IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM:

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

W.P.No.9493 of 2021
and
W.M.P.Nos.10092 to 10094 of 2021

1.S.Sanjeevi

2.S.Sivamuthu ...Petitioners

-vs-

1.The Authorised Officer,
Repco Home Finance Ltd.,
8/26, Indian Red Cross Building,
Hosur Road, Coimbatore 641 018.

2.The Inspector,
Thudiyalur Police Station,
Thudiyalur, Coimbatore. ...Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the 1st respondent pertaining to the proceedings dated 13.08.2019 issued under impugned notice under section 13(2) of the SARFAESI Act 2002 in Ref.No.RHFL/SARF-1828-CBC/2019 as confirmed in the notice dated 21.10.2019 issued under Section 13 (4) of SARFAESI Act 2002 by the 1st respondent, quash the same and direct the 2nd respondent to take action against the 1st respondent after holding proper enquiry into the complaint dated 01.04.2021 given in person by the writ petitioners.

For Petitioners : Mr.C.R.Prasanan

For Respondents : Mr.A.Ilangovan
for R-1

ORDER

(Made by The Hon'ble Chief Justice)

This is another of the misconceived petitions by which a defaulter has sought to bypass the statutory remedy to approach this extraordinary jurisdiction.

2. Two principal grounds are raised: the first that since respondent REPCO Home Finance Ltd is associated with REPCO Bank and REPCO Bank has been held by this Court not to be a bank or financial institution as defined in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, REPCO Home Finance Ltd would also not be a secured creditor within the meaning of the definition in the said Act; and, that the secured creditor in this case has resorted to unlawful means and harrassment to try and realise its dues.

3. There is no doubt that this Court has held that REPCO Bank is not a bank or financial institution and, as such, cannot be regarded as a secured creditor entitled to invoke the provisions of the said Act of 2002. However, in at least two previous matters, this Court has also held that REPCO Home Finance Limited is a financial institution in accordance with a gazette notification dated November 10, 2003 published in such regard. As a financial institution, the REPCO Home Finance Ltd is a secured creditor within the meaning of the expression used in the Act. Accordingly, there is no impediment to REPCO Home Finance Ltd invoking the provisions of the Act to proceed against the secured assets or any borrower of such secured creditor. It must also be remembered that the definition of a “borrower” in the said Act includes both the principal debtor and the guarantor.

4. Section 17 of the Act of 2002 permits any person aggrieved by any measure adopted by a secured creditor under Section 13 (4) of the Act to approach the appropriate Debts Recovery Tribunal. There is no reason why this petitioner should not be directed to such forum or this petition entertained. While the alleged acts of harassment by any secured creditor can never be condoned, as to what amounts to harassment would differ from case to case. The mere request or issuance of a reminder or the visit by a representative of the creditor to seek repayment may not amount to the kind of harassment against which the Court may be expected to take any action. In any event, such matters can also be complained of before the Tribunal in proceedings under Section 17 of the said Act.

5. Since there is an efficacious alternative remedy available to the petitioner and involved questions of accounts cannot be gone into in this extraordinary jurisdiction where the process of adjudication is on summary basis on affidavit evidence, the petitioner is permitted to carry the grievance to the appropriate Debts Recovery Tribunal in accordance with law.

W.P.No.9493 of 2021 is dismissed. W.M.P.Nos.10092 to 10094 of 2021 are closed. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

1.The Authorised Officer,
Repco Home Finance Ltd.,
8/26, Indian Red Cross Building,
Hosur Road, Coimbatore 641 018.

2.The Inspector,
Thudiyalur Police Station,
Thudiyalur, Coimbatore.

+1cc to Mr.C.R.Prasanan, Advocate, S.R.No.23641

NMI(CO)
RN(04/05/2021)