

N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.No.3046 of 2020 &
WMP.No.3563 of 2020

Mr.K.Alagendiran

..Petitioner

Vs.

1. The Authorised Officer,
The Chief manager,
State Bank of India,
SME Centre 005008, Kurinji Complex,
1st Floor, State Bank Road
Coimbatore 641 018.

2. Mrs. R. Anusuya,
Advocate Commissioner,
Old Post Office Road,
S.R.Complex, Coimbatore 641 018.

..Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records comprised in the file of Chief Judicial Magistrate, Coimbatore in issuing warrant in CrI.M.P.No.1056 of 2019 dated 04.01.2020, quash the same as illegal and consequently direct the 2nd respondent not to execute the warrant.

For Petitioner : Mr.B.Jagannath
For Respondents : Mr.M.L.Ganesh for R1.

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

The petitioner is a borrower and he availed financial assistance from the State Bank of India, Coimbatore.

2. Learned counsel appearing for the petitioner would submit that due to rough weather, the petitioner was not able to repay the debt, therefore, action under the provisions of

the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) was taken, after complying with all procedural formalities, the sale notice dated 12.2.2019 was issued. Challenging the legality of the same, the petitioner filed S.A.No146 of 2019 on the file of Debt Recovery Tribunal at Coimbatore and pending disposal of the appeal, he prayed for stay of all further proceedings.

3. The Debt Recovery Tribunal at Coimbatore, vide order dated 19.3.2019 in I.A.No.805 of 2019 in S.A.No.146 of 2019, has passed a conditional order of stay, by directing the petitioner to pay a sum of Rs.3,19,500/- directly to the respondent Bank on or before 19.4.2019 by way of first instalment and another sum of Rs.3,19,500/- directly to them on or before 18.5.2019 by way of second instalment and with default clause.

4. Learned counsel appearing for the petitioner submitted that the petitioner did comply with the conditional order by paying the first instalment and further due to personal difficulties, he could not comply with the order, however, he has remitted the balance amount on 28.5.2019. The petitioner also filed I.A.No.1927 of 2019 for advancement of hearing I.A.No.1926 of 2019 for emergency hearing and the said applications are pending.

5. He would further submit that the petitioner becoming unaware of the fact of the passing of the order by the court of Chief Judicial Magistrate, Coimbatore under section 14(1) of the Act, in pursuance of the same, to the shock and surprise of the petitioner, on 22.1.2020 at about 1 p.m., the Advocate Commissioner along with officials of the 1st respondent Bank came to take possession of the residential property. Since the property is a dwelling house and that the petitioner is residing along with his family members, he prayed for some accommodation, however the Advocate Commissioner, took physical possession of one room and put a seal of the respondent Bank and informed that they will come again after a week's time to take possession of the secured asset.

6. The petitioner, challenging the legality of the order passed by the Court of Chief Judicial Magistrate, Coimbatore dated 4.1.2020 in M.P.No.1056 of 2019 has filed an appeal before the Debts Recovery Tribunal, Coimbatore on 25.1.2020 and pending disposal of the same, he prays for an interim order.

7. Learned counsel appearing for the petitioner would submit that admittedly, there is no Presiding Officer in Debt Recovery Tribunal, Coimbatore and therefore the Presiding Officer of Debt Recovery Tribunal, Madurai will come to Coimbatore and sitting one day and on account of the same, he is unable to move the application for interim relief and prays for appropriate orders forbearing the Advocate Commissioner as well as respondent Bank to take possession of the rest of the portion of the secured asset.

8. This Court has considered the rival submissions and also perused the materials placed before it.

9. This Court, at this state, is not inclined to go into the merits or otherwise of the case of the petitioner for the reason that it is for the Debt Recovery Tribunal to adjudicate the issues involved in the said appeal. Admittedly, no Presiding Officer is posted for Coimbatore Debt Recovery Tribunal for more than one year and Presiding Officer, Debt Recovery Tribunal at Madurai is used to have sitting for a week.

10. In the light of the same, this Court is of the considered view, that some indulgence is to be shown to the petitioner, so as to enable him to approach the Presiding Officer, Debt Recovery Tribunal at Madurai in charge of Debt Recovery Tribunal, Coimbatore, to move application for interim relief.

11. In the result, the writ petition is disposed of and the petitioner is granted two weeks time to move the Debt Recovery Tribunal at Madurai, in-charge of Debt Recovery Tribunal, Coimbatore for numbering the appeal and move the application for stay. Consequently connected WMP.3563 of 2020 is closed.

12. Till such time, the 1st respondent shall defer further proceedings for taking possession of the remaining portion of the secured asset.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

msr

To

1. The Authorised Officer,
The Chief manager,
State Bank of India,
SME Centre 05008, Kurinji Complex,
1st Floor, State Bank Road
Coimbatore 641 018.
2. Mrs. R. Anusuya,
Advocate Commissioner,
Old Post Office Road,
S.R.Complex, Coimbatore 641 018.
3. The Debts Recovery Tribunal
Madurai (incharge of Debts Recovery Tribunal, Coimbatore)

+1 CC to Mr.M.L.Ganesh, Advocate sr 10100.
+1 CC to Mr.B.Jagannath, Advocate sr 9425.

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VD(CO)
SP(10/02/2020)



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