WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.10.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.14208 of 2020
and
W.M.P.(MD).No.11863 of 2020

R.Padmapriya ... Petitioner

Vs

1.The Regional Director,
Reserve Bank of India, Fort Glacis,
16, Rajaji Salai, Chennai-1.

2.Housing Development Finance Corporation Limited,
Represented by its Branch Manager "Achyuta",
No.111, Bharathidasan Salai,
Cantonment, Trichy-1.

3.T.Kannan ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the first and second respondents from proceeding against the house property in Door No.2/14-15F, Ezhil Nagar, Alagapuri Post, Kottaiyur, Karaikudi Taluk, Sivagangai District, which is a subject matter of the Lok Adalat Order, dated 09.04.2016 based on the petitioner's representation dated 29.08.2020 within stipulated time.

For Petitioner : Mr.T.A.Ebenezer

ORDER

This writ petition has been filed for a Mandamus forbearing the first and second respondents from proceeding against the house property in Door No.2/14-15F, Ezhil Nagar, Alagapuri Post, Kottaiyur, Karaikudi Taluk, Sivagangai District.

2. Heard Mr.T.A.Ebenezer, learned counsel appearing for the petitioner. Notice to the respondents is dispensed with, as no adverse order is going to be passed against them.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

3. It is the case of the petitioner that under the Lok Adalat award dated 09.04.2016, the third respondent, who is her husband agreed to settle the aforementioned property in favour of the petitioner's daughter and therefore, the impugned notice issued by the second respondent / Financial Institution under Section 13 (2) of SARFAESI Act, 2002, is bad in law.

4. Admittedly, in the Lok Adalat Award dated 09.04.2016, the second respondent / Financial Institution was not a party to the said award. It is also an admitted fact that the third respondent is a defaulter in the repayment of loan to the second respondent / financial institution and he had mortgaged the aforementioned property with the second respondent / financial institution as a security for repayment of the loan. Hence the petitioner has no *locus standi* to file this Writ Petition in respect of the property, which has already been mortgaged by the third respondent in favour of the second respondent / financial institution, who has now issued a notice under Section 13 (2) of the SARFAESI Act, 2002 to the third respondent for non repayment of the loan by him. The Financial Institution cannot be made to suffer for a contract that has been entered into subsequent to the creation of the mortgage in their favour, that too when the financial institution is not a party to the alleged Lok Adalat award dated 09.04.2016. The case on hand is one such case. If at all the petitioner is aggrieved by the notice issued for the aforementioned property under Section 13 (2) of the SARFAESI Act, 2002, she can only approach the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, 2002.

5. The relief sought for by the petitioner in this Writ Petition is absolutely not maintainable. Therefore, the Writ Petition is dismissed. However, liberty is granted to the petitioner to approach the Debt Recovery Tribunal, to challenge the notice dated 31.08.2020, issued under Section 13 (2) of the SARFAESI Act, 2002. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

To

1.The Regional Director,
Reserve Bank of India, Fort Glacis,
16, Rajaji Salai, Chennai-1.

2.Housing Development Finance Corporation Limited,
Represented by its Branch Manager "Achyuta",
No.111, Bharathidasan Salai,
Cantonment, Trichy-1.

W.P.(MD)No.14208 of 2020
13.10.2020

tsg
SDS (02.11.2020) 3P-3C

https://hcservices.ecourts.gov.in/hcservices/