

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.33088 of 2019

and

WMP.NO.6784 of 2021, 33523 of 2019

1. Maruthai
 2. M.Gowthami
 3. K.Krishnamoorthy
- ..Petitioners

Vs.

1. The Authorized Officer
City Union Bank Ltd.
Branch Office at No.812A South Street
Jothy Complex, Aandimadam
Panchayat Union Office
Vilanthai, Ariyalur District.
 2. The Branch Manager
City Union Bank Ltd.
No.812A South Street
Jothy Complex, Aandimadam
Panchayat Union Office
Vilanthai, Ariyalur District.
- ..Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the record of the first respondent pertaining to the impugned possession notice dated 21.10.2019 and consequential auction notice dated 08.11.2019 and quash the same, consequently forbear the respondents from taking any action against the petitioners under the SARFAESI Act without recourse of the procedure contemplated in proviso of Section 19(1) of the RDDBFI Act, 1993 while pending adjudication of O.A.No.394/2019 on the file of the Debts Recovery Tribunal-III, Chennai.

For Petitioners : Mr.P.R.Thiruneelakandan

For Respondents : Mr.Sivaraman

ORDER

(Made by the Hon'ble Chief Justice)

The petitioners have sought to challenge the steps taken by the respondent bank to realise the debt due from the petitioners on the ground that a substantial part of the loan that may have been sanctioned in the petitioners' favour was misappropriated by a bank employee and the petitioners are being held liable therefor.

2. It is evident that the bank instituted proceedings before the Debts Recovery Tribunal under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993. It is also evident that during the pendency of the proceedings before the appropriate DRT, the bank, as secured creditor, purported to proceed against the secured asset or assets.

3. The petitioners make out a case that despite a criminal complaint having been lodged against the errant official of the bank, the bank has continued to proceed against the petitioners without making allowance for the defalcation indulged in by the concerned official.

4. The mere pendency of proceedings under Section 19 of the Act of 1993 does not preclude a secured creditor from proceeding against the secured assets enjoyed by such creditor. As far as the measures taken by a secured creditor against the secured assets are concerned, it is always open not only to the borrower but to any person aggrieved to carry the grievance to the appropriate DRT under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Accordingly, the petitioners ought to have carried the grievance to the appropriate DRT instead of approaching this Court. At any rate, this petition involves disputed questions of fact that cannot be conveniently addressed on affidavit evidence in summary proceedings. Apart from the fact that the secured creditor in this case is not amenable to this jurisdiction as it is a private body and not a State or authority within the meaning of Article 12 of the Constitution, a dispute between a banker and its constituent pertains to matters of involved accounts which cannot be conclusively dealt with herein.

5. Accordingly, the order dated November 27, 2019 passed on the admission stage of the petition is vacated and W.P.No.33088 of 2019 is dismissed. This order will not prevent the petitioners from approaching the appropriate authority in accordance with law.

6. There will be no order as to costs. WMP Nos.6784 of 2021 and 33523 of 2019 are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

kpl

To

The Debts Recovery Tribunal-III, Chennai.

W.P.No.33088 of 2019

JP-II (CO)
EU 8.6.2021



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