



W.P(MD)Nos.28354 & 28439 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)Nos.28354 & 28439 of 2022
and
W.M.P(MD)Nos.22402, 22404 & 22455 of 2022**

W.P(MD)No.28354 of 2022:-

Rajesh Kumar

... Petitioner

vs.

1.The Authorized Officer,
Indian Bank,
Sam Small Branch,
100-101, East Avanimoola Street,
Madurai – 625 001.

2.M.Selvam

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Ceritorari, calling for the records relating to the proceedings in the impugned order passed by the learned Chief Judicial Magistrate, Srivilliputtur in Cr.M.P.No.5562 of 2022, dated 12.10.2022 and to quash the same as null and void, ultravires and illegal.



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For Petitioner : Mr.Shakul Hameed
for Mr.M.Sundar Rajan

For R – 1 : Mr.Pala Ramasamy

W.P(MD)No.28439 of 2022:-

P.Shanmugathai

... Petitioner

vs.

1.The Authorized Officer,
Indian Bank,
Sam Small Branch,
100-101, East Avanimoola Street,
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PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Ceritorari, calling for the records relating to the proceedings in the impugned order passed by the learned Chief Judicial Magistrate, Srivilliputtur in Cr.M.P.No.5562 of 2022, dated 12.10.2022 and to quash the same as null and void, ultravires and illegal.

For Petitioner : Mr.Shakul Hameed
for Mr.K.Prabhuraj

For R – 1 : Mr.Pala Ramasamy



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COMMON ORDER

(Order of the Court was made by D.KRISHNAKUMAR, J.)

The petitioners have filed the present Writ Petitions to quash the impugned orders passed by the learned Chief Judicial Magistrate, Srivilliputtur in Cr.M.P.No.5562 of 2022, dated 12.10.2022.

2.The writ petitioners, who claim to be the tenants under the second respondent is a borrower under the first respondent Bank. The first respondent Bank has issued demand notice under Section 13(2) of the SARFAESI Act to the second respondent on 26.10.2021 and thereafter, issued a possession notice under Section 13(4) of the Act on 11.01.2022. Since the second respondent has not surrendered physical possession, the first respondent Bank has filed an application under Section 14 of the SARFAESI Act in CrI.M.P.No.5562 of 2022 before the learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputtur. The learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputtur, by order, dated 12.10.2022, has appointed an Advocate Commissioner to inspect the



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petition mentioned properties and to take physical possession of the properties and to hand over the same to the first respondent. Challenging the same, the petitioners have filed the present Writ Petitions.

3.The petitioners relying upon the unregistered lease deeds, dated 24.08.2022, claimed that the petitioners are the tenants under the second respondent.

4.The said unregistered lease deeds have been disputed by the first respondent Bank. According to the learned counsel appearing for the first respondent Bank, the petitioners are not the tenants under the second respondent and at the instigation of the second respondent, the petitioners have filed the present Writ Petitions.

5.The petitioners have filed an undertaking affidavit, dated 19.12.2022, stating that the petitioners would vacate the subject mentioned commercial property and house property on or before 18.02.2023 and hand over the same to the first respondent.



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6.In view of the abovesaid facts, since the second respondent has not challenged the possession notice issued under Section 13(4) of the Act and now, the petitioners have challenged the order passed by the learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputtur in Cr.M.P.No.5562 of 2022, we are not inclined to entertain the Writ Petitions. However, the first respondent Bank has fairly agreed before this Court that the first respondent Bank will not disturb the possession of the borrower for a period of one month and thereafter, the second respondent/borrower or alleged to be occupied in the said properties by the petitioners will have to vacate the abovesaid premises and hand over the same to the first respondent. If there is any default on the side of the second respondent/borrower or alleged to be occupied by the petitioners, action will be taken by the first respondent for taking physical possession of the said property.

7.Recording the abovesaid submissions, these Writ Petitions are disposed of with liberty to the petitioners, either as tenants or as unauthorized occupants of the said premises, to vacate and hand over the physical possession to the first respondent Bank on or before 31.01.2023,

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failing which, it is open to the first respondent Bank to proceed further against them in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes
ps

[D.K.K.,J.] [R.V.,J.]
19.12.2022

To

The Authorized Officer,
Indian Bank,
Sam Small Branch,
100-101, East Avanimoola Street,
Madurai – 625 001.



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D. KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

ORDER MADE IN
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DATED : 19.12.2022