BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.06.2022
CORAM:
THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.(MD)No.11904 of 2022
and WMP(MD) Nos.8461 and 8462 of 2022

P.Govindasamy : Petitioner

Vs.

1.The Authorised Officer,
Bank of Baroda
Regional Stressed Asset Recovery Branch
1st Floor, No.3,4, 5 Sakthivelammal Nagar 10th Street
By Pass Road
Ponmeni, Madurai 625 016.

2.The Branch Manager
Bank of Baroda
Kamalanehuru Hospital Road
Dindigul.

3.Manikandan : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed in Crl.M.P.No.0002576/2022 on the file of learned Chief Judicial Magistrate, Dindigul dated 16.05.2022 based on the application filed by the 1st respondent bank under Section 14 of SARFAESI Act, 2002 and quash the same as illegal and consequently direct the 1st respondent to initiate loan recovery proceedings against the 3rd respondent's asset given as a security before the 2nd respondent bank at the relevant period of time when loan was sanctioned.

For Petitioner : Mr.M.Saravanakumar
For Respondents : Mr.P.Pethurajesh

ORDER
(Order of the Court was made by P.N.PRAKASH, J.)

Admittedly the petitioner's son (third respondent herein) had taken business loan from the second respondent bank some time in the year 2013 and the account became an NPA on 31.08.2015. As on that date, Rs.1,33,48,297/- was due to the bank. Thereafter, the petitioner had given his property as a guarantee for the said loan. Now, the second respondent bank initiated steps under the SARFAESI Act for recovery of the amount and has filed application before the

Chief Judicial Magistrate, Dindigul under Section 14 of the SARFAESI Act. Admittedly, the Chief Judicial Magistrate, Dindigul has also appointed an Advocate Commissioner to take possession of the property.

2.The learned counsel for the petitioner submitted that the bank should first proceed against the principal debtor and only if they are not able to recover the amount from the principal debtor, should they come to the guarantor. However, this proposition cannot be countenanced for the simple reason that the liability of the guarantor is co-existensive with that of the principal debtor. In such view of the matter, we do not find any merit in the writ petition and hence, the writ petition is dismissed. It is always open to the petitioner to have a private negotiation with the bank for settling the loan amount. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

RR

TO

The Chief Judicial Magistrate,
Dindigul

+1 CC to M/s.P. PETHU RAJESH, Advocate (SR-26041[F] dated 16/06/2022)

+1 CC to M/s.M. SARAVANAKUMAR, Advocate (SR-26366[F] dated 17/06/2022)

Order made in
W.P.(MD)No.11904 of 2022
16.06.2022

nsn(CO)
GC(01.07.2022) 2P 4C