamus, forbearing the Tahsildar, Sivakasi, Virudhunagar District, not to execute the order dated 09.10.2015, and to forbear him from proceeding under Section 14 of the SARFAESI Act, till the disposal of the appeal, under Section 18 of the Act, in AIR.No.650 of 2015, filed by the borrower, before the Debts Recovery Appellate Tribunal, Chennai.

8. After considering the submission that the borrower has made an application for waiver of payment of court fee, in the appeal, and that the said application was scheduled for hearing on 05.11.2015, a Hon'ble Division Bench vide order made in W.P. No.32715 of 2015 dated 14.10.2015, has passed the following order:-

""2. This writ petition is filed seeking a direction to forbear the fourth respondent/ Tahsildar, Sivakasi, Virudhunagar District, who is under an obligation to comply with the order dated 14.08.2014 passed by the first respondent/ District Magistrate and Collector, in an application filed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, (for short # SARFAESI Act#), from taking action, till the disposal of the petitioner's appeal (AIR No. 650 of 2015) filed under Section 18 of the SARFAESI Act.

3. Learned counsel appearing for the petitioner submits that the petitioner has also made an application for waiving of the payment of Court fee and the said application is to be listed for hearing on 05.11.2015.

4. It is pertinent to point out that before taking decision in the waiver application, no application for interim relief can be entertained, inasmuch as cognizance of appeal can be taken either after the proper court fee is paid or payment is waived off. In the case on hand, the order dated 9th October, 2015 sought to be restrained in pursuance of the order of the first respondent dated 16th September, 2014 passed in exercise of power under Section 14 of the SARFAESI Act is to be examined by the appellate Tribunal. At this stage, we cannot adjudicate the issue and also pass any order, staying the action initiated by the Tahsildar in pursuance of the order passed by the District Magistrate during the pendency of the dispute before the appellate authority.

5. However, having regard the fact situation, we grant liberty to the petitioner to

make an application for interim relief before the Appellate Authority. If such an application is filed or the same is pending consideration, the Appellate Authority is directed to consider the same, on its own merits and in accordance with law, at the earliest, preferably within a period of two weeks.""

9. I.A. No.933 of 2015 in AIR.No.650 of 2015, has been filed before the Debts Recovery Appellate Tribunal, Chennai, to grant an interim injunction restraining the District Magistrate and Collector, Virudhunagar District, Virudhunagar, first respondent therein, from implementing the order dated 14.08.2014 pending disposal of AIR.No.650 of 2015.

10. On 30.10.2015, the Debts Recovery Tribunal, Chennai, has adjourned the matter to 05.11.2015. Material on record discloses that subsequently, the matter has been adjourned to 16.11.2015 and 09.12.2015 respectively. In the meanwhile, the Tahsildar, Sivakasi, Virudhunagar District, has issued another proceedings in Roc.No.A1/12966/2014, dated 14.11.2015, directing the borrower/petitioner, to remove all the movables, so as to enable the bank to take possession by 24.11.2015, failing which, appropriate action would be taken by the Police. As against the proceedings dated 14.11.2014, the petitioner/borrower has filed the present writ petition, to quash the same.

11. Record of proceedings shows that on 07.12.2015, when the matter came up for hearing, after hearing the learned counsel for the borrower, auction purchaser and the bank, this Court has passed the following order:-

""Heard Mr.J.John, learned counsel for the borrower, Mr.M.Mahaboob Athiff, learned counsel for the auction purchaser and Mr.R.Pandivel, learned counsel for the bank.

2.Two appeals one in S.A. No.198 of 2014 and another in S.A. No.303 of 2015 were filed by the borrower, challenging, respectively, the sale certificate and order for possession. Both were dismissed on 29.07.2015 and 01.08.2015, respectively. The borrower claims to have filed two appeals before the Debts Recovery Appellate Tribunal. In the appeal filed against the order for possession, the appellate tribunal has set the bank and the auction purchaser ex- parte and adjourned the case to 09.12.2015. the appeal against the dismissal of the application challenging the sale certificate is yet to be numbered.

3.Since the valuable rights of statutory appeal to the DRAT cannot be defeated and at the same time, the borrower cannot prolong the matter even getting the other appeal numbered, we grant him time upto 05.01.2016, to get the other appeal numbered and move an application for stay. There is one more reason why we grant this time. There is no Presiding Officer in the Debts Recovery Appellate Tribunal as on date, as the Chairman of DRAT has resigned.

4.Therefore, the matter is adjourned to 05.01.2016 and an interim order protecting the physical possession of the borrower is granted till then, to enable him to get the appeal numbered and move an application for stay.

Call on 05.01.2016.""

12. Subsequently, the matter came up on 07.01.2016. A representation seemed to have been made that the in-charge officer (Appellate Tribunal) would sit on 20.01.2016 and therefore, by extending the interim order dated 07.12.2015, Registry has been directed to post the writ petition on 25.01.2016, immediately after motion cases. Thus, the present writ petition is listed today along with W.P(MD)No.16009 of 2015.

13. Though the learned counsel for the petitioner/borrower submitted that there was no Presiding Officer in the Debts Recovery Appellate Tribunal, Chennai, and thus I.A. No.933 of 2015 in AIR.No.650 of 2015, could not be taken up for hearing, by producing a List of Proceedings before the Hon"ble Chair Person held on 20.01.2016 and 21.01.2016 respectively, learned counsel for the third respondent/auction purchaser, has submitted that despite indulgence granted by this Court, by granting an interim order from taking possession till the appeal is numbered and to move an application for stay, the borrower has not availed the opportunity of numbering the appeal and simultaneously moved an application for stay.

