

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.4553 of 2021

and

W.M.P.No.5176 of 2021

S.Thyagavalli

... Petitioner

-vs-

Authorized Officer

Housing Development Finance Corporation Ltd.

2nd Floor ITC Centre, 760, Anna Salai

Chennai- 600 002.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of respondent in Impugned dated 12.01.2021 and quash the same as illegal arbitration and non-est-in-law and consequently forbear the respondent from taking physical possession of property in No.13 of Annai Nagar, Mahatma Gandhi Street, Korattur, Chennai- 600076 comprised in Survey No.147/ 1 (part) in all measuring 1219 Sq.Ft.

For Petitioner

: Mr.G.Sasikannan

सत्यमेव जयते

ORDER

(Made by The Hon'ble Chief Justice)

This is another of those utterly useless petitions carried by a defaulter to ward off the secured creditor's attempts to proceed against the secured assets.

2. It is admitted that a notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued by the respondent bank on February 24, 2020, calling upon the

petitioner herein to pay a sum in excess of Rs.43.51 lakhs. The petitioner seeks to proffer the excuse of the pandemic to justify the failure of the petitioner to comply with the demand.

3. It now appears that a notice for obtaining physical possession of the relevant property has been issued on January 12, 2021. It is elementary that upon a secured creditor taking steps under Section 13 (4) of the said Act, any person aggrieved thereby may approach the appropriate Debts Recovery Tribunal. Ordinarily, the Debts Recovery Tribunal requires a certain amount of the debt due to be put in as a condition precedent to passing any order against the creditor or impeding the secured assets being proceeded against. There is no doubt that the petitioner herein has sought to avoid the Debts Recovery Tribunal in apprehension that the petitioner may be required to put in a substantial deposit.

4. Since there is an efficacious alternative remedy available to the petitioner and a banker-constituent disagreement necessarily involves disputed questions of facts, the Writ Court is not the appropriate forum to receive the present grievance.

W.P.No.4553 of 2021 is disposed of by leaving the petitioner free to approach the appropriate Debts Recovery Tribunal in accordance with law. There will be no order as to costs. Consequently, W.M.P.No.5176 of 2021 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

The Authorized Officer

Housing Development Finance Corporation Ltd.

2nd Floor ITC Centre

760, Anna Salai

Chennai- 600 002.

W.P.No.4553 of 2021

AAB (CO)

RMP (18/03/2021)