



W.P.No.2257 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.2257 of 2023

Ebrahim

.. Petitioner

Vs

The Authorised Officer,
M/s.Housing Development Finance Corporation Ltd.,
2nd Floor, ITC Centre,
760, Anna Salai,
Chennai-600 002.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the records pertaining to the order passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai-8 dated 07.12.2022 in CrI.M.P.No.33000 of 2022 and quash the same as illegal, incompetent and ultra vires.

For the Petitioner : Mr.G.Thalaimutharasu

For the Respondent : Mr.K.J.Parthasarathy



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ORDER

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(Order of the court was made by the Hon'ble Acting Chief Justice)

The petitioner has come to this Court questioning the validity of the order dated 7.12.2022 passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai in CrI.M.P.No.33000 of 2022.

2. Learned counsel appearing for the petitioner submitted that in the year 2018, the petitioner has borrowed a sum of Rs.8.00 crore from the respondent financial institution and he repaid the monthly installments till the month of September, 2019. Since the petitioner had suffered loss in his business and due to the unexpected and unforeseen Covid-19 lockdown, he was unable to pay the monthly installments regularly thereafter. As a result, his account was classified as "non performing asset" and thereupon, the respondent has taken measures under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity, "*the Act of*



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2002"] by issuing notice under Section 13(2) of the Act, followed by notice under Section 13(4) of the Act of 2002.

3. Learned counsel further submitted that the petitioner has also questioned the notice issued under Section 13(4) of the Act of 2002 before the Debts Recovery Tribunal-II, Chennai by filing S.A.No.461 of 2021, but unfortunately he was unable to mobilize funds. Therefore, S.A.No.461 of 2021 was dismissed vide order dated 29.7.2022 by the Tribunal and, subsequently, the impugned order under Section 14 of the Act of 2002 was passed.

4. Adding further, learned counsel for the petitioner submitted that the petitioner is making sincere efforts to mobilize funds and within a week's time, he will be able to pay Rs.1.00 crore and thereafter within three months, the balance will be paid. Therefore, in order to get the breathing time to pay the amount, the petitioner has approached this Court. Hence, the prayer of the petitioner may be considered sympathetically, he pleaded.



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5. On the other hand, learned counsel for the respondent submitted that when the petitioner had challenged the possession notice issued under Section 13(4) of the Act of 2002 before the Debts Recovery Tribunal-II, Chennai in S.A.No.461 of 2021 and enjoyed an order of stay for a period of one-and-half years, the petitioner could not mobilize funds for repayment of the loan amount. Therefore, the respondent has obtained the impugned order under Section 14 of the Act of 2002 to take physical possession of the secured asset for the purpose of selling it in the public auction to recover the loan amount. Since the present course adopted by the petitioner is a futile exercise, the same cannot be entertained and the writ petition is liable to be dismissed.

6. The petitioner has already lost the battle before the Debts Recovery Tribunal-II, Chennai while challenging the notice issued under Section 13(4) of the Act of 2002 in S.A.No.461 of 2021. If really the petitioner is aggrieved by the measures taken by the respondent, he can work out his remedy before the Debts Recovery Tribunal under Section 17 of the Act of 2002. The Supreme Court,



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time and again, held that the aggrieved parties cannot challenge the SARFAESI proceedings directly by filing writ petition under Article 226 of the Constitution of India without exhausting the appeal remedy available to them.

7. In the light of the above, we are not inclined to entertain the writ petition and the same is dismissed. However, liberty is granted to the petitioner to approach the jurisdictional Debts Recovery Tribunal against the measures taken by the secured creditor. There will be no order as to costs. Consequently, W.M.P.Nos.2334 and 2336 of 2023 are closed.

(T.R., ACJ.) (D.B.C., J.)
17.03.2023

Index : Yes/No
Neutral Citation : Yes/No
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To:

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