IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6894 of 2021

S.M.Kamalahasan ... petitioner
Proprietor, M/s.Kamal & Co,

Vs

1 The Chief Judicial Magistrate
Coimbatore.

2 The District Magistrate Cum
District Collector Coimbatore District
Collectoarate Coimbatore.

3 The Registrar
Debt Recovery Tribunal Coimbatore.

4 The Authorised Officer
Corporation Bank
Coimbatore Main Branch
No.816 Oppanakara Street
Coimbatore

5 Hariom Gola

6 Manorama Gola

7 Rahul Gola

8 Deepak Gola

9 Arumugam

10 N.Rajamanickam(Ms No.2243/2010) ... respondents
Advocate Commissioner

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus directing the to call for the records pertaining to the order dated 27.01.2021 passed by the chief Judicial Magistrate Coimbatore in Cr.M.P.No.426 of 2020 and quash the same and consequently direct the 3rd Respondents Tribunal to dispose of the petitioners application in S.A.No.327 of 2019 pending on its file within a time frame.

For Petitioner : Mr.A.Suresh Sakthi Murugan

For Respondents : Mr.K.S.Suresh,
Government Advocate
for 2nd respondent

ORDER

(made by the Hon'ble Chief Justice)

The petitioner, admittedly a borrower, complains of the respondent secured creditor having surreptitiously approached the Chief Judicial Magistrate, Coimbatore, to obtain an order under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, by suppressing the fact that the present petitioner's appeal is pending with the Debts Recovery Tribunal.

2. The petitioner says that a previous request under Section 14 of the Act by the same secured creditor was pending before the relevant District Collector. The petitioner points out that the relevant District Collector had not passed any order on the request since the appeal was pending before the Debts Recovery Tribunal. The petitioner says that by suppressing such material facts, the secured creditor has attempted to steal a march by having an advocate commissioner appointed by the respondent herein. According to the petitioner, Advocate Commissioner is seeking to take possession of the secured assets immediately.

3. There was a previous doubt as to whether a Chief Judicial Magistrate could entertain a request under Section 14 of the said Act of 2002. However, upon authoritative judicial pronouncements being made, the Chief Judicial Magistrate is now a designated authority to entertain a request under Section 14 of the Act.

4. It may also be remembered that Section 14 of the Act does not call for any adjudication at all. A secured creditor approaches an executive functionary for administrative assistance to take possession of the secured assets for the purpose of the sale thereof. That is the object of Section 14 of the Act. However, certain safeguards have been built in to such provision since the mandate of the provision is for the executive authority approached to render assistance to the secured creditor in a time bound manner. The safety net provided to ensure that the provision is not misused by a secured creditor, certain declarations need to be furnished before the authority approached under Section 14 of the Act. The relevant authority has merely to take note of the declarations and accept

the same at face value. If the declarations have not been furnished, the authority can call upon the secured creditor that has approached it to furnish the relevant declarations. Once the declarations have been furnished, the authority under Section 14 of the Act cannot go into the veracity of the declarations or attempt to clarify the position by referring to the borrower or any other.

5. Not only does a borrower have no say before an authority under Section 14 of the Act, the scheme of such provision is such that any order passed by the relevant authority is immune to a challenge from the borrower unless the borrower questions the action taken by the secured creditor in properly constituted proceedings under Section 17 of the Act of 2002. In the present case, Section 17 proceedings, possibly, have filed and the matter is before the Debts Recovery Tribunal. The petitioner, however, cannot show any injunction issued by the Debts Recovery Tribunal restraining the secured creditor herein from taking steps to pursue the secured assets. In the absence of a positive order of injunction by the Debts Recovery Tribunal approached under Section 17 of the Act, the secured creditor does not have to wait to pursue the secured assets and has every right to approach an authority under Section 14 of the Act for administrative assistance to be rendered to get the secured asset or take possession thereof.

6. The petitioner has no cause of action against the order impugned passed by the respondent herein. The petitioner's only remedy is to pursue the matter before the Debts Recovery Tribunal in accordance with law.

7. W.P.No.6894 of 2021 is dismissed. The petitioner will immediately forward a copy of this order to the concerned secured creditor. There will be no order as to costs. Consequently, W.M.P.Nos.7435 to 7437 of 2021 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1 The Chief Judicial Magistrate
Coimbatore.

2 The District Magistrate Cum
District Collector Coimbatore District
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+1 cc to Mr.A.Suresh, Advocate Sr.No. 16675
+1 cc to The Government Pleader Sr.No. 17128

EV(CO)
RMP(30/03/2021)