



W.P.(MD)No.19375 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2022

CORAM

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

W.P(MD)No.19375 of 2022
and
W.M.P.(MD)Nos.14144 of 2022

B.Kavitha

... Petitioner

Vs.

- 1.The Authorized Officer,
Karur Vysya Bank,
Asset Recovery Branch,
R.S.No.170/9, Mattuthavani – Melur Road,
Near Mattuthavani Bus Stand,
Mattuthavani, Madurai – 625 107.
- 2.Karur Vysya Bank,
Rep. by its Branch Manager,
Gnanavolivupuram Branch,
No.16, Gayathri Illam, A.A.Road,
Gnanaolivupuram, Arapalayam,
Madurai – 625 016.
- 3.The Chief Judicial Magistrate Court,
Madurai,
Madurai District.
- 4.M.Christopher
- 5.Debts Recovery Tribunal – Madurai,
Rep. by the Registrar,



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III & IV Floor, Kalyani Towers,
4/162, Madurai – Melur Road,
(Near Meenakshi Mission Hospital),
Uthangudi Post, Madurai – 625 107.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, to call for records relating to the impugned order dated 09.12.2021 made in Crl.M.P.No.891 of 2021 passed by the 3rd respondent and quash the same.

For Petitioner : Mr.V.Veerapandian
for M/s.Vastlaw Associates

For Respondents 1 & 2 : Mr.R.Pandivel
Standing Counsel

* * *

ORDER

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

This Writ Petition is filed challenging the order of learned Chief Judicial Magistrate, Madurai, dated 09.12.2021, in Crl.M.P.No.891 of 2021, filed by the first respondent under Section 14 of SARFAESI Act.

2. Heard Mr.V.Veerapandian, learned counsel for the petitioner and Mr.R.Pandivel, learned Standing Counsel for the respondents 1 and 2. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.



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3. The petitioner states that she is not a borrower, but said to have been entered into an agreement with the borrower for purchasing the secured asset. It is the case of the petitioner that she is in possession of the property based on the agreement she had entered into with the borrower. Earlier, the petitioner filed a writ petition in W.P.(MD) No.1126 of 2022 for issuance of a Writ of Mandamus, forbearing the respondents 1 and 2 herein from vacating the Petitioner from her possession in Plot No.370, R.S.No. 42/1, measuring 2415 sq.ft. situated at Sree Meenakshi Nagar, Veerapanchan Village, Madurai North Taluk, Madurai District, by considering the Petitioner's representation, dated 10.1.2022. The said writ petition was dismissed with the following observations:-

“4.The agreement is only between the petitioner and the borrower and an agreement will not confer any right or title over the property. The respondents 1 and 2/Bank has already obtained an order under Section 14 of the SARFAESI Act, 2002 before the Chief Judicial Magistrate, Madurai, for taking possession. Since the Petitioner does not have any right or privity of contract, she has to work out her remedy, in the manner known to law and she cannot invoke Article 226 of the Constitution of India to restrain the



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respondents 1 and 2/Bank from taking possession of the property, when the bank has already obtained orders under Section 14 of the SARFAESI Act, 2002.”

4. After dismissal of the writ petition earlier on the same cause of action, now, in the writ petition the petitioner challenges the order of learned Chief Judicial Magistrate, Madurai dated 09.12.2021. It is to be seen that the cause of action for the present writ petition and the earlier writ petition are one and the same. The petitioner has earlier filed the writ petition to forbear the respondent bank from taking possession and now the petitioner has challenged the order of learned Judicial Magistrate appointing Advocate Commissioner to assist the petitioner for taking possession of the secured asset. Both the writ petitions arise out of the same cause of action, the second writ petition is barred by the principles of constructive *res judicata*. Therefore, the prayer available to the petitioner when the earlier writ petition was filed cannot be granted in the present writ petition.

5. On merits, the petitioner as an agreement holder with the borrower is not entitled to canvass any right as against the



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bank. She may redeem the property as a purchaser of equity of redemption. The petitioner is certainly entitled to redeem the property, if she purchases the property. However, as an agreement holder, she does not have any interest in the secured asset, particularly as against the bank. The sale agreement itself is unenforceable as against the bank, which has taken possession. The petitioner has no right to protect his possession as against the respondent Bank by virtue of a sale agreement which is not authorised. Hence, this Court is unable to entertain this Writ Petition.

6. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

[S.S.S.R., J.] [S.S.Y., J.]
24.08.2022

Index : Yes / No
sj

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