



W.P.(MD) No.23893 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD) No.23893 of 2022
and W.M.P.(MD)No.17962 of 2022

1.S.A.Sheela Thevamani

2.G.Prasanth Kumar

... Petitioners

Vs.

Fullerton India Home Finance Company Ltd,
Rep. by Authorized Officer,
M.Rajapandi,
2nd Floor, No.163, Kamarajar Salai,
Parameshwar Complex,
Madurai-625009.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, restraining the respondent from dispossessing the petitioners

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from the residential house property situated at survey No.31/6 to an extent of 4¼ cents New survey No.31/56, Kallanai Village, Vadipatti Taluk, Madurai District till the disposal of the SARFAESI appeal in S.A.No306 of 2022 on the file of Debts Recovery Tribunal, Madurai

For Petitioners : Mr.M.Karunanithi

For Respondent : No Appearance

ORDER

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

This Writ Petition has been filed for issuance of a Writ of Mandamus, restraining the respondent from dispossessing the petitioners from the residential house property situated at survey No.31/6 to an extent of 4¼ cents New survey No.31/56, Kallanai Village, Vadipatti Taluk, Madurai District till the disposal of the SARFAESI appeal in S.A.No306 of 2022 on the file of Debts Recovery Tribunal, Madurai



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2. It is the case of the petitioners that the 1st petitioner has availed a housing loan of Rs.8,00,000/- from the respondent Finance Company, in which the 2nd petitioner stood as co-borrower. Due to COVID 19, the petitioners are not in a position to pay the EMIs regularly and hence, the respondent Finance Company has initiated proceedings under the SARFAESI Act. Thereafter, the respondent has filed an application under Section 14 of the SARFAESI Act, before the Chief Judicial Magistrate, Madurai in CrI.M.P.No.788 of 2022, seeking assistance of the Court to take physical possession of the property. The said application was allowed on 07.07.2022. Challenging the said order, the petitioners have filed an appeal in S.A.No.306 of 2022, along with stay application before the Debts Recovery Tribunal, Madurai. The learned Debts Recovery Tribunal, on 05.08.2022 has granted an order of interim stay on condition that a sum of Rs.1.50 lakhs shall be paid on or before 02.09.2022 and another sum of Rs.1.50 Lakhs shall be paid on or before 30.09.2022. The petitioners have complied the first condition and due to financial crisis and family circumstances, the petitioners could not able to comply the second condition as per the order of the learned Debts Recovery Tribunal. While that



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being so, the respondent on 10.10.2022 affixed the notice in the petitioners' premises stating that on 12.10.2022, they proposed to take possession of the property on the strength of the order passed in CrI.M.P.No.788 of 2022, dated 07.07.2022. Hence, the petitioner has filed this Writ Petition.

3. Heard the learned counsel for the petitioners and perused the materials available on record.

4. On a perusal of the records, it is seen that challenging the order of the learned Chief Judicial Magistrate, Madurai, dated 07.07.2022, the petitioners have already filed an appeal in S.A.No.306 of 2022 along with stay application before the Debts Recovery Tribunal, Madurai and the learned Debts Recovery Tribunal, by an order dated 05.08.2022, has granted an order of conditional interim stay and the said S.A.No.306 of 2022 is pending before the Debts Recovery Tribunal, Madurai.



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6. Accordingly, this Writ Petition is dismissed granting liberty to the petitioners to work out their remedy in the pending S.A.No.306 of 2022, before the Debts Recovery Tribunal, Madurai. No costs. Consequently, connected miscellaneous petition is closed.

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

19.12.2022

Index : Yes / No

Internet : Yes / No

vsm

To

Fullerton India Home Finance Company Ltd,
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Parameshwar Complex,
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