



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.17800 of 2021

and

W.M.P(MD)Nos.14675 and 14676 of 2021

1.R.Bright Rajendran
2.Kamalam
3.R.Prince Rajendran
4.B.J.Lefha
5.M/s Adina Garments,
Proprietor,
R.Prince Rajendran.

... Petitioners

Vs.

1.Tamilnad Mercantile Bank Ltd.,
Padanthalumoodu Branch,
represented by its Authorized Officer,
1/17/17/44-13, Trivandrum Main Road,
Padanthalumoodu, Kaliyakkavilai,
Kanyakumari District - 629 194.

2.Mr.Ganesan,
Deputy Superintendent of Police,
Thuckalay Division,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in CrI.M.P.No.4286 of 2021, dated 28.07.2021, on the file of the Chief Judicial Magistrate No.II, Nagercoil and quash the same as illegal and consequently forbear the respondents from anyway dispossessing the petitioners from the properties in land to an extent of 17.500 cents and house building there at in R.S.No.481/1A2B in Madichal desma, Vilavancode Village, Vilavancode Taluk, Kanyakumari District.

For Petitioners : Mr.V.Santhakumaresan

For Respondents : Mr.N.Dilip Kumar

Standing Counsel for R.1



: Mr.P.Thilak Kumar
Government Pleader
for R.2

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ORDER

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

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed in Crl.M.P.No.4286 of 2021, dated 28.07.2021, on the file of the Chief Judicial Magistrate No.II, Nagercoil and quash the same and consequently, forbear the respondents from dispossessing the petitioners from the properties measuring an extent of 17.500 cents and a house standing thereon in R.S.No.481/1A2B in Madichal desma, Vilavancode Village, Vilavancode Taluk, Kanyakumari District.

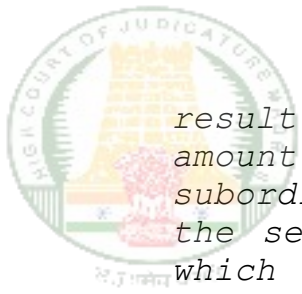
2. The petitioners have challenged the order passed under Section 14 of the SARFAESI Act by the Chief Judicial Magistrate No.II, Nagercoil, in this writ petition. When the petitioners have got an alternate remedy available to them under Section 17 of the SARFAESI Act, the petitioners without exhausting the same, for filing the above writ petition, the Honourable Supreme Court in the following judgments held that the writ petition filed by the aggrieved party challenging the proceedings initiated under the SARFAESI Act, is not maintainable.

3. In **Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.**, reported in (2018) 3 SCC 85, wherein the Hon'ble Supreme Court held as follows:-

"16. The Writ Petition ought to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the Writ Petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.

17. We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Limited Vs. Prem Heavy Engineering Works (P) Limited* 1997 (6) SCC 450, observing:-

132. When a position, in law, is well settled as a



result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate Courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate Courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops".

4. In **ICICI Bank Limited and others v. Umakanta Mohapatra and others** reported in (2019) 13 SCC 497, wherein the Hon'ble Supreme Court held as follows:-

"2. Despite several judgments of this Court, including a Judgment by Hon'ble Navin Sinha, J., as recently on 30.01.2018 in *State Bank of Travancore V. Mathew K.C* (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are non-performing assets (NPAs).

3. The Writ Petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier Judgments of this Court held as follows:-

"17. We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Limited Vs. Prem Heavy Engineering Works (P) Limited* 1997 (6) SCC 450, observing:-

'32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate Courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate Courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops".

4. The Writ Petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside.



5.The appeals are allowed in the aforesaid terms.
Pending applications, if any, shall stand disposed of."

5. In view of the ratio laid down by the Honourable Supreme Court in the above referred judgments, we are of the considered view that the writ petition filed by the petitioners is not maintainable. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioners to challenge the order passed by the Chief Judicial Magistrate No.II, Nagercoil before the Debts Recovery Tribunal in accordance with law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL/LR

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

1.The Chief Judicial Magistrate No.II, Nagercoil.

2.The Authorized Officer,
Tamilnad Mercantile Bank Ltd.,
Padanthalumoodu Branch,
1/17/17/44-13, Trivandrum Main Road,
Padanthalumoodu, Kaliyakkavilai,
Kanyakumari District - 629 194.

3.Mr.Ganesan,
Deputy Superintendent of Police,
Thuckalay Division,
Kanyakumari District.

+1 CC to M/s.SPL.GP (SR-30996[F] dated 04/10/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-31111[F] dated 04/10/2021)

W.P (MD)No.17800 of 2021

01.10.2021

RD(12.10.2021) 4P 6C