



W.P.(MD) No.10426 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.10426 of 2022

and

W.M.P.(MD)Nos.7474, 7475 & 9176 of 2022

H.Shajahan

... Petitioner

-Vs-

1.The Chief Judicial Magistrate,
Kanniyakumari District,
At Nagercoil.

2.The Authorised Officer,
The Karur Vysya Bank Ltd.,
No.47, Court Road, Nagercoil.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned order passed by the 1st respondent in Cr.MP.No.587/2022 dated 02.05.2022, quash the same as illegal.

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For Petitioner : Mr.A.S.Abdul Kalam Azad
for M/s Spicy Law Firm
For R2 : Mr.R.Pandivel,
Standing Counsel

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

The order of the 1st respondent dated 02.05.2022 made in Cr.M.P.No.587 of 2022, ordering for taking physical possession of the petitioner's properties, is under challenge in this Writ Petition.

2.According to the petitioner, he availed a loan for a sum of Rs.30,00,000/- from the respondent Bank and regularly, has been paying interest to the said amount. Due to Covid-19 Pandemic situation and lock-down declared by the Central and State Governments, he was not in a position to repay the loan amount. Therefore, the 2nd respondent classified the loan account of the petitioner as Non Performing Asset and initiated SARFAESI proceedings.

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Thereafter, the petitioner paid a sum of Rs.1,00,00,702/-. Hence, the respondent Bank has released one of the properties of the petitioner mortgaged with the respondent Bank, which has been shown as I schedule property in the impugned order dated 02.05.2022. Thereafter, the petitioner has sold the said property to third party. When the matter stood thus, the respondent Bank has filed an application under Section 14 of SARFAESI Act before the 1st respondent for taking possession of the properties including the I schedule property, wherein the 1st respondent, by order dated 02.05.2022, ordered for taking possession of the properties of the petitioner and the same is under challenge in this Writ Petition.

3. When the matter was taken up for admission, this Court, by an order dated 25.05.2022, granted an interim stay with regard to the I schedule property and with regard to the II and III schedule property, granted an interim stay on condition that the petitioner shall deposit a sum of Rs.50,00,000/- on or before 14.06.2022. The petitioner has also duly complied with the said conditional interim order of this Court.



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4.Now, the learned counsel for the petitioner seeks some indulgence of this Court that the petitioner may be permitted to submit a proposal for One Time Settlement to the respondent Bank within a period of two weeks from the date of receipt of a copy of this order and the same may be directed to be considered by the respondent Bank within a time frame.

5.The learned Standing Counsel for the respondent Bank fairly submitted that the aforesaid I schedule property as shown in the impugned order was included inadvertently and if any such proposal is made by the petitioner, the respondent Bank shall consider the same in the light of RBI norms.

6.In view of the above, the impugned order of the 1st respondent is modified to the effect that the I schedule property included in the impugned order is excluded and in respect of the remaining schedule properties, the respondent Bank is at liberty to proceed in accordance with law. In the meantime, if any such proposal, seeking One Time Settlement is made by the



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petitioner within a period of one week from the date of receipt of a copy of this order, it is for the respondent Bank to consider the same at the earliest in the light of RBI norms.

7.In view of the above, this Writ Petition stands disposed of. No costs.
Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.] & [R.V., J.]

07.12.2022

Index : Yes / No
Internet : Yes / No

Myr

To

The Chief Judicial Magistrate,
Kanniyakumari District,
At Nagercoil.



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