14. It is also his submission that when many applications were taken up for hearing on 20.01.2016 and 21.01.2016, nothing prevented the borrower from moving I.A. No.933 of 2015 in AIR.No.650 of 2015 for an interim order. It is also his submission that the petitioner is adopting dilatory tactics.

15. Perusal of the order made in W.P. No.32715 of 2015 dated 14.10.2015, makes it clear that when the Tahsildar, Sivakasi, Virudhunagar District, has issued a proceedings dated 09.10.2015 in Roc.No.A1/ 12966/2014, the borrower has sought for a Writ of Mandamus, directing the fourth respondent/Tahsildar, to forbear from proceeding under Section 18 of the SARFAESI Act, till the disposal of the appeal under Section 18 of the Act, in AIR.No.650 of 2015, filed by the borrower, before the Debts Recovery Appellate Tribunal, Chennai. S.A. No.198/2014 has been filed to set aside the sale certificate dated 29.03.2014, as well as the sale deed dated 07.04.2014. The same has been dismissed by the Debts Recovery Tribunal, Madurai, on 21.07.2015. As against the dismissal of S.A. No.198/2014, appeal is stated to have been filed under Section 18(1) of the SARFAESI Act, wherein, an application for waiver of payment of court fee is stated to have been filed and that the said application was scheduled for hearing on 05.11.2015.

16. After considering the said representation in W.P. No.32715 of 2015, the Hon"ble Division Bench though observed that before taking a decision in the waiver application, no application for interim relief can be entertained, inasmuch as cognizance of appeal can be taken, either after the proper court fee is paid or payment is waived off and in the abovesaid circumstances, the Hon"ble Division Bench has observed that it cannot adjudicate the issue and pass any order, staying the action initiated by the Tahsildar, in pursuance of an order passed by

the District Magistrate, during the pendency of the dispute before the appellate authority, and in the abovesaid circumstances, the Hon"ble Bench has granted liberty to the borrower/petitioner to make an application for interim relief before the appellate authority and if any such application is filed or pending, the appellate authority has been directed to consider the same on its merits, and in accordance with law, at the earliest, preferably, within a period of two weeks. Thereafter, I.A. No.933 of 2015 in AIR.No.650 of 2015, has been filed to grant injunction restraining the respondents from implementing the order dated 14.08.2014, and that the same has been adjourned on various dates, as stated supra.

17. Pending disposal of the above application, based on the orders in S.A. No.198 of 2014 dated 21.07.2015, the Tahsildar, Sivakasi, has issued another proceedings dated 14.11.2015, to hand over the building to Indian Bank, Sivakasi Branch, on 24.11.2015. At this juncture, the petitioner/borrower who had already approached the Principal Bench of this Court, against the order dated 09.10.2015 made in Roc.No.A1/ 12966/2014, to forbear the Tahsildar, Sivakasi, Virudhunagar District, from taking proceedings under Section 14 of the SARFAESI Act, pending disposal of the appeal in AIR.No.650 of 2015, has chosen to approach this Court, challenging the subsequent proceedings dated 14.11.2015 issued by the Tahsildar, pursuant to the order made in S.A. No.198/2014, dated 21.07.2015, by filing the present writ petition.

18. Thus, without numbering the appeal filed against the order made in S.A. No.198/2014, the borrower/petitioner has filed the present writ petition, before this Court. On the one hand, he has sought for a Mandamus forbearing the Tahsildar, Sivakasi, from proceeding with the order dated 09.10.2015, pending AIR.No.650 of 2015, stating that an appeal was pending before the Debts Recovery Appellate Tribunal, Chennai, and on the other, adopting forum shopping, the petitioner has filed the present writ petition, in this Bench, challenging the proceedings of the Tahsildar dated 14.11.2015.

19. Perusal of the proceedings dated 05.01.2016 of the Secretary/Registrar, Debts Recovery Appellate Tribunal, Southern Region, shows that the Hon"ble Chair Person, Debts Recovery Appellate Tribunal, Chennai, was scheduled to hold sitting at Chennai on 20.01.2016 and 21.01.2016.

20. Perusal of the list of proceedings before the Hon"ble Chair Person on 20.01.2016, shows that as many as 63 cases/appeals/interim applications have been listed on 20.01.2016 and on 21.01.2016, about 92 cases/appeals/interim applications have been listed.

21. In some cases, arguments have been heard and orders passed. Considering the fact that many appeals/applications have been listed before the Hon"ble Chair Person on 20.01.2016 and 21.01.2016 respectively, and when this Court vide order dated 07.12.2015 granted time to the petitioner/borrower to number the other appeal and move a stay application, nothing prevented the borrower

from approaching the Registrar, Debts Recovery Appellate Tribunal(Southern Region), to number the appeal filed against the order in S.A. No.198/2014 dated 21.07.2015 and to seek for an interim order, against dispossession, even if any application for waiver had been made in the appeal, against the order in S.A. No.198/2014 dated 21.07.2015.

22. As rightly observed by the Hon"ble Division Bench in W.P. No. 32715 of 2015, this Court cannot adjudicate the issue as to whether an interim order can be granted, pending waiver, and it is left to the discretion of the Debts Recovery Appellate Tribunal. While passing an order dated 07.12.2015, indulgence has been granted by this Court, which has not been deliberately pursued. The petitioner has adopted forum shopping.

23. For the reasons stated supra, this Court is not inclined to accede to the prayer made in the writ petition and issue any Writ of Certiorarified Mandamus. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.