



W.P.(MD).No.15106 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.07.2022

CORAM:

**THE HONOURABLE MR.JUSTICE S.S. SUNDAR
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

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HDB Financial Services Limited,
Represented by its Authorised Officer,
Mr.K.Raja, aged 39 years,
Working as Legal Associate,
Having Office at No.2, 3rd Floor,
M.S.Towers, Convent Road,
Cantonment, Trichirappalli – 620 001.

... Petitioner

Vs.

1.The Chief Judicial Magistrate,
Trichirappalli.

2.Wellcare International Hospital and Research
Institute Pvt. Ltd.,
Old No.C-59, New No.11, 9th A Cross West,
Thillai Nagar, Trichy – 620 018.

3.K.Rajendran

4.R.Vimala Rajakumari

5.Wellcare International Hospital and
Research Institute Pvt. Ltd.,
SF.No.153/4B1/7A Part,
Plot No.44-45, D.No.12,
Anbil Nagar, Kottapattu Village,
K.Sathanur SRO, Ponmalai Division,
Trichy – 620 007.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 1st respondent/Chief Judicial Magistrate, Trichy to forthwith number the application in CrI.M.P.S.R.No.1168 of 2022 filed by the petitioner institution on 15.02.2022, seeking assistance for taking physical possession of the property SF.No.153/4B1/7A Part, Plot No. 44-45, Door No.12, Anbil Nagar, Kottapattu Village, K.Sathanur Sub Registrar Office, Ponmalai Division, Trichy – 620 007 admeasuring 5439.24 sq. feet which is a secured asset of the petitioner institution, under Section 14 of SARFAESI Act.

For Petitioner : Mr.M.Kannan

ORDER

(Order of the Court was made by S.S.SUNDAR.J.,)

This writ petition is filed for issuance of a writ of mandamus directing the learned Chief Judicial Magistrate, Trichirappalli to forthwith number the application in CrI.M.P.S.R.No.1168 of 2022.

2. The petitioner is the Financial Institution, which has advanced loan to the borrower. The respondents 2 to 5 had borrowed a sum of Rs. 1,75,00,000/- from the petitioner under a loan agreement No.1233641. Since respondents 2 to 5 had committed default and failed to respond to the notice issued under Section 13 (2) of the SARFAESI Act, the petitioner institution has declared the loan account of the respondents 2 to 5 as 'NPA'. After declaring



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the assets of the respondents 2 to 5 as NPA, the petitioner institution filed a petition under Section 14 of SARFAESI Act for taking physical possession of the property. The petitioner has also filed an affidavit, which contains all the particulars that are required in terms of Section 14(1) of the Act. Despite the petitioner has filed an affidavit, declaring the particulars required under Section 14(1) of the Act, the petitioner's application was returned, mainly on the ground that the petitioner has to produce the RBI certificate and produce the acknowledgements, return covers, etc. The other reason stated is that the service effected through the paper publication in two newspapers has not been proved by submitting the paper. Thereafter, the petitioner institution represented the petition. Even thereafter, the application was rejected for the same reason on 26.04.2022. Therefore, this Writ Petition is filed by the petitioner seeking a direction to the learned Chief Judicial Magistrate to forthwith number the application in CrI.M.P.S.R.No.1168 of 2022.

3. This court, in similar cases, has already held that while exercising power under Section 14 of the SARFAESI Act, the Chief Judicial Magistrate is discharging a ministerial act and not an adjudicatory authority dealing with the rights of the parties. Further, the requirements of Section 14 of the SARFAESI Act can very well be complied with by an affidavit filed by the competent authority of the petitioner.



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4. In the earlier representation itself, the petitioner has stated that the notice issued to the borrower had not returned. Therefore, notice was not only served by affixure but also by effecting paper publication. However, without seeing the endorsement, the learned Chief Judicial Magistrate has returned the petition on the ground that the acknowledgment is not enclosed. Hence, this Court is of the view that the endorsement made by the learned Chief Judicial Magistrate for returning the petition is not justified.

5. In view of the above, this Court directs the petitioner to re-present the papers in CrI.M.P.S.R.No.1168 of 2022 before the learned Chief Judicial Magistrate, Trichirappalli. Upon representation of the same, the learned Chief Judicial Magistrate is directed to consider and number the application in CrI.M.P.S.R.No.1168 of 2022, if the petition is otherwise in order.

6. With the above direction, this Writ Petition is disposed of. No costs.

[S.S.S.R.J.,] [S.S.Y.J.,]

vsm

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Index : Yes / No

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To

The Chief Judicial Magistrate,
Trichirappalli.



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S.S. SUNDAR,J.,
and
S.SRIMATHY,J.,

vsm

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