



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2017

CORAM:

WEB COPY

THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.(MD) No.11512 of 2017
and
W.M.P.(MD) No.8871 of 2017

Kandasamy

... Petitioner

-vs-

1.The Chairman

SIDBI Bank, Lucknow
Uttarpradesh, India

2.The District Executive Magistrate /

The District Collector
Collector Office, Perambalur District

3.The Authorized Officer /

The Deputy General Manager
SIDBI Bank, Trichy No.19
Royal Road
Near KMC Speciality Hospital
Cantonment
Trichy & District

4.The Branch Manager

SIDBI
No.19, Royal Road
Near KMC Speciality Hospital
Cantonment, Trichy & District

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus forbearing the respondents from dispossessing the petitioner from the properties mentioned in Annexure-I in the notice, dated 13.06.2017, of the 3rd respondent during the pendency of O.A.No.1217/2016 of the Hon'ble Debt Recovery Tribunal, Madurai.

For Petitioner : Mr.K.Baalasundharam

For Respondents : Mr.V.R.Shanmuganathan
Spl. Govt. Pleader for R2

O R D E R

(Order of the Court by T.S.SIVAGNANAM, J.,)

Mr.V.R.Shanmuganathan, learned Special Government Pleader accepts notice on behalf of the second respondent.

2. With the consent of both sides, this writ petition is taken up for final hearing at the admission stage itself.

3. This writ petition has been filed for issuance of a writ of mandamus to forbear the respondents from dispossessing the petitioner from the property in question during the pendency of O.A.No.1217 of 2016, pending on the file of the Debts Recovery Tribunal, Madurai.

4. The undisputed facts are that the petitioner had borrowed a loan from the respondent - Bank and as on date, he is a defaulter. The respondent - Bank initiated proceedings before the Debts Recovery Tribunal by invoking the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. That apart, the respondent - Bank has issued a notice, dated 20.04.2016, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter, referred to as "the SARFAESI Act"), to which the petitioner has submitted a reply on 07.03.2016 and 28.07.2016. Thereafter, the respondent - Bank has issued a notice, under Section 13(4) of the SARFAESI Act and also directed the petitioner to handover the possession of the secured asset by 20.06.2017, failing which they would initiate action under the provisions of the SARFAESI Act. At this juncture, the petitioner is before this Court seeking for a direction upon the respondent - Bank not to dispossess him from the secured asset.

5. The learned counsel appearing for the petitioner would submit that it may be true that the petitioner has an effective remedy before the Debts Recovery Tribunal and the secured asset being a dwelling house, the petitioner may be granted some interim relief till he approaches the Debts Recovery Tribunal.

6. After going through the facts of the case and considering the submissions made by the learned counsel appearing for the petitioner, we are of the clear view that in a writ petition, such a relief as sought for cannot be granted and the petitioner has to first invoke the remedy available under the SARFAESI Act by approaching the Debts Recovery Tribunal. The possession notice was received by the petitioner as early as on 13.06.2017. <https://hccaseservices.in/hccaseservices> At this juncture, we are not inclined to entertain the writ petition nor grant any relief as sought for by the writ petitioner.



7. In the result, the writ petition fails and it is dismissed. However, if the petitioner files an application before the Debts Recovery Tribunal, the Debts Recovery Tribunal is directed to consider the said application expeditiously as it is stated that the secured asset is a dwelling house and in the first floor of the said dwelling house, there are some tenants. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar.

To:

- 1 The Debts Recovery Tribunal, Madurai.
- 2 The District Executive Magistrate / The District Collector, Collector Office, Perambalur District.

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