



WEB COPY

W.P(MD)No. 7314 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No. 7314 of 2022
and WMP(MD) No. 5550 of 2022

M.Revathi

... Petitioner

Vs

1.The Chief Judicial Magistrate,
Madurai.

2.Mothoot Housing Finance Company Ltd.,
Rep. by through its Constituted Attorney/
Authorized Signatory,
R.Madhukumar,
No.11/1B, C.V.Complex, 3rd Floor,
Jawahar 2nd Street, S.S.Colony,
Bye Pass Road Branch, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for records relating to the impugned taking possession order allowed in CrI.MP.No.127/2022 dated 14.03.2022 u/s.14 of SARFAESI Act and quash the same.

For Petitioner : Mr.A.Vadivel

Respondents : Mr.P.Pethurajesh
Standing Counsel for R2

ORDER

[Made by PARESH UPADHYAY, J.]

1. This Court, on 21 April 2022, passed the following orders:-

"1. Challenge in this petition is made to the order dated 14.03.2022 recorded on Cr.M.P.No. 127 of 2022 by the Court of Chief Judicial Magistrate, Madurai.

2. The second respondent - M/s.Muthoot Housing Finance Company Limited has sealed the residential house of the petitioner on the basis of the said order.



3. We are conscious of the pronouncements to the effect that, the Court will be very slow while dealing with the orders passed by the Magistrate under SARFAESI Act, however the following are the glaring facts.

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4. The total disbursement made by the respondent to the petitioner was Rs.4,99,730/-. For some time, the borrower repaid installments, thereafter there is default and it has led to a situation where for the default in repayment of the loan which was not exceeding Rupees Five Lakhs, the person is now on road. We are inclined to exercise our discretion in this factual background. By way of interim order it is directed that, the impugned order passed by the Chief Judicial Magistrate dated 14.03.2022 shall remain stayed. Consequential action taken by the respondent shall be undone immediately.

5. A question may also crop up, if the statutory powers are to be resorted to like this, whether the entities like the second respondent can at all be permitted to continue its status as defined under Section 2(zd) of the SARFAESI Act. If required, Reserve Bank of India may also be joined as party respondent to explore this.

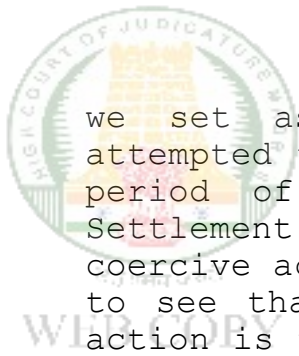
6. List for compliance on 26.04.2022."

2. Today, it is reported that, the seal applied by the second respondent is removed and the petitioner is put back in possession of his dwelling house.

3. While recording this order, we are conscious of the fact that, the Court would be very slow to exercise discretion under Article 226 of the Constitution of India in SARFAESI proceedings, that too at the stage when an order is passed by the Magistrate under Section 14 of the Act. However, considering the fact which is noted above, we had thought it proper to grant protection in favour of the petitioner.

4. Learned advocate for the petitioner states that, considering the financial capacity of the petitioner, so also keeping in view the fact that total borrowing amount was around Rs.5,00,000/- (Rupees Five Lakhs only), One Time Settlement (OTS) will be attempted by him. Learned advocate for the second respondent also states that, considering peculiar circumstances, if any reasonable proposal is made for One Time Settlement, the same will be considered by the Bank.

<https://hcservices.ecourt5gov.in/hcservices5> allow the parties to workout such an arrangement,



we set aside the order under challenge. One Time Settlement attempted to be explored be done expeditiously, preferably within a period of three months. It is directed that, till One Time Settlement arrangement is worked out between the parties, no coercive action shall be taken against the petitioner. With the view to see that, the matter is not stretched any further, no further action is taken, qua the concern shown by this Court in para : 5 of the order dated 24.04.2022.

6. This writ petition is closed with above observations and directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sj/33

To

The Chief Judicial Magistrate,
Madurai.

+1 CC to M/s.P. PETHU RAJESH, Advocate (SR-21433[F] dated
26/04/2022)

+1 CC to M/s.A. VADIVEL, Advocate (SR-21989[F] dated 28/04/2022)

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26.04.2022

RD(13.05.2022) 3P 4C