



WEB COPY



WP No.3388 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP No.3388 of 2023

1.M.Balu

2.B.Muthammal

... Petitioners

Vs

1 The Authorized Officer
City Union Bank Limited
Credit Recovery and Management Department
24-B Gandhi Nagar
Kumbagonam- 612 001.

2 The Branch Manager
City Union Bank Limited
Thiruchengodu Branch
No.106-A South Car Street
Thiruchengode, Namakkal- 637 211.

3 Hemavathi

4 Sutha Thangavel

... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Declaration declaring the action initiated by the 3rd respondent under Section 13 (4) (a) and 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act 2002 r/w Rule 8 of the Security Interest (Enforcement) Rules 2002 without following the statutory procedure there under for taking possession of the 1st Petitioner property taking un due advantage pending before the Presiding Officer of the Debts Recovery Tribunal at Coimbatore before whom the S.A.No.1111 of 2022 and stay petition in



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I.A.No.4912 of 2022 filed by the Petitioners is pending consideration from 01.12.2022 onwards with a next date of hearing on dated 12.04.2023 as illegal arbitrary and violative of Articles 14, 19(1)(g), 21 and 300-A of the Constitution of India, apart from being violative of principles of natural justice.

For the Petitioners : Mr.B.Janakiram

ORDER

(Made by the Hon'ble Acting Chief Justice)

The petitioners have filed this writ petition principally on the ground that they should not be dispossessed of their property, pursuant to the direction issued by the Chief Judicial Magistrate, Namakkal.

2. According to the petitioners, they availed a loan of Rs.18 lakh under the CUB Dharani Special CC/OD scheme on 22.08.2016 from the second respondent bank. Again the petitioners availed financial assistance from the said respondent under the scheme 'UCB OSL Term EMI-BR', to the tune of Rs.20 lakh, on 22.08.2016.

3. Learned counsel for the petitioners would submit that only due to demonetisation, Goods and Sales Tax implementation, Covid-19 pandemic outbreak and other economic conditions, the petitioners were unable to carry on their business to achieve the revenue target. The petitioners have created an equitable mortgage by way of deposit of title deeds creating security in favour of



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the second respondent bank. Since the petitioners were irregular in making repayment of dues/installment/ interest, their loan account has been classified as a non-performing asset on 27.12.2020. Finally, the bank issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short, 'the Act of 2002') on 19.06.2021, followed by possession notice, issued on 25.08.2021, under Section 13(4) of the Act of 2002. Thereafter, sale notice dated 18.09.2021 was issued, fixing e-auction to be held on 29.10.2021. The petitioner filed SA No.599 of 2021, challenging the e-auction notice before the Debts Recovery Tribunal, Coimbatore. An interim order was passed by the Tribunal directing the petitioners to deposit a sum of Rs.7.5 Lakh on or before 24.11.2021 and another sum of Rs.7.5 Lakh on or before 22.12.2021. As the petitioners faced financial crunch, they were unable to comply with the order of the Tribunal. Therefore, the bank approached the Chief Judicial Magistrate, Namakkal, under Section 14 of the Act of 2002, who ordered for taking physical possession of the property and putting the property for sale. Accordingly, sale was conducted and the property was sold to the highest bidder.

4. The main grievance of the petitioners is that when the petitioners approached learned Debts Recovery Tribunal, Coimbatore, questioning the validity of the action taken by the respondent bank under Section 13(4) of the



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Act, read with Section 14 of the Act of 2002, the matter has not been heard, and it is kept pending. Because of the pendency, the challenge made by the petitioners against the action of the bank for taking steps to take physical possession of the petitioners' land, and for issuing the sale deed is becoming infructuous. Therefore, the petitioners have filed this writ petition.

5. Learned counsel for the petitioners produced an order of the Andhra Pradesh High Court in *M/s.Mangalagiri Textile Mills Pvt. Ltd and Anr. vs. SBI, rep. By its Authorised Officer and Anr., WP No.30161 of 2021, dated 18.02.2022*, for the proposition that parallel proceedings is also permitted and therefore, this writ petition is maintainable.

6. We are unable to find any merit in the said submission because a reading of the judgment of the Andhra Pradesh High Court clearly shows that it was a case where the Debts Recovery Tribunal had no presiding officer and hence, the petitioner therein, left with no other alternative, has approached the High Court. But in this case, the Debts Recovery Tribunal, Coimbatore, is functioning with a presiding officer. Therefore, invocation of Article 226 of the Constitution of India is not permissible.

7. According to the learned counsel for petitioners, the prime point taken



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in the Sarfaesi Application challenging the order under Section 14 of the Act of 2002, that the physical possession has been taken without any legal sanctity, has not been considered by the Tribunal.

8. In view of the above, we direct the Debts Recovery Tribunal, Coimbatore, to take up the pending SA No.1111 of 2022, and dispose of the same within two months from the date of receipt of a copy of this order.

9. There is no merits in this writ petition. The writ petition, therefore, fails and the same is dismissed. There will be no order as to costs. Consequently, WMP Nos.3462 and 3463 of 2023 are closed.

(T.R., ACJ.) (D.B.C., J.)
06.02.2023

Index : Yes/No
Neutral Citation : Yes/No
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