



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P(MD)No.12852 of 2021
and
WMP(MD)Nos.9955 and 9957 of 2021

1. R. Sivamurugan

2. S.Vijayashanthi

...Petitioners

Vs.

1. The Presiding Officer,
Debt Recovery Tribunal,
IV Floor, Kalyani Towers,
Melur Main Road,
Madurai

2. M/s. Repco Home Finance Limited,
(Promoted by Repco Bank- Govt of India Enterprise),
Represented by its Authorized Officer,
Mr. G. Ashok Kumar,
Alexander Square,
No.2, (Old No.34 & 35) 3rd Floor,
Sardar Patel Road, Guindy,
Chennai - 600 032

3. The Chief Judicial Magistrate,
Srivilliputhur,
Virudhunagar District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issuance of Writ of Certiorari, calling for the records pertaining to the order passed by the first respondent in I.A.No.786 of 2021, in S.A.No.208 of 2021 dated 23.06.2021 and quash the same.

For Petitioners
For Respondents

: Mr.Suresh S
: Mr.B.Rajesh Saravanan
for R2



ORDER

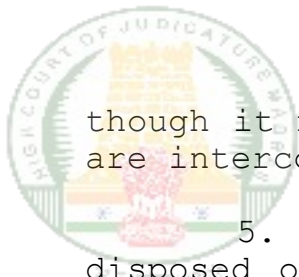
[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard learned counsel for the petitioners and Mr. B. Rajesh Saravanan, learned counsel appearing for the second respondent bank.

2. The petitioners have filed the above writ petition aggrieved by an order passed by the Debts Recovery Appellate Tribunal dated 23.06.2021 in I.A.No.786 of 2021 in S.A.No.208 of 2021. The said SARFAESI Appeal was filed challenging an order passed by the Chief Judicial Magistrate, Srivilliputhur in CrI.MP.No.40 of 2020 dated 05.04.2021 under Section 154 of the SARFAESI Act. The Petitioners are aggrieved by the condition imposed by the Debt Recovery Tribunal directing them to pay a sum of Rs.6,18,000/- directly to the respondent bank on or before 23.07.2021 as the first instalment and another sum of Rs.6,18,000/- directly to the first respondent bank on or before 23.08.2021 as second instalment.

3. The petitioners' case is that earlier they had filed SARFAESI appeal in S.A.No.459 of 2019 in which an interim order was granted in I.A.No.1739 of 2019 on 05.09.2019, pursuant to which the petitioners have paid a sum of Rs.11,02,000/-. Therefore, it is submitted that the condition imposed in the impugned order is onerous. As rightly pointed out by Mr. Rajesh Saravanan, learned counsel for the respondent bank, the cause of action which is the subject matter of S.A.No.208 of 2021 is different from that of the cause of action in S.A.No.59 of 2019. Further, the learned counsel, is right in submitting that the order impugned is an appealable order.

4. The learned counsel appearing for the writ petitioners would submit that the writ petitioners are willing to approach the Debt Recovery Appellate Tribunal by way of an Appeal but they may be put to difficult because there is a mandatory pre-deposit condition which has to be complied with. Since the order impugned is an appealable order, it is appropriate for the petitioners to approach the appellate tribunal as alternative remedy is not only effective but efficacious. Therefore, we dispose of the writ petition giving liberty to the petitioners to file an appeal before the Debt Recovery Appellate Tribunal challenging the order passed by the Debts Recovery Appellate Tribunal dated 23.06.2021 in I.A.No.786 of 2021 in S.A.No.208 of 2021 and if such an appeal is filed within a period of three weeks from the date of receipt of a copy of this order, the Tribunal may consider the same and take the appeal on file without reference to limitation. While considering the pre-deposit condition, the Appellate Tribunal may take note of the amount of Rs.11,02,000/- paid by the petitioners pursuant to order dated 05.09.2018 in I.A.No.1739 of 2019 in S.A.No.459 of 2019,



though it may have a different cause of action but both the matters are interconnected as it pertains to the same loan transaction.

5. With the above observations, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mnr

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: -

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MMS (CO)
KB(24.08.2021) 3P 4C