



WP No.5046 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2023

CORAM

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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M/s.Kotak Mahindra Bank Ltd.,  
Asset Reconstruction Division,  
rep. By its Vice President  
402 L, Samson Towers, 5<sup>th</sup> Floor,  
Pantheon Road, Egmore,  
Chennai 600 008

... Petitioner

versus

1.A.Anand Prasad,  
2.A.Manohar Prasad  
3.A.Indira Anand  
4.A.Chandini  
5.A.Sai Sivajyoti  
6.A.Lakshmi Anandhi  
7.A.Anjali Krishna Mani  
8.A.Manoramma

9.The Recovery Officer,  
Debts Recovery Tribunal-III, Chennai

10.S.Vignesh

... Respondents



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Prayer: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the 9<sup>th</sup> respondent herein to take steps to forthwith take physical possession of the ground floor of the premises at Adyar, Gandhinagar, currently in the occupation of the 3<sup>rd</sup> respondent herein, and proceed further with the Recovery proceedings to enforce DRC No.5 of 2023 issued to the petitioner.

For the Petitioner : Mr.H.Karthik Seshadri

### ORDER

(Made by the Hon'ble Acting Chief Justice)

This writ petition has been filed for issuance of a writ of mandamus directing the ninth respondent to take steps to forthwith take physical possession of the ground floor of the premises at Adyar, Gandhinagar, currently in the occupation of the 3<sup>rd</sup> respondent herein, and proceed further with the recovery proceedings to enforce DRC No.5 of 2023 issued to the petitioner.

2. Learned counsel for the petitioner would submit that although the Debts Recovery Tribunal-II, Chennai, in its order dated 20.12.2017 has appointed the tenth respondent as Advocate Commissioner for taking possession of the immovable property, after issuing notice to the parties concerned, and handover possession to the Recovery



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Officer, the said warrant has not been fully complied with. Learned counsel for the petitioner further submitted that even the mahazar dated 12.04.2022 says that pursuant to the warrant issued to the Advocate Commissioner, physical possession of the land was taken in the presence of Mr.Manohar Prasad, Ms.A.Manorama Anand on 12.04.2022. The said Mr.Manohar Prasad and Ms.Manorama Anand gave separate undertaking letters to vacate and handover the property. Ms.Manorama Anand, in her undertaking dated 12.04.2022, has undertaken to vacate and handover the vacant possession without any demur. In spite of the undertaking, the petitioner is not able to get the physical possession of the property. Therefore, the petitioner has filed the present writ petition with the prayer mentioned above.

3. We are unable to find any merits in the writ petition. The petitioner has already approached the Debts Recovery Tribunal with an application for appointment of an Advocate Commissioner and the learned Debts Recovery Tribunal-II, Chennai, in DRC No.5/2013 in OA No.84 of 2011, dated 20.12.2017, has appointed the tenth respondent as Advocate Commissioner to take physical possession of the land in terms of Section 25(aa) of the Recovery of Debts Due to Banks and



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Financial Institutions, 1993. When the Advocate Commissioner was directed to take physical possession of the property, after issuing notice to the parties concerned, and handover possession to the recovery officer, pursuant to the said warrant, the accused has gone to the place in question and has also taken physical possession; but the occupants viz., the grandmother of the first respondent sought some breathing time to find an alternative accommodation and in that regard, she has also given an undertaking-cum-assurance dated 12.04.2022. The relevant portion is as under:

*“I sincerely state and undertake that by coming Tuesday, i.e. 22/4/22, the entire space occupied by me shall be vacated and possession handed over to you along with the key without any demur. This undertaking cum assurance is given to you by me for and on behalf of the certificate debtors which includes my mother. Hence, I request you to take this unconditional undertaking and assurance and permit me to stay upto 22/4/22 in the aforesaid premises. I am deeply obliged for the consideration and shall comply and abide by the warrant.”*



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4. If the petitioner is unable to get the order dated 20.12.2017 implemented by again revisiting the Debts Recovery Tribunal, it only shows its inability to enforce the order, and this Court is not inclined to entertain the writ petition. Since the matter is pending before Debts Recovery Tribunal-II, Chennai, this Court cannot interdict by way of an order in this writ petition and the petitioner has to pursue the matter before the Recovery Officer and thereafter before the Tribunal, if necessary. The writ petition fails and the same is dismissed. There will be no order as to costs.

(T.R., ACJ.) (D.B.C., J.)  
22.02.2023

Index : Yes/No  
Neutral Citation : Yes/No  
tar

To

The Recovery Officer,  
Debts Recovery Tribunal-III,  
Chennai



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T.RAJA, ACJ,  
and  
D.BHARATHA CHAKRAVARTHY, J.

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