(2013) 10 MAD CK 0056

In the Madras High Court

Case No : Writ Petition (MD) No. 17536 of 2013 and M.P. (MD) No''s. 1 to 3 of 2013

M/s. Nashika Industries Pvt. Ltd. APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0056

Hon'ble Judges : S. Vaidyanathan, J;M. Jaichandren, J

Bench : Division Bench

Advocate : Almas Mohammed, for the Appellant; S. Sethu Raman, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This writ petition has been filed, praying that this Court may be pleased to issue a Writ of Certiorari to call for the

records and quash the impugned possession notices issued by the respondent bank, dated 10.07.2013 and 27.09.2013, under Rule 8(1) of the

Security Interest (Enforcement) Rules, 2002. It has been stated that the petitioner industry is registered before the Registrar of Companies,

Chennai, under the Companies Act, 1956. The petitioner industry is running saw mills dealing in various kinds of wood and its by-products from

the year, 2007. For running the business, the petitioner industry had approached the respondent bank for financial assistance. The respondent bank

had sanctioned a Cash Credit Limit to an extent of Rs. 11 Crores and a Term Loan to an extent of Rs. 75 Lakhs. It has also issued a Letter of

Credit for Rs. 5 Crores and Credit Exposure LT for Rs. 20 Lakhs.

2. It has been further stated that, at the time of the sanctioning of the loan,

certain moveable and immoveable properties have been furnished as

equitable mortgage. Even though the business was running successfully, for a period of about 18 months, it had run into financial problems, due to

the power cuts in the State of Tamil Nadu and also due to adverse business conditions. In such circumstances, the petitioner industry could not pay

the installments, as per the agreement entered into with the respondent bank. Inspite of the representations made to the respondent bank, notices,

under Sections 13(2) and 13(4) had been issued, under the provisions of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest (Enforcement), Rules, 2002. In such circumstances, the petitioner has preferred the present Writ Petition, before

this Court, under Article 226 of the Constitution of India.

3. Mr. Almas Mohammed, the learned counsel appearing for the petitioner had submitted that the respondent Bank had failed to act, as per the

guidelines of the Reserve Bank of India. Further, the respondent Bank had issued the possession notice, under Rule 8(1) of the Security Interest

(Enforcement) Rules, 2002 and u/s 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002, arbitrarily and illegally, without following due process of law. The respondent bank has also been using recovery agents to take forcible

possession of the lands in question, contrary to the orders passed by the Supreme Court. The respondent bank had also taken possession of some

of the properties, which had not been mortgaged and had seized certain machineries relating to a mineral water plant set up by the petitioner

industry. The respondent bank had also seized the agricultural land situated at Panpozhi Road, Kanakaapillaivalasi, Shencottah, Tamil Nadu,

without obtaining specific orders from the Courts concerned.

4. Per contra, Mr. S. Sethu Raman, learned counsel, who had been directed to take notice on behalf of the respondent bank, had submitted that

the Writ Petition filed by the petitioner industry is not maintainable, as the petitioner industry has not availed the alternative remedies provided

under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, before the appropriate forum.

Therefore, the Writ Petition is liable to be dismissed.

5. In view of the averments made in the affidavit filed in support of the writ

petition and in view of the submissions made by the learned counsels

appearing on behalf of the parties concerned, we are of the considered view that the present writ petition, filed by the petitioner industry, is not

maintainable, in view of the decisions of the Supreme Court, in United Bank of India Vs. Satyawati Tondon and Others, and GM, Sri Siddeshwara

Co-operative Bank Ltd. and Another Vs. Sri Ikbal and Others, .

6. It is noted that Supreme Court, in United Bank of India Vs. Satyawati Tondon and Others, has made it clear that the scope of interference by

this Court, under Article 226 of the Constitution of India, is limited in nature. It has also made it clear that the statutory schemes provided under the

specific enactments should not be defeated by the exercise of the writ jurisdiction by this Court. As such, the alternative remedies provided to the

petitioner, under the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002, ought not to be

interfered with, by this Court, by invoking its writ jurisdiction, under Article 226 of the Constitution of India. In such circumstances, we find it

appropriate to dismiss the present writ petition. Hence, it stands dismissed. However, it may be open to the petitioner industry to approach the

appropriate forum, as per the provisions of the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act,

2002, if so advised, in the manner known to law. No costs. Consequently, the connected miscellaneous petitions are closed. No costs.