



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P (MD) No.1620 of 2021

and

C.M.P (MD) No.8781 of 2021

WEB COPY

1.Y.Ramaraj

2.R.Bama

... Petitioners/Petitioners/Petitioners

Vs.

1.Aptus Value Housing Finance India Ltd.,
Rep. by Asst. Manager-cum-Authorized Officer
Mr.P.Velmurugan.

2.The Chief Judicial Magistrate,
Srivilliputhur,
Virudhunagar District. ...Respondents/Respondents/Defendants

Prayer:- Civil Revision Petition filed the Under Article 227 of the Constitution of India, against the order passed in I.A.No.1242 of 2021 in S.A.No.322 of 2021, dated 01.10.2021 passed by the learned Debts Recovery Tribunal, Madurai and allow this revision petition.

For Petitioners : Mr.V.Lakshmanan

For R1 : Mr.V.Sukumar

O R D E R

S.VAIDYANATHAN, J.

And

DR.G.JAYACHANDRAN, J.

This revision petition is filed against the order passed by the Debts Recovery Tribunal, Madurai.

2. Heard the learned counsel for the petitioner and perused the materials available in the records.

3. The substance of the revision petitioner's case is that he borrowed a sum of Rs.12,00,000/- from the first respondent Finance Institution on 31.05.2016 and repaid around Rs.6,00,000/-, but without taking into account of the part payment, they have proceeded against the petitioner herein under the Securitisation and



Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (in short 'SARFAESI Act'). When the application was filed before the Debts Recovery Tribunal seeking stay of all further proceedings pursuant to the impugned order of the second respondent, dated 05.05.2021 pending disposal of the SARFAESI proceedings, the Debts Recovery Tribunal has dismissed the interlocutory application stating that the Tribunal has no power to pass any interim order relating to restoration of possession or restoration of management before the finalization of the proceedings under Section 17 of the SARFAESI Act. Being aggrieved by the dismissal of the interlocutory application, the petitioner has filed the present revision petition.

4.This Court, having strong reservation regarding entertaining the revision petition under Article 226 of the Constitution of India, when the statute provides for appellate remedy for the petitioner herein to approach Debts Recovery Appellate Tribunal against the order passed by the Debts Recovery Tribunal, the learned counsel appearing for the petitioner would submit that as per Section 31 of the SARFAESI Act, the petitioner has already executed a pro-note on equitable mortgage of this property as a 'Security', hence, there is a specific bar to apply the provisions of the SARFAESI Act in case of lien on any goods, money or security given by or under the Indian Contract Act or the Sale of Goods Act or any other law for the time being in force. He would further submit that the invocation of the provision of SARFAESI Act by the second respondent is *per se* illegal and when that was brought to the notice of the Debts Recovery Tribunal and sought for stay of the interlocutory application, the Debts Recovery Tribunal has declined to entertain the said application, therefore, the failure to exercise its power by the Debts Recovery Tribunal has given a cause for the petitioner herein to approach this Court invoking the extraordinary jurisdiction under Article 227 of the Constitution of India.

5.The learned counsel for the first respondent would submit that the Division Bench of this Court very recently in the case of ***T.Jansirani vs. The Authorised Officer, Tamilnadu Mercantile Bank Ltd., and others***, has held that since the order passed by the Debts Recovery Tribunal in Interlocutory Applications is appealable before the Debts Recovery Appellate Tribunal, the Civil Revision Petition under Article 227 of the Constitution of India is not maintainable and the same has been followed by another Division Bench of this Court in ***K.Rajeswari v. Chief Judicial Magistrate, Tiruppur and others***.

6.This Court, in view of a proprietary and uniformity is bound to follow the dictum laid by the co-ordinate benches of this Court. When there is effective alternative remedy is available for the petitioner herein, without advertting to the merits canvassed by the



petitioner herein, this Civil Revision Petition is dismissed as not maintainable. No Costs. Consequently, connected miscellaneous petition is closed.

7. It is open to the petitioner herein to approach the appropriate appellate forum, if he is aggrieved by the order, dated 01.10.2021 in I.A.No.1242 of 2021 in S.A.No.322 of 2021, passed by the Debts Recovery Tribunal, Madurai.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

PJL

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 Debts Recovery Tribunal,
Madurai.
- 2.The Chief Judicial Magistrate,
Srivilliputhur,
Virudhunagar District.

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MGJ(26.11.2021) 3P 3C