



W.P.No.26445 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2022

CORAM

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR**

W.P.No.26445 of 2022

M/s.Indian Overseas Bank,
Rep. by its Authorised Officer,
Kavundampalayam Branch,
Coimbatore 641 029.

.. Petitioner

-VS-

1. The Chief Judicial Magistrate,
Coimbatore.

2. R.Ilamathi

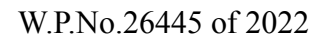
..Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of writ of certiorarified mandamus to call for the records of the Chief Judicial Magistrate, Coimbatore, made in C.M.P.No.8442 of 2021 dated 02.11.2021, the first respondent herein and quash the same and consequently, direct the first respondent to give effect to the order dated 11.03.2020 passed in CrI.M.P.No.336 of 2020 on the file of the Chief Judicial Magistrate, Coimbatore.

For Petitioner

: Mrs.Ananda Gomathy Murugesan

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(Order of the Court was made by The Hon'ble Acting Chief Justice)

2. The learned counsel appearing for the petitioner would submit that as a matter of fact, when the Indian Overseas Bank, the petitioner herein, has filed CrI.M.P.No.336 of 2020 under Section 14(1) of the SARFAESI Act, 2002, seeking to appoint an advocate commissioner for taking possession of the secured assets belonging to Tmt.R.Illamathi, has shown both R.Senthilkumar and R.Illamathi, as necessary parties. But, the petitioner was unaware of the fact that even before approaching the Chief Judicial Magistrate, R.Senthilkumar died. Therefore, inadvertently, the name of R.Senthilkumar has been shown



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as one of the necessary parties. However, accepting the case of the Indian Overseas Bank, the petitioner herein, the learned Chief Judicial Magistrate allowed the application and appointed Mrs.S.Rohini, as an Advocate Commissioner to inspect the petition mentioned property, take inventories, take physical possession and hand over to the secured creditor. Subsequently, the second respondent herein, Tmt.Illamathi, moved an application in C.M.P.No.8442 of 2021 seeking to recall the warrant of commission issued by the learned Chief Judicial Magistrate on 11.03.2020 on the ground that no order can be passed against a dead person. The learned Chief Judicial Magistrate came to the conclusion that the death of R.Senthilkumar vitiates the entire proceedings and accordingly, closed the petition as infructuous.

3. The contention of the learned counsel for the petitioner before us is that no proceedings were initiated against the properties belonging to R.Senthilkumar and instead, the petitioner bank initiated proceedings under the SARFAESI Act by issuing notices under Sections 13(2) and 13(4) of the Act followed by taking out an application under Section 14 of the Act before the learned Chief Judicial Magistrate only against the properties belonging to Tmt.Illamathi. It is submitted that



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only when the application to recall the warrant of commission filed by the said Tmt.Illamathi, the bank came to know of the death of R.Senthilkumar and had an opportunity been granted to the petitioner by the learned Chief Judicial Magistrate, the petitioner would have brought to the notice of the learned Chief Judicial Magistrate that only the properties belonging to Tmt.Illamathi were proceeded before the learned Chief Judicial Magistrate closed the petition making the entire proceedings as infructuous. Therefore, the petitioner would contend that the petitioner bank is still entitled to approach against the properties belonging to Tmt.Illamathi and therefore, the order of the learned Chief Judicial Magistrate, Coimbatore, that the entire proceedings became infructuous is uncalled for.

4. We do not find any merit in the writ petition. Even it is the admission of the learned counsel appearing for the petitioner that the properties sought to be proceeded against belong to Tmt.Illamathi and therefore, the order dated 2.11.2021 passed in C.M.P.No.8442 of 2021 by the learned Chief Judicial Magistrate, Coimbatore, holding that the entire proceedings have become infructuous would not in any way affect the petitioner. Therefore, when the properties belonging to



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Tmt.Illamathi are readily available for initiation of proceedings under the SARFAESI Act by the petitioner bank, we are not inclined to entertain the writ petition.

The writ petition is, accordingly, dismissed. No costs.

(T.R., ACJ.) (D.K.K, J.)
30.09.2022

Speaking/Non-speaking order

Index : Yes / No

Internet : Yes / No

sra

To

1. The Chief Judicial Magistrate,
Coimbatore.



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T.Raja, ACJ.
and
D.Krishnakumar, J.

(sra)

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