



W.P(MD)No.16422 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.16422 of 2022

and

W.M.P(MD) Nos.11862 and 11863 of 2022

J.Joe Reeves Kamalam

... Petitioner

-Vs-

1.The Authorized Officer,
Housing Development Finance Corporation Ltd., (HDFC),
Nagercoil Branch,
Court Road,
Nagercoil-629 001,
Kanyakumari District.

2.The Branch Manager,
Housing Development Finance Corporation Ltd., (HDFC),
Court Road,
Nagercoil-629 001,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the impugned possession notice dated 30.12.2021 issued by the respondent Banks to the petitioner in respect of their residential house situated at No.



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123, Allan Street, Near Medical College, Asaripallam, Nagercoil,
Kanyakumari District -629 201 forthwith.

For Petitioner : Mr.S.Palani Velayutham
For Respondents : Mr.Pala Ramasamy

ORDER

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

Challenging the possession notice that was issued on
30.12.2021, the above writ petition is filed.

2. Though the writ petition is filed with the delay, the learned counsel for the petitioner has given plausible reason for the delay. It is the case of the petitioner that the petitioner borrowed a sum of Rs.39,50,000/- (Rupees Thirty Nine Lakhs and Fifty Thousand only) in 2013 agreeing to repay the amount in 15 years period. Admittedly, the petitioner has paid substantial amount and the liability as on 31.08.2021, is Rs.18,72,409/- (Rupees Eighteen Lakhs Seventy Two Thousand Four Hundred and Nine only).



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3. The learned counsel for the petitioner states that the petitioner is prepared to pay a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) in four monthly installments, in case, the respondent bank agrees to restructure the loan on payment of the said sum.

4. The learned counsel for the respondent bank has no serious objection to consider the petitioner's request for restructuring or rescheduling the payment, in case, the petitioner pays around a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) within the stipulated period as this Court may direct.

5. Considering the facts and circumstances of the case, this Court is of the view that the writ petition itself can be disposed of, finally with the following directions:

The respondent bank shall not initiate any further action for taking possession or sale of the property for a period of six months on condition that the petitioner deposits a sum of Rs.1,75,000/- (Rupees One Lakh and Seventy Five Thousand only) on or before **26.08.2022**; a further sum of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only) on or before **26.09.2022**; a further sum of Rs.1,75,000/- (Rupees One Lakh



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Seventy Five Thousand only) on or before **27.10.2022** and a further sum of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only) on or before **27.11.2022**.

6. Upon payment of the said sum of Rs.7,00,000/- (Rupees Seven Lakhs only) in four monthly installments as directed above, the respondent bank shall consider the representation of the petitioner for waiver of penal interest or for one time settlement or for restructuring the loan, within a period of two weeks from the date of such representation being submitted by the petitioner. Till such time the respondent considers the representation of the petitioner for restructuring the loan or for waiver of penal interest or other concession and communicates the decision to the petitioner, the respondent Bank shall not take any coercive action against the petitioner.

7. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

8. This Court noticed in few cases where the possession notice or sale notice is challenged before this Court in the writ petitions that the pendency of the proceedings before the Debt Recovery Tribunal is not



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disclosed in the affidavit filed in support of the writ petitions. Therefore, this Court is of the view that it will be in the interest of justice to give the following instructions to the Registry:

(i) Registry is directed to insist the petitioner/s in all the cases challenging the recovery proceedings, namely, sale notice / possession notice etc to give a declaration in the affidavit that no proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, is pending before the Tribunal at the time of filing the writ petition.

(ii) If there is pendency of the proceedings before the Debts Recovery Tribunal, challenging the previous sale notice or possession notice or any other proceedings relating to recover, the petitioner/s, the petitioner/s shall disclose all the facts relating to pendency of the proceedings in respect of the property, which is the subject matter of the mortgage.

(S.S.S.R., J.) & (S.S.Y., J.)

27.07.2022

Index : Yes / No

Internet : Yes / No



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AND

S.SRIMATHY, J.

CP

ORDER MADE IN

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