



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:24.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. (MD) No.15098 of 2021

and

W.M.P. (MD) .Nos.12025 and 12026 of 2021

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Mary Sheela

... Petitioner

Vs.

1.Tamilnad Mercantile Bank Limited,
rep. by The Authorised Officer,
Colachel Branch,
No.17/W21, Main Road,
Colachel,
Kanniyakumari District.

2.The Manager,
Tamilnad Mercantile Bank,
Colachel Branch,
No.17/W21, Main Road,
Colachel,
Kanniyakumari District.

3.John Britto

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned possession notice, dated 09.07.2021 issued by the 1st respondent with regard to the property admeasuring 4 cents with a house in RS No.B1 - 15/14, belonging to 3rd respondent situated at Kolachel B-Village, Kalkulam Taluk, Kanniyakumari District and set aside the same as illegal and consequently, directing the 1st and 2nd respondents not to take any coercive steps including sale of the above property for a period of six months in the light of the decision made in W.P. (MD).No.17753 of 2020, dated 04.03.2021 on the file of the Madurai Bench of Madras High Court.

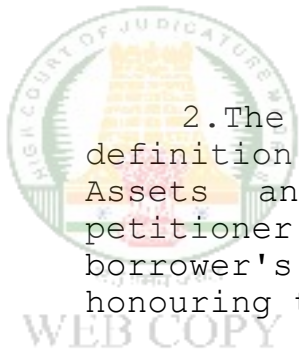
For Petitioner : Mr.G.Rajendran

For Respondents : Mr.Pethu Rajesh for R1 & R2

ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

The petition is as misconceived as they come.



2.The petitioner is a borrower within the meaning of the definition in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The petitioner has obtained credit facilities and, true to the Indian borrower's character, cites the lockdown as an excuse for not honouring the commitment of repayment.

3.The immediate challenge is to a possession notice issued under Section 13(4) of the said Act by the respondent-secured creditor. Such notice is dated July 9, 2021.

4.It is elementary that any person aggrieved by any measure taken by a secured creditor under Section 13(4) of the said Act may approach the jurisdictional Debts Recovery Tribunal under Section 17 of the Act of 2002.

5.Since there is an efficacious alternative remedy available to the petitioner and the petitioner is free to approach the relevant forum, the present writ petition cannot be entertained.

6.The petitioner refers to an order dated March 4, 2021 passed in W.P.(MD)No.17753 of 2020 as a precedent.

7.Such order, in its opening paragraph, indicated that however much sympathy the peculiar case of a particular petitioner may evoke, the prayers that cannot be legally granted, should not be considered in the jurisdiction exercised under Article 226 of the Constitution of India. While declining the prayers, the secured creditor in that case was requested not to take precipitous action for a period of six months to enable the writ petitioner to work out her remedies before the Debts Recovery Tribunal and, if necessary, the Debts Recovery Appellate Tribunal. The special feature of the matter was that the petitioner was the wife of the original debtor who had died in the interregnum and the only shelter that the widow and her minor children had was the security which had been furnished to the secured creditor. The present case is clearly distinguishable on facts.

8.W.P.(MD).No.15098 of 2021, is dismissed.

There will be no order as to costs. Consequently, W.M.P.(MD). Nos.12025 and 12026 of 2021 are closed.

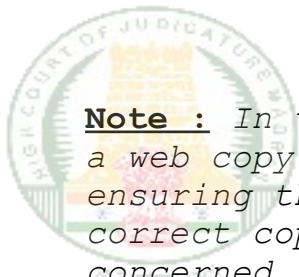
Sd/-

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.

WEB COPY

To:

+1 CC to M/s.P.PETHU RAJESH, Advocate (SR-27092[F] dated 24/08/2021)

W.P. (MD) No.15098 of 2021
24.08.2021

_RS (01.09.2021) 3P 2C