IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.13541 of 2021

1. M/s.Muthumariyammal Granites,
   No.789/1, Pachanampalli Village,
   Selliyampatti Post,
   Dharmapuri - 636 708.

2. P.Venkatesh,
   Managing Partner,
   M/s.Muthumariyamman Granites,
   D.No.3/188, Gollankottai,
   Pulikarai,
   Palacode Taluk,
   Dharmapuri - 636 808. .. Petitioners

Vs.

The South Indian Bank Limited,
rep. by its Authorized Officer,
Dharmapuri Branch,
Dharmapuri District. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondent bank to handover the subject matter of property situated at No.789/1, Pachanampalli Village, Selliyampatti Post, Dharmapuri - 636 708 pursuant to the order dated 29.03.2021 in S.A.No.11 of 2021 passed by the Hon'ble Debt Recovery Tribunal No.III at Chennai by extending the time limit to pay the amount of Rs.20,00,000/- (Rupees Twenty Lakhs only).

For Petitioners : Mr.L.G.Sahadevan
for M/s.A.Ilaya Perumal

For Respondent : Mr.M.L.Ganesh

ORDER

(Order of the Court was made by Senthilkumar Ramamoorthy, J.)

The petitioners are defaulting borrowers, who failed to comply with the conditional order of the Debts Recovery Tribunal-III, Chennai in S.A.No.11 of 2021, dated January 28, 2021.

2. The admitted position is that the petitioners availed of loan facilities from the respondent bank and created an equitable mortgage in respect of the petitioners' property as security for such loan. Upon the account being declared NPA, the secured creditor issued a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "the Act of 2002") on January 2, 2018. In view of the failure of the borrowers to discharge the debt in response to such notice, further action was taken under Section 13(4) of the Act of 2002. In fact, in response to a request for executive assistance under Section 14 of the said Act, an order was passed on November 24, 2020 to hand over physical possession of the secured asset to the secured creditor. It appears that the borrowers filed proceedings under Section 17 of the Act of 2002 before the Debts Recovery Tribunal and an order dated March 29, 2021 was passed by such Tribunal. The said order was a conditional order directing the borrower to pay a sum of Rs.20 lakh by way of a first tranche and to discharge a debt of about Rs.32 lakh on or before May 7, 2021. The borrowers failed to pay either installment referred to above.

3. The borrower contends that the Debts Recovery Tribunal had directed the secured creditor to hand over permissive possession of the property and on account of the failure of the secured creditor to do so, the borrowers have been unable to undertake business activities and pay the secured creditor from and out of revenues realised from such business.

4. On the other hand, the secured creditor says that the order passed by the Debts Recovery Tribunal was a conditional order and the payment conditions stipulated therein have not been fulfilled by the borrowers. Secondly, the secured creditor says that the total amount outstanding from the borrowers is in the region of Rs.1.5 crore whereas even the meagre amounts that were directed to be paid by way of the conditional order have not been paid. However, this contention is refuted by learned counsel for the petitioners. Moreover, the secured creditor contends that the inability of the borrowers to continue business cannot be cited as a ground to justify non-payment by

such borrowers.

5. The secured creditor also states that it has a hypothecation in respect of the movables in the secured asset. When the above facts and circumstances are taken into consideration, it is clear that the matter raises several disputed questions of fact, which cannot be conveniently addressed in proceedings under Article 226 of the Constitution. The statute contains an efficacious alternative mechanism to deal with such disputes and the petitioners have completely failed to make out a case for exercising extraordinary jurisdiction by this court notwithstanding the availability of such alternative remedy. In addition, it may be noticed that the secured creditor has filed an appeal against the conditional interim order dated March 29, 2021 and it is stated that the said appeal is pending before the jurisdictional Debt Recovery Appellate Tribunal.

6. In these circumstances, the petitioner has failed to make a case to interfere with the impugned proceedings or to grant the relief prayed for. Subject to applicable limitation periods, the petitioners are left free to pursue available statutory remedies.

7. In the result, W.P.No.13541 of 2021 is dismissed without any order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

The Authorized Officer,
South Indian Bank Limited,
Dharmapuri Branch,
Dharmapuri District.

+1cc to M/S.A.Ilaya Perumal, Advocate, S.R.No.35021

Copy to:

1. The Deputy Recovery Tribunal,
   No-III, Chennai.

2. The Chief Judicial Magistrate,
   Dharmapuri.

W.P.No.13541 of 2021

SR-II(CO)
SU(30/07/2021)