



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.21179 of 2019 and
W.M.P.Nos.20384 & 20433 of 2019

1.J.Indira

2.M.Jayasekaran

.. Petitioners

Vs.

1.The Chief Metropolitan Magistrate,
Metropolitan Magistrate Court,
Egmore, Chennai - 600 008.

2.The Authorized Officer,
Aadhar Housing Finance Limited,
(previously known as DHFL Vysya
Housing Finance Limited),
Shop No.109, 1st Floor, Challamall,
No.11 & 11A, Sir Theagaraya Road,
T.Nagar, Chennai - 600 017.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of mandamus directing the 1st respondent to consider the objection made by the petitioner in compliance of provisions of SARFAESI Act while deciding the Substitution Petition dated 09.07.2018 filed by the 2nd respondent in CrI.M.P.No.3515 of 2017 and to decide the same on merits in accordance with law.

For Petitioners : Mr.R.Munuswamy

O R D E R

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The petitioners have filed the above Writ Petition to issue a Writ of mandamus directing the 1st respondent to consider the objection made by the petitioner in compliance of provisions of SARFAESI Act while deciding the Substitution Petition dated 09.07.2018 filed by the 2nd respondent in CrI.M.P.No.3515 of 2017 and to decide the same on merits in accordance with law.



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2.It is the case of the petitioners that they availed financial assistance from DHFL Vysya Housing Finance Limited and the property was mortgaged as a security for the due repayment of the loan. Since the petitioners defaulted in repaying the loan amount, the 2nd respondent initiated proceedings under the SARFAESI Act. Challenging the possession notice dated 02.06.2014, the petitioners preferred a SARFAESI Application in S.A.No.43 of 2014 before the Debts Recovery Tribunal - I, Chennai. By order dated 30.12.2016, the Debts Recovery Tribunal dismissed the SARFAESI Application. Thereafter, the 2nd respondent filed a petition in Crl.M.P.No.3515 of 2017 under Section 14 of the SARFAESI Act to take physical possession of the property. In the said petition, the petitioners filed a Miscellaneous Petition in Crl.M.P.No.3574 of 2017 seeking permission from the 1st respondent to issue notice to them in the petition filed under Section 14 of the SARFAESI Act. By order dated 06.02.2018, the 1st respondent dismissed the Crl.M.P.No.3574 of 2017. Challenging the order dated 06.02.2018 passed in Crl.M.P.No.3574 of 2017, the petitioners preferred a Writ Petition in W.P.No.4186 of 2018 and the Division Bench of this Court, by order dated 31.10.2018, dismissed the Writ Petition finding that the petitioners have got remedy by way of a SARFAESI Application under Section 17 of the SARFAESI Act and not under Article 226 of the Constitution of India.

3.Even prior to the dismissal of the Writ Petition, the DHFL was amalgamated with the 2nd respondent Aadhar Housing Finance Limited. Even in the Writ Petition in W.P.No.4186 of 2018, the 2nd respondent has been arrayed as the Senior Manager, Aadhar Housing Finance Limited. In the said Writ Petition, the petitioners did not raise any objection with regard to the locus of the Senior Manager. Now, in the present Writ Petition, the petitioners are questioning the locus of the Senior Manager for the first time. The filing of the Writ Petition by the petitioners would only prove that they have filed the Writ Petition only to drag on the proceedings. When this issue was not raised by the petitioners at the earliest point of time, they cannot be allowed to raise the issue in a piece-meal manner as and when they liked.

4.In these circumstances, we are not inclined to entertain the Writ Petition. The Writ Petition is devoid of merits and the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar



To

1. The Chief Metropolitan Magistrate,
Metropolitan Magistrate Court,
Egmore, Chennai - 600 008.

+1 CC to Mr.R.Munuswamy, Advocate sr 67361.

W.P.No.21179 of 2019 and
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PM(CO)
SP(04/09/2019)