BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.08.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU**
**AND**
**THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.P(MD)NO.18733 OF 2019**
**and**
**W.M.P(MD)No.15088 of 2019**

1.S.Ramasamy
2.J.Sagayaraj :Petitioners

.vs.

1.The District Collector cum
District Executive Magistrate,
Tuticorin.

2.The Authorized Officer,
City Union Bank,
No.52, East Car Street,
Tuticorin - 628 001.

3.Pappu Jerald : Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the proceedings of the impugned order in Na.Ka.C4/14546/2018, dated 11.7.2019 on the file of the first respondent and to quash the same.

For Petitioners :Mr.G.Prabhu Rajadurai

For Respondent-1 :Mr.VR.Shanmuganathan
Special Govt.Pleader

For Respondent-2 :Mr.K.Muralidharan
Standing Counsel

**O R D E R**
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[Order of the Court was made by **SENTHILKUMAR RAMAMOORTHY.,J.**]

This Writ Petition is filed challenging the order of the first respondent, dated 11.7.2019 under Section 14 of the SARFAESI Act.

2.The case of the Petitioners is that they stood as guarantors in respect of the loan availed by an unregistered partnership firm at the instance of the third respondent. They further submit that upon default in repayment of the loan amount by the borrowers, proceedings were initiated under SARFAESI Act and that possession notice was also issued in the year 2018. It is further stated that the borrowers filed a Petition before the Debt Recovery Tribunal in S.A.No.342 of 2018 and that subsequently, the present impugned order has been passed, which shows that the second respondent/Bank has discharged the property of the third respondent and is proceeding only against the property of the guarantors. Therefore, the present Writ Petition has been filed challenging the order of the first respondent.

3.The learned counsel for the Petitioners mainly contended that upon discharge of the mortgage given by the third respondent to the second respondent/Bank, without the consent of the guarantors, the guarantee extended by the guarantors stand automatically discharged. Accordingly, they submitted that the impugned order is liable to be quashed.

4.On the other hand, the learned counsel for the second respondent/Bank submitted that the said borrower made repayments to the Bank and therefore the property mortgaged by them was released and that if the Petitioners make repayment, the property mortgaged by the Petitioners would also be released from mortgage.

5.We heard the learned counsel for the Petitioners and the learned Special Government Pleader appearing for the first respondent and the learned Standing counsel appearing for the second respondent/Bank. Since the order passed in this Writ Petition will not affect the interest of the third respondent, notice to the third respondent is dispensed with.

6.There is an effective alternative remedy before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, which is also available to the guarantors. In this case, we also find that the borrower has already approached the Debt Recovery Tribunal by filing S.A.No.242 of 2018. Therefore, we are of the view that the Writ Petitioners/guarantors should also approach the Debt Recovery Tribunal by filing appropriate appeal. However, in view of the fact that physical possession of the property may be taken in the meantime, we are inclined to grant interim protection from dispossession only, till the Petitioners approach the Debt Recovery Tribunal.

7.Accordingly, without expressing any opinion on the merits of the case, we dispose of this Writ Petition with the following directions:

(a) the Petitioners are granted leave to approach the Debt Recovery Tribunal concerned within a period of three weeks from the date of receipt of a copy of this order.

(b) status-quo with regard to the possession of the property, as on today, shall be maintained by the second respondent/Bank for a period of three weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

vsn

To

1.The District Collector cum
District Executive Magistrate,
Tuticorin.

2.The Authorized Officer,
City Union Bank,
No..52, East Car Street,
Tuticorin - 628 001.

+1 CC to M/s.K.MURALEEDHARAN, Advocate ( SR-84448[F] dated 30/08/2019 )

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate ( SR-84551[F] dated 30/08/2019 )

+1 CC to M/s.SPL GP ( SR-84595[F] dated 30/08/2019 )

**0RDER MADE IN**
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**29.08.2019**

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