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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.19777 of 2021

and W.M.P.Nos.21050, 21053 and 21054 of 2021

1. M/s.D.M.Traders,
rep. By its Partner D.Sampath
59, Karukkinil Amarthaval Koil street,
Kancheepuram 631 501.

2. D.Sampath

3. S.Geetha

... Petitioners

-VS-

1. The Chief Judicial Magistrate,
Chengalpet, Kancheepuram

2. The Authorised Officer,
Tamil Nadu Mercantile Bank Ltd.,
for Kancheepuram Branch,
40A, Vanigar Street,
Kancheepuram 635 501

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records on the file of the 1st respondent in CrI.M.P.No.5820 of 2021 dated 27.08.2021 and quash the same.

For the Petitioners : Mr.T.V.Badrinarayanan

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The grievance of the petitioners is that the first



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respondent has entertained a request from the second respondent secured creditor under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and has passed an order for executive assistance in respect of one or more of the secured assets.

2. The scheme of the Act of 2020 is such that it permits a secured creditor to proceed against the secured assets before an adjudication as to the extent of indebtedness of the borrower is determined. Under Section 13 of the said Act, a notice is required to be issued to a borrower upon the account being classified as a non-performing asset in accordance with the guidelines issued by the Reserve Bank of India. The borrower is entitled to respond to such notice, which must be taken into consideration by the secured creditor, before the secured creditor adopts any measure under Section 13(4) of the said Act. However, neither the initial notice nor the subsequent consideration by the secured creditor of the borrower's response is justiciable at such stage.

3. It is only upon any measure being taken by the secured creditor under Section 13(4) of the Act that any person aggrieved thereby, including a borrower, may approach the jurisdictional Debts Recovery Tribunal with such grievance.

4. Section 14 of the Act, which follows Section 13 and appears before Section 17 of the Act, permits a secured creditor, as defined in the said Act of 2002, to approach the authorities indicated therein with a request for executive assistance to have access to the secured asset or the papers pertaining thereto. Section 14 of the Act does not involve any process of adjudication. Section 14 of the Act as amended mandates that certain declarations be furnished by the secured creditor, whereupon the authority approached under such provision has to accept the declarations at face value and consider the appropriate assistance that may be rendered to the secured creditor. To repeat, no adjudication is conducted at this stage and there is no provision for the relevant authority to issue notice to the borrower or any other person.

5. It is upon the executive assistance being rendered and the secured creditor adopting a measure under Section 13(4) of the Act that the right to approach a forum for adjudication opens



up to a borrower or any other person who may be aggrieved by the measure adopted by the secured creditor.

6. Since there is an efficacious alternative remedy available to the petitioners at the appropriate stage, the invocation of this extraordinary jurisdiction was unnecessary.

W.P.No.19777 of 2021 is dismissed without entering into the merits thereof and by leaving the petitioners free to approach the statutory forum in accordance with law. W.M.P.Nos.21050, 21053 and 21054 of 2021 are closed. There will be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sra

To:

1. The Chief Judicial Magistrate,
Chengalpet, Kancheepuram
2. The Authorised Officer,
Tamil Nadu Mercantile Bank Ltd.,
for Kancheepuram Branch,
40A, Vanigar Street,
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W.P.No.19777 of 2021

SV-I(CO)
SB(24/09/2021)