



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Special Original Jurisdiction)

Wednesday, the Twenty Seventh day of January Two Thousand and
Twenty One

WEB COPY

PRESENT

The Hon'ble Mr.Justice M.M.SUNDRESH

AND

The Hon'ble Mrs.Justice S.ANANTHI

WMP(MD). Nos.1226 and 1227 of 2021

in

WP(MD).No.14759 of 2020

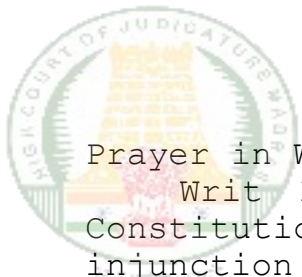
1. Velmurugan.R
The Delegated Authority of the 2nd and 3rd Petitioners Herein,
Plot No.20, Ksp Nagar, 2nd Street,
Officers Town Backside Meenambalpuram, Madurai 625 017.
2. M/s.Pro Visual Audio Private Ltd.,
Rep.By its Managing Director P.Natarajan,
No.4, Pushpa Nagar , 1st Street, Iyyappanthangal,
Chennai 600 056.
3. M/s.Sukrith Motor Cars Pvt., Ltd.,,
Rep. by its Managing Director N.Maheswari,
Door.No.4/113H, Ring Road, SKS Nagar, Uthangudi,
Madurai - 625 107.
Also at : B-73. 3rd Street, Kalai Nagar, Madurai - 625 014.
...Petitioners/Petitioners in both WMPs

Vs

- 1 The Authorised Officer, Kotak Mahindra Bank Ltd.,
Samson Towers, (4th Floor), 402403L, Pantheon Road,
Egmore, Chennai 600 008
- 2 The Commissioner of Police, Madurai City
...Respondents/Respondents in both WMPs

Prayer in 1226 of 2021 :-

Writ Miscellaneous Petition is filed under Article 226 of Constitution of India, praying this Court to extend the time limit stipulated in its order dated 18.12.2020 by providing three more months so as to enable the petitioners to dispose off their scheduled properties and settle the entire outstanding balance loan amount of Rs.11,25,94,233.21/- payable to the 1st respondent bank.



Prayer in WMP(MD).No.1227 of 2021 :

Writ Miscellaneous Petition is filed under Article 226 of Constitution of India, praying this Court to grant an interim injunction restraining the 1st respondent Bank, their men, agents and servants from proceeding with their possession Notice dated 3.4.2019 till the disposal of the writ miscellaneous petition.

Prayer in WP(MD).No.14759 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of mandamus or any other appropriate writ, order or direction particularly in the nature of a writ, directing the respondent bank to grant an additional moratorium period of three and half months to the petitioners to settle the entire outstanding balance loan amount of Rs.11,25,94,233.21/- that is on or before the 30th day of January, 2021 in the matter of Possession Notice dated 03.04.2019 issued by the respondent bank on the petitioners or within a time frame that may be stipulated by this Court.

ORDER:-

Writ Miscellaneous Petitions coming up for orders on this day and upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr.Prabhakaran, Senior Counsel for Mr.G.Thalaimutharasu, Advocate for the Petitioners Mrs.Ananda Gomathy, Advocate for the 1st Respondent and of Mr.K.P.Krishnadoss, Special Government Pleader on Behalf of the 2nd Respondent, this Court made the following order:

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner has come forward to file this Miscellaneous petition seeking extension in pursuant to the undertaken given earlier.

2.The writ petition was filed by the petitioner seeking a writ of Mandamus directing the first respondent Bank to grant additional moratorium period of 3½ months to settle the outstanding dues. The petitioner approached this Court in pursuant to the action taken by the respondent Bank.

3.Though the petitioners sought for a lesser time, taking note of the undertaking given by the learned Senior counsel and the undertaking affidavit filed dated 17.12.2020, this Court passed the following order:

"3. This Court has perused the undertaking affidavit filed by the petitioners dated 17.12.2020, undertaking to settle the matter amicably on or before 31.01.2021. In view of such undertaking, the 1st respondent / bank is directed not to disturb the petitioners' property till 31.01.2021.



4. In case, if the petitioners are unable to settle the dues as per their undertaking, they shall hand over the possession of the property to the 1st respondent / bank on 01.02.2021, without any protest. In case, if the petitioners are not coming forward to hand over the possession, the 1st respondent / bank, on 02.02.2021, with police protection, can take possession.

5. For effective implementation of this order, this Court *suo-motu* impleads the Commissioner of Police, Madurai City, as 2nd respondent and Mr.M.Muthugeethaiyan, learned Special Government Pleader takes notice for the newly impleaded 2nd respondent.

6. On receipt of any representation from the 1st respondent / bank seeking police protection on or after 02.02.2021, the 2nd respondent is directed to consider the same and provide necessary protection enabling the 1st respondent / bank to take possession of the property.

7. With the above directions, this writ petition stands disposed of. The undertaking affidavit of the petitioners dated 17.12.2020 shall form part of this order. No costs. Consequently, connected miscellaneous petition is closed."

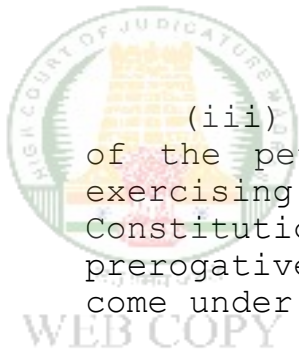
Now the present Miscellaneous Petition seeking for extension has been filed on the premise that the petitioners, due to the situation beyond their control, were unable to comply with the directions of the undertaking given.

4.The learned senior counsel for the petitioners sought the indulgence of this Court stating that steps have been taken to repay the amount agreed within a period of three months. An affidavit has been filed by the respondent Authorized Officer of the Kotak Mahindra Bank Limited stating that though sufficient indulgence has already been shown, the petitioners have suppressed the material facts. Even on the earlier occasion, the petitioners were given adequate time. The order passed by the Court is very clear and explicit. When an attempt was made to take possession, it was obstructed using third degree methods.

5. We have three difficulties in the case on hand.

(i) One is the existence of alternative remedy under Section 17 of the SARFAESI Act before the jurisdictional Tribunal and as held by the Hon'ble Apex Court, a writ petition is not to be maintained;

(ii) The second difficulty is the maintainability of the writ petition against the respondent Bank; and



(iii) The third is with respect to consideration of the request of the petitioners for extension. This also cannot be done by exercising the discretionary powers under Article 226 of the Constitution of India. Apart from the nature of transaction, a prerogative writ cannot be issued against the body, which would not come under the purview of Article 12 of the Constitution of India.

6. In such view of the matter, we are not inclined to allow these petitions. However liberty is given to the petitioners to approach the respondent Bank for adjustments and seeking extension of time. Our order will not stand in the way of the respondent Bank. Accordingly, the petition for extension is dismissed. Consequently, the petition for injunction stand closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Commissioner of Police, Madurai City.

+1 CC to Mr. Special Government Pleader, SR.No. 2362

ORDER DATED : 27/01/2021

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ORDER

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WMP(MD) . Nos.1226 and 1227 of 2021
in

WP(MD) .No.14759 of 2020

Giving direction and etc.
as stated within.

ns (CO)

TR(09.02.2021) 4P 3C