BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2021

CORAM:

THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.(MD) No.17753 of 2020
and
W.M.P(MD)Nos.14825 of 2020 and 3025 of 2021

P.Angayarkanni ... Petitioner

-vs-

1. The Authorised Officer,
M/s.Axis Bank - RAC, Arcot Plaza,
Old No.38, New No.165,
Arcot Road,
Kodambakkam,
Chennai - 600 224.

2. The Branch Manager,
Axis Bank Limited,
Madurai Retail Asset Centre,
Pattu Arcade,
Byepass Road,
Madurai.

3. Max Life Insurance Company Limited,
represented by its
Manager,
No.90-A, Sector 18, HUDA,
Gurrgram,
Haryana. ... Respondents

(R.3 is *suo motu* impleaded vide Court order dated 08.12.2020)

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the impugned order vide Possession Notice, dated 21.10.2020, as per the Rule 8(1) in Appendix IV of SARFAESI Act, continued by Notice under Section 13(2), dated 07.08.2020 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.P.Muthu Vijaya Pandian

For Respondents : Mr.P.Pethu Rajesh for R.1 & R.2

No appearance for R.3

O R D E R

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

The petitioner is the wife of the original debtor and however much sympathy the petitioner may evoke, the prayers made cannot be legally granted on the basis of the law as it stands and the writ Court at this level not having the plenary authority as granted under Article 142 of the Constitution.

2. The respondent bank appears to have a valid claim and the dues are said to be in excess of Rs.23 lakh. The only security is the immovable property for which a loan was obtained and whereat the petitioner claims to be staying with her minor children following the untimely death of her husband.

3. According to the petitioner, an insurance policy was obtained as a cover for the loan but the third respondent insurance company has declined the claim against which the writ petitioner has approached the Consumer Disputes Redressal Forum. The writ petitioner says that if the respondent bank is permitted to take steps immediately in respect of the secured asset, particularly before the Consumer Forum decides on the insurance claim, the writ petitioner will be left with no remedy and will be thrown out of the only shelter that she and her minor children have.

4. It is for the respondent bank to consider the matter sympathetically, particularly in the light of the plight of the petitioner. It will also be open to the petitioner to cite this order before the appropriate Consumer Forum with a request for the matter before such forum to be dealt with expeditiously. The third respondent insurance company is conspicuous in its absence despite notice.

5. The writ petitioner should approach the appropriate Debts Recovery Tribunal, if the writ petitioner has any grievance against the respondent bank or the measures taken by the respondent bank. There is no doubt that the appropriate Debts Recovery Tribunal may deal with the matter sympathetically considering the circumstances faced by the petitioner herein. However, the writ Court was not the appropriate forum to have been approached. Since the petition has been entertained but there is

no real relief that the petitioner can be granted in this jurisdiction, particularly in the absence of any serious allegation against the respondent bank, the present petition is disposed of with liberty to the petitioner to approach the appropriate Debts Recovery Tribunal and pursue the complaint before the Consumer Forum.

6. As a special measure and considering the extraordinary circumstances, the respondent bank is requested to not take any precipitous action in respect of the secured asset for a period of six months from date to enable the writ petitioner to work out her remedies before the two fora in accordance with law. It will also be open to the respondent bank to enter into any agreement with the writ petitioner on sympathetic terms and subject to the approval of its highest authorities so that the writ petitioner may pay off the amount in easier instalments than otherwise permitted. Such exercise must be explored within the next three months and before the moratorium of six months in terms of this order runs out.

7. W.P.(MD) No.17753 of 2020 is disposed of without any order as to costs. Consequently, W.M.P.(MD) Nos.14825 of 2020 and 3025 of 2021 are closed.

Sd/-

Assistant Registrar (CO)

// 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 Manager,
Max Life Insurance Company Limited,
No.90-A, Sector 18, HUDA,
Gurrgram, Haryana.

+1 CC to M/s.P.PETHU RAJESH, Advocate (SR-8876[F] dated 04/03/2021)
+1 CC to Mr.P.MUTHUVIJAYA PANDIAN, Advocate (SR-8781[F] dated 04/03/2021)

W.P.(MD) No.17753 of 2020
and
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04.03.2021

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