IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.NO.20304 OF 2020
AND
W.M.P.NOS.25083, 25086 AND 25087 OF 2020

T.Vellaiyan .. Petitioner

-vs-

1. The Chief Judicial Magistrate,
   Salem District.

2. The Branch Manager,
   REPCO Home Finance Limited,
   (Promoted by Repco Bank - Govt. of India Enterprise) No.1/5, Shanthi Plaza,
   Brindavan Road, Opp to Ponnusamy Gounder,
   Kalyana Mandapam, Near S.K.S.Hospital,
   Salem 636 004.

3. V.Sumathi
4. T.Madhu
5. M.Sumathi
6. K.Karthik .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records relating to the order of the 1st Respondent made in Crl.M.P.No.106 of 2020 dated 09.07.2020 and quash the same as illegal and consequently direct the respondents not to take possession or auction or evict the petitioner without following due process law for the property situated in S.No.5/3 C1 measuring to an extent of Acer 0.12 cents, S.No.5/5 measuring to an extent of acer 0.04 cents, S.No.47/2 measuring to an extent of Acer 0.06 cents, S.No.48/1A1 measuring to an extent of Acer 0.12 cents comprised in Kattuveppilaipatty village and R.C.C. Building their in bearing Door No. 1/100 and comprised 17 Rooms with Electricity Connection, Water Connection, Electric

Motor, lights, fans, bureau, chairs, tables and all other apparatus connected thereto within the limit Kattuveppilaipatty Panchayat and Valapady Panchayat Union and within the limits of Sub Registration District of Valapady and Registration District of Salem-East.

For Petitioner : Mr.Vijayan

For Respondents : Mr.A.Ilangovan for R-2

ORDER

(Made by The Hon'ble Chief Justice)

This is a completely misconceived petition and the desperation of the petitioner is evident from the utterly frivolous case sought to be made out.

2. The essence of the challenge pertains to the status of the second respondent secured creditor and the permissibility of the second respondent to invoke the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. The petition or the further continuation thereof appears to be inspired by a recent judgment of this Court declaring REPCO Bank to not be a bank or financial institution to be entitled to claim itself as a secured creditor to invoke the provisions of the said Act of 2002. However, REPCO Home Finance Limited, even if it may be a subsidiary of REPCO Bank or otherwise associated with REPCO Bank or promoted by REPCO Bank, is a juristic entity on its own. There is no dispute that by a notification dated November 10, 2003 the Central Government has notified REPCO Home Finance Company as a financial institution and, as such, entitled to invoke the provisions of the said Act of 2002. The issue has been dealt with in at least two previous judgments of this Court, but, in view of the contentions raised by the petitioner, the same has to be reiterated.

4. Section 2(1)(m) of the Act of 2002 defines a financial institution. Sub-clause (iv) under such provision permits any other institution or non-banking financial company as defined in Section 45-I (f) of the Reserve Bank of India Act, 1934 to be notified by the Central Government as a financial institution for the purpose of the Act of 2002. Such notification has been published and has remained unchallenged from 2003.

5. The petitioner seeks to contend that though REPCO Home

Finance Limited has indicated in its counter-affidavit that it is registered with the National Housing Bank and has been notified by the Central Government to be a financial institution, REPCO Home Finance Limited may not be a company to be qualified to be notified under the relevant provision.

6. Such contention is unacceptable. REPCO Home Finance Limited appears to be a company in the very use of the word "Limited" as part of its name which is a requirement under the Companies Act and is a warning to the rest of the world to be aware that the shareholders of such juristic entity have limited liability towards the creditors of such juristic entity. It is only in special circumstances that the word "Limited" may be dropped from the name of a company, upon special permission in such regard being obtained.

7. There is no doubt that the petitioner is a debtor who has failed to discharge the repayment obligations in respect of credit facilities obtained from the REPCO Home Finance Limited. The petitioner seeks to challenge the request made by the secured creditor to an appropriate authority under Section 14 of the Act of 2002. Even such aspect of the challenge is utterly misconceived once it is seen that the creditor is a secured creditor within the meaning of the definition of such expression in the Act of 2002.

8. Under Section 14 of the Act of 2002 a secured creditor as defined in the said Act may approach such of the executive functionaries as indicated in the relevant provision for assistance to take possession of the secured asset for the sale or the like thereof. Such provision, as has been repeated in several orders passed by this Court, does not conceive of any process of adjudication. The provision is for administrative assistance to be extended to a secured creditor to obtain the secured asset. The secured creditor has to furnish certain declarations and once the declarations have been furnished, the authority approached with the request under Section 14 of the Act has to accept the contents of the declarations at face value and proceed to extend the assistance sought in accordance with law within the time-frame mentioned in the provision. At any rate, Section 14 does not conceive of any notice being issued to the borrower or any other person who may be interested in the secured asset.

9. The remedy of this petitioner was before the appropriate Debts Recovery Tribunal. However, borrowers who failed to repay do not choose to approach the Debts Recovery Tribunal since borrowers are usually required to make a deposit of the amount claimed by the secured creditor before being permitted any say. There is no doubt that it is for such reason that this

petitioner approached the Writ Court.

10. Since there was an efficacious alternative remedy available to the petitioner and since it is evident that the principal ground urged that REPCO Home Finance Limited is not a secured creditor within the meaning of the relevant expression in the Act of 2002 is without basis, W.P.No.20304 of 2020 is dismissed. Consequently, W.M.P.Nos.25083, 25086 and 25087 of 2020 are closed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Chief Judicial Magistrate,
   Salem District.

+1cc to Mr.A.Ilangovan, Advocate, S.R.No.23965

W.P.No.20304 of 2020

LN(CO)
CS/17/05/2021