

(2013) 10 MAD CK 0055

In the Madras High Court

Case No : Writ Petition (MD) No. 17631 of 2013 and M.P. (MD) No's. 1 to 4 of 2013

M/s. Om Timber Mart

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0055

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 11.07.2013, under Rule 8(1) of the

Security Interest (Enforcement) Rules, 2002. It has been stated that the petitioner industry is a partnership firm and registered under the Factories

Act, 1948. The petitioner industry is running saw mills dealing in various kinds of wood and its by-products for the last 12 years. For running the

business, the petitioner industry had approached the respondent bank for financial assistance. The respondent bank had sanctioned a Cash Credit

(hypn) to an extent of Rs. 12.50 Crores. It has also issued a Letter of Credit(WC) for Rs. 17 Crores and Credit Exposure LT for Rs. 0.20

Crores.

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 20 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. In spite 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. Ms. 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 seized the agricultural lands, which were mortgaged to the respondent Bank, without obtaining specific orders from the Courts concerned.

4. Per contra, Mr. S. Sethu Raman, the 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 Iqbal 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.