BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2016**

CORAM:
THE HONOURABLE **MR.JUSTICE NOOTY.RAMAMOHANA RAO**
AND
THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
AND
W.P.(MD).No.12236 of 2016
and
W.M.P.(MD)No.9354 of 2016

Rakku : Petitioner

Vs.

1. The Chief Manager/Authorized Officer,
   Indian Overseas Bank,
   A.A.Nagar, Madurai.

2. Nagarathinam : Respondent
   R-2 impleaded, vide order dated 22.07.2016,
   in W.M.P.(MD)No.9811/2016

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the possession notice dated 30.06.2016 passed under SARFAESI Act, 2002 by the respondent relating to the petitioner dwelling house bearing Door No.19, situated at East Car Street, Thiruppuvanam Kottai, Thiruppuvanam Taluk, Sivagangai District and quash the same and consequently to direct the respondent to consider the claim of the petitioner.

For Petitioner : Mr.R.Murugappan

For Respondent No.1 : Mr.N.Dilipkumar

O R D E R

[Order of the Court was made by **NOOTY.RAMAMOHANA RAO, J.**]

The Writ Petitioner claims to be the widow of one T.Ramesh Kumar and she has now instituted the present Writ Petition calling in question the action initiated by the respondent, Authorized Officer of the Indian Overseas Bank, on 30.06.2016, by taking symbolic possession of a residential house property, in terms and in accordance with Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002, [for brevity, "the Act"] r/w Rule 8 of the Security Interest [Enforcement] Rules, 2002.

2. Learned counsel for the respondent bank has opposed this Writ Petition on several grounds, including the ground that the Writ Petitioner cannot maintain this Writ Petition, as there is no material available on record to establish that she was the wife of the deceased T.Rameshkumar; whereas, going by the record available with the bank, the said T.Rameshkumar was an unmarried person and his mother was shown as a nominee.

3. It is also brought to our notice by the learned counsel for the respondent bank that there was some discrepancy with regard to the photocopy of the sale deed produced, relating to the immovable property itself, where the relationship of the present petitioner, as the wife of the deceased Rameshkumar, has been interpolated.

4. Learned counsel for the petitioner would urge that if an opportunity is given, the petitioner would be in a position to establish that she and the deceased Rameshkumar got married. But, right now, if the respondent bank drives out the petitioner from and out of the possession of immovable property, she will face a miserable condition and hence, it was her anxiety to save the immovable property in question.

5. Though we do not wish to be understood as laying down that the Writ Petitioner herein was married to T.Ramesh kumar, the principal borrower of the respondent bank and that there was a relationship as wife and husband between them, but, however, for the purpose of disposal of this Writ Petition, we take into account the assertion of the Writ Petitioner that she is in possession of the immovable property in question, of which possession was sought to be taken by the respondent bank on 30.06.2016, more, with a view to prevent the respondent bank from taking possession of the secured assets and then, realizing the debt due from the Writ Petitioner, by liquidating the said asset and also taking into account and consideration of the anxiety of the petitioner herein to retrieve the asset from going under hammer, we pass the following order:-

- It appears that the deceased T.Rameshkumar has availed temporary over draft facility from the Indian Overseas Bank and that the said loan account was outstanding due little more than a sum of Rs.2.19 lakhs. The Writ Petitioner wants to liquidate this liability first. Therefore, we grant time to the Writ Petitioner upto 31.08.2016 for liquidating the entire liability.
- The deceased T.Rameshkumar appears to have also offered as a guarantor to an educational loan availed by his nephew. Be that as it may, since the educational loan has not been repaid, he has also been brought within the description of the term "borrower", as defined in Section 2(1)(f) of the Act.

- There is an over due amount of nearly Rs.3.71 lakhs. Unless the said over due amount is cleared first, the bank cannot accord permission for payment to the remaining balance amount by according monthly installment.
- It appears that a little more than a sum of Rs.11.66 lakhs has been availed as an educational loan and the said loan amount has not been re-cycled by paying the monthly installment, as a consequence of which, the over due amount has reached Rs.3.71 lakhs. Unless the said amount of over due is paid first, monthly installment cannot be granted by the respondent bank. Therefore, we grant permission to the Writ Petitioner to liquidate the entire over due liability in the educational loan amount latest by 17th October 2016. Upon such payment, the respondent bank may consider the Writ Petitioner to pay the balance amount in accordance with the monthly installment.
- Any failure on the part of the Writ Petitioner to adhere to the above schedule of payments, it would be open to the respondent bank to act in accordance with law, without any further reference to this Court.
- If the Writ Petitioner complies with the payments, the respondent bank shall not proceed further in taking physical possession of the secured asset or putting it to sale otherwise.

6. With this, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

+1 CC to Mr.R.MURUGAPPAN, Advocate, SR No.39060

+1 CC to Mr.N.DILIPKUMAR, Advocate, SR No.39285

ORDER MADE IN
W.P.(MD).No.12236 of 2016

NB
SH/KBM/SAR-I:19.08.2016:2P/3C