

(2013) 11 MAD CK 0187**Madras High Court****Case No:** Writ Petition No. 32522 of 2013 and M.P. No. 1 of 2013

M/s. Firdaus Hawiyya Industries

APPELLANT

Vs

Chief Manager and Authorised
Officer Indian Bank

RESPONDENT

Date of Decision: Nov. 28, 2013**Hon'ble Judges:** R. Sudhakar, J; Pushpa Sathyanarayana, J**Bench:** Division Bench**Advocate:** V. Ajaykumar, for the Appellant;**Final Decision:** Disposed Off**Judgement**

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R. Sudhakar, J.

Possession notice issued by the Bank u/s 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short "the Act") is under challenge. The petitioner is a victim of "Thane" cyclone. Loan in this case was granted to the lady entrepreneur on 4.10.10 and it was given for the purpose of establishment and production of substrata material, viz., saw dust for the manufacture of mosquito coils and the petitioner was running the small scale unit. The unfortunate cyclone, which hit the coast of Cuddalore on 29.12.2011, caused extensive damage and the petitioner claimed insurance compensation, which was granted on 15.3.2012 and that amount has been appropriated by the Bank. Nevertheless, the petitioner could not revive the unit in time and, therefore, the account has been declared as a Non-Performing Asset on 14.8.13 and as a consequence, the bank proceeded to issue notice u/s 13(2) of the Act on 14.8.13. A reply was given by the petitioner on 15.8.13 referring to the Reserve Bank of India guidelines dated 1.7.13, which provides for relief measures to be given by banks to various categories of persons affected by natural calamities and small scale industries and tiny units are included in clause 43 of Section 4, which reads as hereunder:-

IV. Small Scale and Tiny Units

43. Rehabilitation of units under village and cottage industry sector, small-scale industrial units as also smaller of the medium industrial sector damaged, will also need attention. Term loans for repairs to and renovation of factory buildings/sheds and machinery as also for replacement of damaged parts and working capital for purchase of raw materials and stores will need to be provided urgently.

44. Where the raw materials or finished goods have been washed away or ruined or damaged, banks" security for working capital will naturally be eroded and the working capital account (Cash Credit or Loan) will be out of order. In such cases, banks will convert drawings in excess of the value of security into a term loan and also provide further working capital to the borrower.

45. Depending on the damage suffered and time needed for rehabilitation and restarting production and sales, term loan installments will have to be suitably rescheduled, keeping in view the income generating capacity of the unit. Shortfall in margins will have to be condoned or even waived and borrower should be allowed time to build up margin gradually from his future cash generation. Wherever State Government or any agency has formulated special scheme for providing grants/subsidy/seed money, suitable margin may be stipulated to the extent of such grants/subsidy/seed money.

46. The primary consideration before the banks in extending credit to a small/tiny unit for its rehabilitation should be the viability of the venture after the rehabilitation programme is implemented.

2. The plea of the petitioner is that the possession notice u/s 13(4) of the Act in the above backdrop of the petitioner's claim, is issued without considering the above guidelines of the Reserve Bank of India and, thereby, divesting the petitioner of possession of the business property and the residential property as well, which act of the Bank would cause grave hardship and prejudice to the petitioner. It is the further plea of the petitioner that the respondent bank is bound by the guidelines issued by the Reserve Bank of India and should have considered the claim of the petitioner in that perspective.

3. We notice that a request has been made by the petitioner based on notice u/s 13(2) of the Act to the Bank. However, we find that the Bank has not taken note of the same, thereby causing serious hardship and prejudice to the petitioner. Nevertheless, since there is an effective remedy to the Debts Recovery Tribunal as against the notice u/s 13(4) of the Act, and the Tribunal could consider all the above pleas, both on facts and law, we direct the petitioner to approach the Debts Recovery Tribunal, which shall consider all these issues on merits and deal with the matter in accordance with law and the guidelines of the Reserve Bank of India. Accordingly, the writ petition is disposed of with the aforesaid observation and direction. Consequently, connected miscellaneous petition is closed.