BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2021

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

C.R.P. (MD) No.1139 of 2020

Tamilnad Mercantile Bank Ltd.,
Through its Manager,
Kalakkad Branch,
1st floor, K.N.Complex,
Cheranmahadevi Road,
Nanguneri Taluk,
Kalakkad - 627 501.
Tirunelveli District. ... Petitioner/Plaintiff

**-Vs-**

1. T.David Kamaraj
2. D.Selvarani ... Respondents/Defendants

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside order dated 17.06.2019 and consequential order dated 08.10.2020 in O.S.S.R.No.3694 of 2019, passed by learned Subordinate Judge, Vallioor and the direct the learned Subordinate Judge, Vallioor and take the suit on its file and number the same.

For Petitioner : Mr.N.Dilip Kumar

**O R D E R**

The petitioner has filed this Civil Revision Petition to set aside the docket orders, dated 17.06.2019 and 08.10.2020 in O.S.S.R.No.3694 of 2019, on the file of the learned Subordinate Judge, Vallioor and to number the suit in O.S.S.R.No.3694 of 2019, on the file of Subordinate Court, Vallioor.

2.The revision petitioner/Bank is the plaintiff and the respondents are the defendants in the suit in O.S.S.R.No.3694 of 2019.

3. The petitioner's case is that, the first respondent herein availed working Capital loan for a sum of Rs.98,00,000/- (Rupees Ninety Eight Lakhs Only) by signing a Memorandum of Deposit of title deed, registered in the office of SRO, Kalakkad vide Doc.No.1826 of 2014 and the second respondent herein stood as a guarantor.

4. It is also stated that due to default, the account was classified as a No-Performing Asset on 30.04.2017. Thereafter, on 11.05.2017, action was initiated under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), followed by a possession notice under Section 13(4) of the SARFAESI Act on 25.07.2017. The petitioner/Bank issued auction sale notice for auctioning the mortgaged property on 18.01.2018. The outstanding amount as on 03.02.2018 was Rs.1,16,00,254/-. The mortgaged property was purchased by E.Muthu and M.Mohammed Shaikh Raja for a sum of Rs.1,12,51,000/- and hence, a legal notice dated 22.11.2018 was sent to the respondents to clear the balance debts as on 31.10.2018 of Rs.3,11,748/- after deducting the above auction sale price. Since, the respondents failed to pay the balance due, the plaintiff/Bank filed civil suit on 13.06.2019, on the file of the learned Subordinate Judge, Vallioor, for recovering the debts amount as on 28.02.2019 of Rs.3,32,489/-.

5. The learned Judge returned the plaint raising query with regard to maintainability as the petitioner/Bank recovered the borrowed money from the defendants under the SARFAESI Act. The petitioner re-presented the plaint stating that the suit is filed only for recovering the balance debts of Rs.3,32,489/- after realizing a portion of the loan amount by auctioning the mortgaged property under the SARFAESI Act. The learned Judge did not accept the same and again returned the plaint stating that the previous directions have not rectified.

6. Against the said return, the revision petitioner/Bank has come out with the present Civil Revision Petition.

7.From the materials on record, it is seen that the respondents/defendants have availed working Capital loan of Rs.90,00,000/- from the petitioner/Bank and due to default, by invoking the Sections 13 (2) and 13(4) of the SARFAESI Act, the petitioner/Bank issued the statutory demand notice, followed by a possession notice to the respondents. The respondents mortgaged property had been auctioned for a sum of Rs.1,12,51,000/- and only to recover the balance debts of Rs.3,32,489/-, the petitioner/Bank has filed a suit in O.S.S.R.No.3694 of 2019.

8. Section 13(10) of the SARFAESI Act states that where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent Court as the case may be, for recovery of the balance amount from the borrower. Therefore, the civil suit is maintainable.

9. In such view of the matter, the Civil Revision Petition is allowed, if the petitioner re-present the plaint within four weeks from the date of receipt of a copy of this order, the learned Subordinate Judge, Vallioor is directed to number the same, if it is otherwise in order and proceed in the manner know to law. No costs.



Sd/-
Assistant Registrar (CS-I)

// True Copy //

/ /2021
Sub Assistant Registrar(CS- )

**To**

1. The Subordinate Judge, Vallioor.

2. The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

3. The Section Officer,
E.R Section,
Madurai Bench of Madras High Court,
Madurai.
(To return the original plaint filed in the C.R.P., to the learned counsel for the petitioner.)

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-24[F] dated 04/01/2021 )

PKN
TE : 19/01/2021 : 3P/5C

C.R.P.(MD) No.1139 of 2020
04.01.2021