IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.34455 of 2022

M.Venkatesan .. Petitioner

v

1. The Lakshmi Vilas Bank Ltd.,
(Now a part of DBS Bank India Ltd.,)
rep.by its Authorized Officer
Palacode Branch, House Main Road
Opp.to Police Station
Palacode, Dharmapuri District

2. Mrs.M.Chitra
3. Mr.M.Raghavendran
4. Mrs.G.Pooviyammal .. Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for records of the order dated 04.08.2022 passed by Chief Judicial Magistrate, Dharmapuri in C.M.P.No.4813 of 2022 and quash the same.

For Petitioner :: Mr.S.Rajmakesh

ORDER

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

This writ petition has been filed challenging the correctness of the impugned order dated 04.08.2022 passed by Chief Judicial Magistrate, Dharmapuri in C.M.P.No.4813 of 2022.

2. We have heard the learned counsel appearing for the petitioner. When Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 clearly spells out that any person including a borrower, aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer, can take out an application before the Debts Recovery Tribunal having jurisdiction in the matter, the petitioner should have gone to the Debts Recovery Tribunal, instead of filing the writ petition before this Court. However, the learned counsel appearing for the petitioner, referring to an order dated 28.11.2022 passed by the Debts Recovery Appellate

Tribunal, Chennai in I.A.No.474 of 2022 in R.A.(SA) No.48 of 2022 in the case of Mr.K.Nagarajan v. The Authorized Officer, Tamilnadu Mercantile Bank Ltd., and another, submitted that the Appellate Tribunal in that order has held that there is no provision to entertain any application challenging the correctness of the order passed by the District Magistrate or Chief Judicial Magistrate, as the case may be, under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Therefore, he pleaded that it will only be a mere exercise in futility if the petitioner is asked to go before the Debts Recovery Tribunal.

3. The relevant paragraph of the order dated 28.11.2022 passed by the Debts Recovery Appellate Tribunal, Chennai in I.A.No.474 of 2022 in R.A.(SA) No.48 of 2022, is extracted hereunder:-

> "Ld. Counsel for appellant submitted that Chief Judicial Magistrate, while passing order under Section 14 of SARFAESI Act has not followed the provisions of SARFAESI Act and the Rules made

thereunder, therefore, the said order has to be set aside. Then, this Tribunal asked the advocate for appellant to show law, under which, this Tribunal by exercising power under Section 18 or DRT, by exercising power under Section 17, can set aside orders of District Magistrate or Chief Judicial Magistrate, as the case may be, passed under Section 14 as main SA is filed to set aside order of CJM dated 17.5.2021 in Crl.M.P. No.747/2021. Advocate for appellant referred to decisions of Hon'ble High Court of Madras, *in re,* Hotel Amuthas Vs. District collector, Coimbatore & Others reported in IV (2015) BC 435 (DB) (Mad.), Honble High Court of Mumbai, *in re*, Bank of Maharashtra Vs. Addl. District Magistrate & Others reported in I (2018) BC 86 (DB) (Bom.) and Hon'ble High Court of Telangana, *in re*, Anantha Reddy Nadeaguoni & another Vs. Union of India & Others reported in III (2017) BC 482 (DB) (T & AP), wherein High Courts set aside orders of DM/CJM passed under Section 14 of the Act. In all above decisions, Hon'ble High Courts were pleased to set aside

> orders of DM/CJM under Writ Jurisdiction but not held that DRT/DRAT can set aside orders of DM/CJM. When advocate for appellant is specifically asked to show power of DRT/DRAT under Sections 17 and 18 of the Act along with supporting judgments to show that DRT/DRAT can set aside orders of DM/CJM, advocate for appellant failed to show any judgment or provision on the subject empowering DRT/DRAT to set aside orders passed under Section 14 of SARFAESI Act. On the other hand, Clause (3) of Section 14 specifically prohibits a party to question order of DM/CJM in any court or before any Authority.
>
> In view of above, I am not inclined to grant stay especially when advocate for appellant is not inclined to proceed with main appeal today.
>
> IA 474/2022 is disposed of, accordingly.",

The above order supports the argument advanced by the learned counsel appearing for the petitioner. Therefore, we are constrained to extract Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as follows:-

> "17. Application against measures to recover

> secured debts.—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:
> ......"

4. Under Section 13(4)(a), the secured creditor is entitled to take possession of the secured assets. If the secured creditor has to take possession of the secured assets, it can make a request by way of an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, upon which a suitable order for the purpose of taking possession of the secured asset is passed by the learned District Magistrate or Chief Metropolitan Magistrate, as the case may be. Therefore, the same is only a measure of taking possession under Section 13(4) of the Act and as such, a person

aggrieved by the order under Section 14 has to approach only the Debts Recovery Tribunal which has got jurisdiction to entertain any application challenging the correctness of the order passed by the District Magistrate or Chief Judicial Magistrate, as the case may be.

5. The Hon'ble Apex Court, while considering an identical issue, in the case of *United Bank of India v. Satyawati Tondon and others, (2010) 8 SCC 110*, has succinctly held as follows:-

> "42. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). <u>The expression `any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person</u>

> who may be affected by the action taken under Section 13(4) or Section 14. Both the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.
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> (emphasis supplied)

6. In the light of the above settled legal position, it is very clear that if any application/appeal is filed by not only the borrower or guarantor, but also by any other person who may be affected by the action taken under Section 13(4) or Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal, as the case may be, having jurisdiction to entertain the said application/appeal, is also

empowered to pass appropriate orders under Section 17 or Section 18, on merits and as per law. Since the petitioner is having an effective, alternative and statutory remedy of appeal under Section 17(1) before the Debts Recovery Tribunal against the impugned order, we dispose of the writ petition with the aforesaid observation. Consequently, W.M.P.Nos.33906 and 33908 of 2022 are closed.

Speaking/Non speaking order (T.R.,A.C.J.) (D.B.C.,J.)
Index : yes/no 22.12.2022

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To

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THE HON'BLE ACTING CHIEF JUSTICE

AND

D.BHARATHA CHAKRAVARTHY,J.

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