

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6018 of 2021

1 Mrs. Velumani  
2 Mrs. Kaliammal Avinasiappan ... petitioners

Vs

1 Authorized Officer  
The South Indian Bank Pallapalayam Branch  
No. 155 Trichy Road Gandhi Nagar  
Pallapalayam  
Ondipudur Post Coimbatore

2 Mrs. Eswari Ponnusamy ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the Debt Recovery Tribunal to take the SA(SR) No.6371/2020 on file with liberty to us to amend the main petition in order to challenge the 3rd tender cum Sale notice dated 20.01.2021.

For Petitioners : Mr.V.Bharadhidasan  
for Mr.A.Parthasarathy

For Respondents : Mr.M.L.Ganesh  
for 1<sup>st</sup> respondent

ORDER

(made by the Hon'ble Chief Justice)

The petitioners complain that the first respondent bank has not issued any notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, before resorting to measures for sale of an immovable property furnished as security. It is the petitioners' further contention that since the petitioners periodically tendered the amounts required to be paid on account of repayment, the account could not have been regarded as a non-performing asset for steps to be taken under the said Act of 2002.

2. It is evident that the secured creditor in this case has resorted to measures under Section 13(4) of the Act. Once a secured creditor takes such measures, it is open to any person aggrieved thereby, including a borrower - where a guarantor, by definition, is regarded as a borrower - to approach the relevant Debts Recovery Tribunal exercising jurisdiction with a petition under Section 17 of the said Act. In this case, the petitioners say that they have already approached the appropriate Debts Recovery Tribunal.

3. The grievance of the petitioners is that the Debts Recovery Tribunal has not taken up the matter for consideration and, as such, the bank is left free to proceed against the secured assets despite the petitioners having carried their grievance to the Debts Recovery Tribunal.

4. There is no doubt that the matter will be taken up by the relevant Tribunal at its earliest convenience. It is also open to the petitioners to mention the matter on the ground of urgency, if the bank seeks to proceed further. The scope of the present petition has to be limited to the grievance against the Tribunal rather than the grievance against the secured creditor.

5. Accordingly, W.P.No.6018 of 2021 is disposed of by requesting the relevant Debts Recovery Tribunal to take up the petitioners' application filed before it in accordance with law and at its earliest convenience.

6. There will be no order as to costs. Consequently, W.M.P.Nos.6669 and 6671 of 2021 are closed.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

- 1 The Authorized Officer  
The South Indian Bank Pallapalayam Branch  
No. 155 Trichy Road Gandhi Nagar  
Pallapalayam  
Ondipudur Post Coimbatore

Copy to:  
The Presiding Officer,  
Debts Recovery Tribunal,  
Coimbatore

W.P.No.6018 of 2021

ssn (CO)  
KKN 15.04.2021



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