



W.P.(MD) No.27775 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD) No.27775 of 2022

and

W.M.P.(MD) Nos.21858 & 21859 of 2022

Rajeshkumar

... Petitioner

Vs.

The Authorized Officer,
Aspire Home Finance Corporation Ltd.,
Shop No.2, First Floor, V Complex,
D.No.6/81, Avadi Main Road,
Sennerkuppam,
Ponnamallee – 600 056.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the impugned possession notice dated 10.03.2021 issued by the respondent and quash the same.

For Petitioner : Mr.B.Chandran



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ORDER

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

Challenging the impugned possession notice dated 10.03.2021, issued by the respondent, the petitioner has filed this Writ Petition.

2. It is the case of the petitioner that the petitioner's father has availed a housing loan of Rs.4,10,177/- on 21.09.2018, by depositing his title deed, in which the petitioner and his brother stood as witnesses. The petitioner has paid a sum of Rs.61,600/- as 14 installments and due to COVID-19 pandemic, the petitioner is unable to pay the EMI amount, as agreed. Thus, the respondent has issued a demand notice on 22.06.2020 under Section 13(2) of the SARFAESI Act. Due to the non-payment of the said amount, the respondent has declared the petitioner's account as NPA and subsequently, possession notice was issued on 10.03.2021, to the petitioner's father and his elder brother. Thereafter, the respondent has filed a petition in CrI.M.P.No.447 of 2022, before the learned Chief Judicial Magistrate, Madurai, to secure the physical possession of the



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secured property. The learned Chief Judicial Magistrate, Madurai, by order dated 18.05.2022, allowed the petition and appointed an Advocate Commissioner to execute the order. The petitioner without challenging the possession notice dated 10.03.2021, has challenged the order of the learned Chief Judicial Magistrate, Madurai, dated 18.05.2022, before this Court in W.P. (MD)No.25034 of 2022. Hence, the petitioner has filed the present writ petition, challenging the possession notice dated 10.03.2021.

3. Heard the learned counsel appearing for the petitioner and perused the materials placed before this Court.

4. In the earlier Writ Petition filed by the petitioner in W.P.(MD)No.25034 of 2022, this Court by order dated 04.11.2022, has passed the following order:

“4. Learned counsel appearing for the petitioner has given an undertaking that the petitioner is ready to pay 50% of the abovesaid amount within a period of two weeks and the balance amount shall be paid within a period of two weeks thereafter.

5. Therefore, recording the undertaking given by the learned



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WEB COPY *counsel appearing for the petitioner, we direct the petitioner to pay 50% of the abovesaid amount on or before 18.11.2022 and to pay the remaining amount on or before 02.12.2022. If the petitioner fails to pay any one of the aforesaid conditions, it is open to the respondent – Bank to proceed further in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.”*

5. We are of the view that the petitioner without complying the aforesaid conditional order passed by this Court 04.11.2022, has filed the present writ petition, challenging the possession notice dated 10.03.2021 and hence, the writ petition is not maintainable and the same is liable to be dismissed.

6. Accordingly, this writ petition is dismissed, granting liberty to the petitioner to work out his remedy before the Debts Recovery Tribunal, Madurai, if he so advised. No costs. Consequently, connected miscellaneous petitions are closed.

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

09.12.2022

vsm



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D.KRISHNAKUMAR, J.
and
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