IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

CORAM :

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

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.10574, 10586, 10577 and 10580 of 2021
and W.M.P.Nos.11168, 11170, 11175, 11180, 11190, 11191 11183 and 11184 of 2021

Jesima Banu .. Petitioner in WPs.10574 & 10577 of 2021

A.Sabin Nihar .. Petitioner in WPs.10580 & 10586 of 2021

-vs-

1.Union of India,
Rep. By its Secretary,
Finance Department,
No.15, Safdarjung Road,
New Delhi.

2.Reserve Bank of India,
Rep. by its Secretary,
P.O.Box 901, Shahid Bhat Singh Road,
Mumbai.

3.REPCO Home Finance Limited,
Rep. by its Authorised Signatory/
Deputy General Manager, REPCO Tower,
Regd. Office at No.33, North Usman Road,
T.Nagar, Chennai,
Branch Office at No.55, IV Main Road,
Gandhi Nagar, Adyar, Chennai 600 020.

4.Fysal Khan
5.Thameem Ansari
6.Jainul Arabu
7.H.Shakeela Banu

8.The Sub-Registrar,
Sub-Registrar Office of Triplicane,
Bharathi Salai, Triplicane,
Chennai. ... Respondents in all WPs.

Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Prohibition : (W.P.Nos.10574 and 10580) - prohibiting the 3rd respondent from initiating any proceedings under the SARFAESI Act in pursuance of the Memorandum of Deposit of Title Deeds dated 15.10.2014, presented on 16.10.2014 registered on 11.06.2015 bearing Doc.No.758 of 2015 on the file of SRO Triplicane being executed by the respondents 4 and 5 through their Power agent the 6th respondent herein; (W.P.Nos.10577 and 10586) - prohibiting the 8th respondent from accepting any kind of deeds in respect of the property measuring an extent of 2131.75 sq.ft., comprised in R.S.No.853, New R.S.No.853/6, Block No.22, bearing Door No.205, Old No.88, and previous No.193, situate at Kammam Dharwaja Lane, Bharathi Salai (formerly Pycrofts Road), Triplicane, Chennai 600 005 till the disposal of the civil litigations.

For Petitioners : Mr.R.Venkata Varathan

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

: Mr.T.M.Pappiah Spl. Govt. Pleader for R-8

COMMON ORDER

(Made by The Hon'ble Chief Justice)

The only issue raised by the petitioner has been covered in several orders of this Court. The petitioner contends that the third respondent, REPCO Home Finance Limited, is not entitled to invoke the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The petitioner is aggrieved by the measures taken by the third respondent under the provisions of the said Act of 2002. The petitioner says that since the third respondent is not a secured creditor within the meaning of the definition in the relevant statute, the entire action taken by the third respondent is without jurisdiction. The petitioner says that in such circumstances, this extraordinary jurisdiction has been

invoked in preference to the usual remedy available under Section 17 of the Act. In support of the petitioner's contention, the petitioner refers to a judgment of this Court rendered on March 3, 2021 pertaining to REPCO Bank. The petitioner says that since REPCO Bank is the holding entity of REPCO Home Finance Limited, the same rule as applicable to REPCO Bank would, ipso facto, apply to REPCO Home Finance Limited.

3. The contention is flawed and exceptionable. It has been noticed in several previous judgments that by a notification dated November 10, 2003, the REPCO Home Finance Limited has been recognised as a financial institution by the Central Government. In at least one of the matters dealt with by this Court, the relevant notification has been referred to on the basis of a copy thereof that was appended to the papers filed by the REPCO Home Finance Limited.

4. Section 2(1)(zd) of the Act of 2002 defines a "secured creditor". Under sub-clause (i) of Section 2(1)(zd), any bank or or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (l) of sub-section (1) of section 2 of the Act would be reckoned to be a secured creditor. Section 2 (1) (m) defines a "financial institution". Sub-clause (ii) in Section 2 (1) (m) provides for any institution to be specified by the Central Government under Section 2 (h) (ii) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. Such notification has been issued as noticed above. As a consequence, REPCO Home Finance Limited has to be regarded as a financial institution within the meaning of Section 2 (1) (m) of the Act of 2002. Since REPCO Home Finance Limited has proceeded against the security, REPCO Home Finance Limited has also to be regarded as a secured creditor within the meaning of Section 2 (1) (zd) of the Act. As such, notwithstanding that the holding entity of REPCO Home Finance Limited may not qualify as a secured creditor within the meaning of the Act of 2002, REPCO Home Finance Limited eminently qualifies thereunder.

5. Since the principal ground as to jurisdiction urged on behalf of the petitioners is completely without basis and REPCO Home Finance Limited is a financial institution and, consequently, a secured creditor as defined in the Act of 2002, W.P.Nos.10574, 10577, 10586 and 10580 of 2021 are dismissed.

6. The status of the petitioner as described in the present case is with reference to W.P.No.10574 of 2021. However, it matters little as to whether the petitioner is a borrower or a guarantor or any other person aggrieved by any measure adopted by REPCO Home Finance Limited. For the purpose of the present

discussion, REPCO Home Finance Limited has to be regarded as a financial institution and, upon a financial institution holding any security, it qualifies to be regarded as a secured creditor within the meaning of the definition in the Act of 2002. Consequently, W.M.P.Nos. 11168, 11170, 11175, 11180, 11190, 11191 11183 and 11184 of 2021 are closed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sra
To

1.The Secretary,
Union of India,
Finance Department,
No.15, Safdarjung Road,
New Delhi.

2.The Secretary,
Reserve Bank of India,
P.O.Box 901, Shahid Bhat Singh Road,
Mumbai.

3.The Sub-Registrar,
Sub-Registrar Office of Triplicane,
Bharathi Salai, Triplicane,
Chennai.

+1cc to the Government Pleader Sr.26350
+4cc to M/s.R.Venkata varathan, Advocate Sr.25858, 25856, 25857 and 25855

W.P.Nos.10574, 10577,
10586 and 10580 of 2021

ppa[co]
srg 21/06/2021