



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)Nos.585 and 1030 of 2022

and

WMP(MD) Nos.869 to 871 and 449, 452 & 454 of 2022

1. V.Shiva

2. S.Madhumalar

.. Petitioners
in both petitions

(Represented through Power Agent
S.Varatharajan)

Vs

The Authorized Officer,
The State Bank of India (SARB),
No.8, Dr. Ambedkar Road,
Vinayaga Nagar Branch, First Floor,
Madurai - 625 020.

.. Respondent
in both petitions

Prayer in W.P.(MD) No.1030 of 2022:-

W.P.(MD) No.1030 of 2022 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the Impugned Demand Notice dated 09.08.2021 issued by the respondent under the SARFAESI Act, 2002 and the Security Interest Rules, 2002 to the petitioners herein.

Prayer in W.P.(MD) No.585 of 2022:-

W.P.(MD) No.585 of 2022 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the impugned order passed by the Chief Judicial Magistrate Court at Madurai in Cr.M.P.No.880 of 2021 dated 07.12.2021 and quash the same.

For Petitioners in both : Dr.S.Padma
petitions

For Respondent in both : Mr.P.Pethurajesh
petitions



COMMON ORDER

(Made by PARESH UPADHYAY, J.)

1. These two petitions are by the same petitioners and the property in question is also the same and therefore both these petitions are considered together by this Court.

2. Heard Mr.Dr.S.Padma learned advocate for the petitioners and Mr.P.Pethurajesh, learned advocate for the respondent bank.

3. Learned advocate for the petitioners has submitted that the petitioners want to close the account and liquidate the borrowings and till then, no coercive proceedings, more particularly of dispossessing the occupants of the property in question be resorted to by the bank. It is submitted that, for that limited purpose, these petitions be entertained. Readiness is also shown to repay the amount as required by the bank, read with the directions of the Debt Recovery Tribunal (DRT) dated 29 December 2021 in S.A.No.570 of 2021. It is submitted that these petitions be entertained.

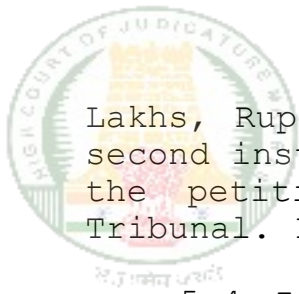
4. On the other hand, learned advocate for the respondent bank has submitted that, the petitioners are approaching the Forum(s) as per their convenience and therefore no interference be made by this Court. It is submitted that on the one hand, S.A.No.570 of 2021 is kept pending before the DRT, the petitioners have taken advantage of the interim order recorded thereon with non-compliance thereof and when they have to reply to the Tribunal with regard to the consequence of that non-compliance, instead of approaching the Tribunal, these petitions are filed before this Court and therefore these petitions be not entertained.

5. Having heard the learned advocates for the respective parties and having considered the material on record, this Court finds as under:

5.1 The petitioners are the borrowers. The guarantor to this borrowing is an Officer of a nationalised bank, which is a statement of fact made in counter filed by the bank, which has remained uncontroverted. This may have its own consequences, however the matter is not stretched that far.

5.2 So far the present petitioners are concerned, going by the introduction which they themselves have given, are the NRI at present residents of the United Kingdom.

5.3 Some tenants and the father of the present petitioner No.1, are claimed to be occupying the property in question. The father is stated to be in difficulty, because of death of his wife - the mother of the petitioner No.1. As against this personal factor, the fact remains that, the petitioners have approached the DRT by filing S.A.No.570 of 2021 and are granted protection (vide order dated 24 December 2021). Out of the first installment of Rupees Thirty One



Lakhs, Rupees Ten Lakhs is stated to have been paid till date. The second installment of Rupees Thirty One Lakh is untouched so far, by the petitioners. The matter is still not disposed of by the Tribunal. It is pending.

5.4 In the above factual background, on the moment the petitioners go to Tribunal, it will start from their explanation, if available, what has happened to the interim order. It is under these circumstances, these two petitions are filed here, which need not be entertained.

6. This grievance may be voiced in pending S.A.No.507 of 2021 or by instituting appropriate proceedings before the Tribunal. Not going before the Tribunal, in these peculiar facts, does not appear to be very innocuous. Apart from the fact that the petitioners need to approach DRT and the petitions need not be entertained on the ground of availability of alternate statutory remedy, even on merits, the petitioners are not entitled to any relief.

7. During the course of hearing, it has also transpired that not only one proceedings before DRT, as referred above is pending, there is one more proceedings instituted by the present petitioner being S.A.No.65 of 2022 on which, on 11 February 2022 interim protection is stated to have been granted in favour of the petitioners which is to be in force till 11.03.2022. It is under these circumstances this Court finds that, the attempt on the part of the petitioners need not be acknowledged.

8. For the reasons recorded above, these petitions are dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Chief Judicial Magistrate, Madurai.

+2 CC to M/s.P.PETHU RAJESH, Advocate (SR-9089,9090[F] dated 28/02/2022)

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28.02.2022

RK(09/03/2022) 3P 4C