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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM :

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

W.P.No.16457 of 2020

M/s.Repco Home Finance Ltd.,
Represented by its Authorised Officer,
Pal Pandi,
Having Corporate Office at
3rd Floor, Alexander Square,
Old No.34 & 35, New No.2,
Sardar Patel Road, Guindy,
Chennai - 600 032.

... Petitioner

Vs.

1.T.M.Swaminathan

2.Divya

3.Manjula

4. The Sub-Registrar,
Sub-Registrar Office,
Ganapathy,
Coimbatore.

5. M/s.Sriram Transport Finance Company Ltd.,
Represented by Authorised Representative T.Senthilkumar,
Old No.71/46, New No.7/68, Sree Saravana Bhavan Towers,
First Floor, S.R.P. Hills Opposite,
Sivanandapuram,
Saravananpatti,
Coimbatore - 641 035.

6. Noor Ahamed,
The Sole Arbitrator,
Arbitration Tribunal,
Coimbatore.

... Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India for issuance of a Writ of Mandamus
directing the 4th respondent to remove the entry of order of
attachment dated 16.10.2019 and registered as Document



No.31/2019 on the his file in respect of the property all that piece and parcel having an extent of 1476 sq.ft. or 3 cents 169 sq.ft. comprised in S.F.No. 19/2, Sub Division S.F.No.19/2G, Site No.31 West Part, Patta No. 848, Door No.31, 31/1, Sri Amman Nagar, Villankurichi Village, Ganapathy SRO, Coimbatore Corporation and District- 641 035.

For Petitioner : Mr.A.Ilangovan
For R4 : Mr.T.M.Pappaiah,
Special Government Pleader

O R D E R

(Order of the Court was made by M. SATHYANARAYANAN, J.)

The petitioner is a Secured Creditor and according to them, the respondents 1 and 2 had availed housing loan of Rs.80,00,000/- and also created security for the due repayment of the loan in respect of the property having an extent of 1476 sq.ft or 3 cents 169 sq.ft., comprised in S.F.No.19/2, Sub Division S.F.No.19/2G, Site No.31, West Part, Patta No.848, Door No.31, 31/1, Sri Amman Nagar, Villankurichi Village, Ganapathy SRO, Coimbatore Corporation and District, and the said financial assistance was also guaranteed by the 3rd respondent. The respondents 1 and 2 committed default in repayment of the loan, and therefore, the loan account has been declared as Non-Performing Assets on 30.12.2018 and thereafter, a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ("SARFAESI Act" for brevity) was issued on 23.01.2019, calling upon the respondents 1 to 3 to pay the total outstanding loan amount of Rs.78,82,403/- together with further interest from 23.01.2019. The respondents 1 to 3 did not fulfill the terms of the said notice, and it was followed by possession notice, under Section 13(4) of the SARFAESI Act, dated 22.04.2019, and symbolic possession of the Secured Assets was taken and due formalities have also been followed with regard to possession notice. The petitioner also approached the Chief Judicial Magistrate, Coimbatore, and obtained a positive order, dated 21.11.2019, in CrI.M.P.No.4018 of 2019, under Section 14(1) of the SARFAESI Act. The petitioner also obtained valuation certificate and Encumbrance Certificate and on verification of the Encumbrance Certificate, to the shock and surprise, the petitioner found that there is an attachment order entry in I.A.No.1 of 2019 in Arbitration Case No.611 of 2018 for an extent of Rs.53,09,253/- and such entry was also registered as G.No.31/2019 on 16.10.2019.

2.The learned counsel appearing for the petitioner has drawn the attention of this Court to Section 26(c) of the SARFAESI Act and would submit that the petitioner, being the Secured Creditor



and the 5th respondent being an Unsecured Creditor, in the light of the statutory provisions and various pronouncements of this Court, their claim is having priority over all other claims and prays for appropriate orders.

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3.Mr.T.M.Pappaiah, learned Special Government Pleader, accepts notice on behalf of the 4th respondent, and on instructions, would submit that the representation, dated 27.12.2019, submitted by the petitioner would be considered by the 4th respondent and disposal will be given in accordance with law at an early date.

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

5.Though the petitioner prays for a larger relief, this Court, in the light of the facts and circumstances of the case, without going into the merits of the claim as projected by the petitioner either in the representation or in the present writ petition, directs the 4th respondent to put the petitioner and the respondents 1 to 3 and 5 on notice, and thereafter, consider and dispose of the petitioner's representation, dated 27.12.2019, on merits and in accordance with law and pass appropriate orders, within a period of six weeks from the date of receipt of a copy of this order, and communicate the decision taken to the petitioner and the respondents 1 to 3 and 5.

This writ petition stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mkn
To
The Sub-Registrar,
Sub-Registrar Office,
Ganapathy, Coimbatore.

+1 cc to M/s.A.Ilangovan, Advocate Sr.No. 37664
+1 cc to The Government Pleader, Sr.No. 37961

W.P.No.16457 of 2020

PM(CO)
RMP(15/12/2020)