(2016) 11 MAD CK 0098

In the Madras High Court

Case No : W.P(MD)No. 13046 of 2016 and WMP(MD) No. 9841 of 2016

C.Venkatesan APPELLANT

Vs

District Collector RESPONDENT

Date of Decision : 21-11-2016

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), Section 14, Section 17, Section 8(5)

Citation : (2017) 1 BC 766 : (2017) 2 DCR 43

Hon'ble Judges : M. Sathyanarayanan and J. Nisha Banu, JJ.

Bench : Division Bench

Advocate : Mr. A.D. Ganesha Moorthi, Advocate, for the Petitioner; Mr. D. Muruganantham, Additional Government Pleader, for the Respondents 1 to 3; Mr. N. Dilipkumar, Advocates, for the Respondents 4 & 5; Mr. S.C. Herold Singh, Advocate, for the Respondent 6

Final Decision : Dismissed

Judgement

M. Sathyanarayanan, J.—By consent this writ petition is taken up for final disposal.

2. The writ petitioner is running brick chamber, namely, M/s. Sadana Chamber for more than 5 years and for the purpose of improving business he has availed loan of Rs.12,00,000/- from the 5th respondent bank and in order to secure the loan he created equitable mortgage in respect of an extent of 88 cents of land in S.Nos. 67A/9B and 102/13 at Mavadipannai Village, Tuticorin District and an extent of 80 cents of land in S.Nos.102/8A2 and 102/9A as well as AC Sheet Roof Chamber Yard at Mavadipannai Village, Tuticorin District. According to the petitioner, the said business was originally run by his father and after his death on 20.05.2013, he started running the said chamber and the value of thee property on which equitable mortgage created was worth more than Rs.1 Crore. The petitioner has stated that he was regularly paying the dues from the year 2013 and on account of serious physical ailment he was unable to run the said

business and therefore, the 4th and 5th respondents initiated action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) by issuing notice under Section 13(2) of the Act and it was also followed with possession notice under Section 8(5) of the Act, demanding Rs. 15,07,125.39 and also sought auction of the properties on which equitable mortgage has been created. The petitioner upon receipt of the said notice approached the officials of the respondent bank and pleaded that he is unwell. The petitioner also filed S.A. No. 208 of 2015 before the Debt Recovery Tribunal, Madurai challenging the said auction and pending disposal filed I.A. No. 1073 of 2015, praying for stay of the further proceedings. The Debt Recovery Tribunal, Madurai vide order dated 25.05.2015 granted interim stay subject to the condition that the petitioner has to make payment of Rs.6,00,000/- in two instalments on or before 10.06.2015 and also imposed a default condition that the stay would be vacated if the conditional order has not been complied with. The 4th respondent has approached the District Collector of Tuticorin District under Section 14 of the Act for taking possession and vide order dated 02.06.2016, the first respondent Collector has passed the order directing his subordinate to take further steps and thereafter the Revenue Divisional Officer, Tiruchendur issued notice dated 06.07.2016, informing that he has directed the Tahsildar, Tiruchendur to take possession of the lands belonging to the petitioner on 22.07.2016 and to handover possession of the same to the Bank. The petitioner challenging the legality of order has filed this petition.

3. This Court while entertaining this Writ Petition directed maintenance of status-quo with regard to the property. When the matter was listed on 17.10.2016, it was represented by the respective learned counsel for the respondents that even prior to status-quo granted on 25.07.2016, physical possession was taken and thereafter auction sale also has been conducted and sale deed was executed in favour of the successful bidder and the auction purchaser is also impleaded as a party and on filing of application, auction purchaser also got implemented and he is represented by Mr. S.C. Herold Singh, learned counsel.

4. Learned counsel for the petitioner would vehemently contend that before passing the impugned notice, the Revenue Divisional Officer, Tiruchendur ought to have put the petitioner on notice and therefore the impugned order is per se non-sustainable in law and some leniency may be shown and he is ready to pay some portion of the amount due and payable to the 5th respondent.

5. This Court heard the submissions of Mr. D. Muruganantham, learned Additional Government Pleader appearing for the respondents 1 to 3 and Mr. N. Dilipkumar, learned counsel appearing for the respondents 4 and 5, who would submit that even prior to status-quo order of this Court dated 25.07.2016, possession of such mortgaged property has been taken and it was put to sale in which the 6th respondent became the successful bidder and would further contend that before passing the order under Section 14 of the Act it is not necessary on the part of the first respondent to put petitioner/borrower on notice and he is competent to

direct his subordinate official to take possession and prays for dismissal of the Writ Petition.

6. Learned counsel for the 6th respondent would submit that in view of the interim of this Court the 6th respondent, who is the auction purchaser, is unable to enjoy the fruits of the sale and prays for vacation of the interim order and dismissal of the Writ Petition.

7. This Court paid it''s best attention to the rival submissions and perused the materials available on record carefully.

8. The scope of Section 14 the SARFAESI Act came up for consideration before the Hon''ble Supreme Court in the decision Standard Chartered Bank v. V.Noble Kumar [2013 (9) SCC 620], wherein the Hon''ble Supreme Court after taking note of the amendment in the form of proviso to Section 14(1) as well as sub-section (1-A) by Act 1 of 2013 of the SARFAESI Act, has held that it is not necessary on the part of the Bank to resort to measures under Section 14 of SARFAESI only if the borrower resists and they can approach the District Magistrate to take possession and further held that whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which, a remedy under Section 17 is available.

9. A perusal of the amendment made in Section 14(1) of the SARFAESI Act also would disclose that before the District Collector ordering the petition filed under Section 14 of the SARFAESI Act, he need not put the borrower on notice. Section 14(1-A) authorises any officer subordinate to him to take possession of such assets and documents relating thereto; and to forward such assets and documents to the secured creditor. In the light of the said legal possession, the point urged by the learned counsel lacks merits and substance and that apart the petitioner is also having effective alternative remedy under Section 17 SARFAESI Act.

10. In the light of reasons cited, the writ petition deserves dismissal and accordingly, dismissed. However, in the circumstances, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is also dismissed.

