BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **16.04.2019**
CORAM:
THE HONOURABLE **MR.JUSTICE K.KALYANASUNDARAM**
and
THE HONOURABLE **MRS.JUSTICE R.THARANI**

W.P.(MD)No.3724 of 2019
and
W.M.P.(MD)Nos.2926 & 2927 of 2019

V.Jayaprakash ...Petitioner

/Vs./

1.The Presiding Officer,
Debts Recovery Tribunal,
Uthangudi, Madurai.

2.The Authorised Officer,
HDFC Ltd., No.29,
Kamaraj Road (Near Circuit House),
Coimbatore.

3.The Authorised Officer,
'HDFC ERGO General Insurance Company Ltd.,'
Registered office at
Ramon House, H.T.Parekh Marg,
169, Backbay Reclamation,
Mumbai - 400 020.
(R3 Impleaded vide ordered
dated 01.03.2019 in WMP(MD)No.3232/19)
...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the first respondent to dispose of S.A.No.91 of 2015 filed by the petitioner's mother as expeditiously as possible within a stipulated time.

For Petitioner : Mr.M.Kannan
For R-3 : Mr.S.Srinivasa Raghavan

ORDER

The petitioner has come up with this writ petition for issuance of writ of Mandamus directing the first respondent to dispose of S.A.No.91 of 2015 filed by the petitioner's mother V.Shanthi, within a stipulated time.

2.According the petitioner, his father late G.T.Velumani and his mother Mrs.Shanthi had availed a housing loan of

Rs.16,50,247/- on 20.12.2010. At the time of availing the loan, the second respondent bank had directed his parents to compulsorily insure with their sister concern viz., HDFC ERGO General Insurance Company. The loan agreement itself stipulates that the borrower should ensure that the property is insured and HDFC is being the sole beneficiary under the policy. The petitioner would state that as per the loan agreement, his parents had taken a policy with the third respondent and when the policy was in force, the petitioner's father died on 29.09.2012 and his mother suffered stroke. Hence, the loan amount could not be paid and proceedings under SARFAESI Act was initiated. Challenging the same, an appeal in S.A.No.91 of 2015 has been filed before the first respondent/Tribunal.

3.The grievance of the petitioner is that the respondent should have paid the policy amount to the second respondent. Since the request of the petitioner was not considered by the second respondent, the present writ petition has been filed.

4.The learned counsel for the petitioner reiterated the averments contained in the affidavit.

5.Mr.Srinivasa Raghavan, learned standing counsel for the third respondent would submit that the Insurance policy taken by the petitioner's parents is genuine. But subsequently there is no claim and hence, the third respondent did not take any action. It is further stated that the third respondent is also not a party before the Debt Recovery proceedings. If all the Legal heirs of the insured/policy holders makes an application to the third respondent, it would be considered in accordance with law and the entire policy amount will be given credit to the loan account.

6.Considering the limited scope of prayer sought for in this writ petition and also the submissions of the learned counsels on either side, this writ petition is disposed of with the following directions:-

> "(i). The petitioner is directed to implead the third respondent as one of the respondents in the Debt recovery proceedings;
>
> (ii).The legal heirs of the policy holder shall make an application to the third respondent within a period of two weeks from the receipt of this order. On such compliance, it shall be considered as expeditiously as possible on its own merits preferably, within a period of four weeks therefrom.
>
> (iii).Till such time, the second respondent bank shall keep the proceedings in abeyance. It is made clear that in the event of non compliance of the above directions, the Bank is at liberty to take further action in accordance with law."

7.With the above directions, the Writ Petition is disposed of.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To
1.The Presiding Officer,
Debts Recovery Tribunal,
Uthangudi, Madurai.

2.The Authorised Officer,
HDFC Ltd., No.29,
Kamaraj Road (Near Circuit House),
Coimbatore.

3.The Authorised Officer,
'HDFC ERGO General Insurance Company Ltd.,'
Registered office at
Ramon House, H.T.Parekh Marg,
169, Backbay Reclamation,
Mumbai - 400 020.

+1 CC to M/s.M.KANNAN, Advocate (SR-61343[F] dated 16/04/2019)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-61413[F] dated 16/04/2019)

RJ2

W.P.(MD)No.3724 of 2019
16.04.2019

_KM/(03.05.2019) 5P 6C