



W.P.No.5462 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

CORAM :

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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1. R.R.Manohar
2. Mrs.Rashmi Ram Manohar
3. M/s Ramkay Motors
rep.by its Managing Partner
Mr.R.R.Manohar
No.7, Canara Bank Road
Kasturi Bai Nagar
Adyar, Chennai 600 020

.. Petitioners

-vs-

1. The Chief Metropolitan Magistrate
Egmore, Chennai 600 008
2. TATA Capital Housing Finance Ltd.,
Having its registered office at
11th Floor, Tower A, Peninsula Business Park
Ganpatrao Kadam Marg
Lower Parel, Mumbai 400 013



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Branch office at 1st Floor, Centennial Square
No.6-A, Dr.Ambedkar Salai
Kodambakkam, Chennai 600 024
represented by its Authorized Officer
Mr.S.Pugalendhi

.. Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the orders passed in Crl.M.P.No.39295/2022 dated 29.11.2022 and Crl.M.P.No.19608/2021 dated 02.12.2022 by the 1st respondent and quash the same.

For Petitioners :: Mr.I.Abrar Md Abdullah

ORDER

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

W.M.P.No.5500 of 2023 seeking permission to file a single writ petition is ordered as prayed for.

2. The petitioners have filed this writ petition, while two appeals in S.A.Nos.53 of 2021 and 143 of 2022 are pending on the file of the Debts Recovery Tribunal-II, Chennai, now transferred to the file of the Debts Recovery Tribunal-III, Chennai, challenging the impugned orders passed by the learned Chief Metropolitan Magistrate, Egmore under Section 14 of the



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Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the SARFAESI Act).

3. Learned counsel appearing for the petitioners submitted that after borrowing a loan to the tune of Rs.2,28,00,000/- from the second respondent financial institution in the year 2018, the petitioners have repaid a sum of Rs.1,37,56,869/-, as per the statement of accounts enclosed at page-94 of the typedset. However, when there was a sudden intervention of Covid-19 pandemic situation from March 2020, default in repayment had occurred, as a result the petitioners suffered issuance of notice under Section 13(2) followed by Section 13(4) of the SARFAESI Act. Having been aggrieved by the possession notice dated 11.01.2021 issued under Section 13(4) of the SARFAESI Act, the petitioners have filed S.A.No.53 of 2021 before the Debts Recovery Tribunal-II, Chennai and the same has been now transferred to the Debts Recovery Tribunal-III, Chennai. However, the second respondent, knowing pretty well about the pendency of the S.A.No.53 of 2021, has taken out a petition under Section 14 of the SARFAESI Act



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before the learned Chief Metropolitan Magistrate, Egmore for appointment of an Advocate Commissioner to take physical possession of the residential premises of the petitioners and an order dated 07.01.2022 has also been passed by the learned Chief Metropolitan Magistrate, Egmore as prayed for. When the schedule mentioned property is the only residence of the first petitioner and his family, if the second respondent is permitted to proceed further, the petitioners would be put to face irreparable hardship. Therefore, the petitioners were constrained to file yet another appeal in S.A.No.143 of 2022 before the Debts Recovery Tribunal-II challenging the order dated 07.01.2022 passed by the learned Chief Metropolitan Magistrate, Egmore under Section 14 of the SARFAESI Act and the Tribunal passed a conditional order of stay by order dated 21.03.2022 directing the petitioners to pay a sum of Rs.20,00,000/- to the second respondent on or before 29.03.2022 and a further payment of Rs.50,00,000/- in two installments, i.e., a sum of Rs.25,00,000/- on or before 29.04.2022 and a sum of Rs.25,00,000/- on or before 29.05.2022. Although there was a delay on the part of the petitioners in paying the last installment of Rs.25,00,000/-, as on



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today, a sum of Rs.70,00,000/- had been remitted to the second respondent and the same was also acknowledged by the second respondent, thereby the conditional order has been duly complied with. Now the petitioners are prepared to pay a sum of Rs.25,00,000/- within a period of one week to show their bona fide that they are willing to pay the balance installments till the debt is cleared. In this background, the learned counsel for the petitioners submitted that when the learned Chief Metropolitan Magistrate, Egmore has got power under Section 14 of the SARFAESI Act to entertain any application for taking physical possession by appointing an Advocate Commissioner, in the present case, he has repeatedly passed three orders under Section 14 without there being any jurisdiction. Therefore, the petitioners have been advised to come to this Court.

4. The sum and substance of the arguments of the learned counsel appearing for the petitioners would show that the S.A.No.53 of 2021 challenging the possession notice dated 11.01.2021 is still pending. Secondly, when the second respondent moved the learned Chief



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Metropolitan Magistrate, Egmore under Section 14 of the SARFAESI Act to appoint an Advocate Commissioner to take physical possession of the residential property, challenging the order dated 07.01.2022, the petitioners have filed S.A.No.143 of 2022 and the same is also now pending before the Debts Recovery Tribunal-III, Chennai with the conditional order of stay that was also complied with. In addition thereto, the petitioners, after having complied with the conditional order, are prepared to pay a sum of Rs.25,00,000/- within a week. Therefore, we do not wish to go into the question whether the learned Chief Metropolitan Magistrate, Egmore, while exercising the power conferred under Section 14 of the SARFAESI Act, has passed the impugned orders rightly or not. When the petitioners have shown to have complied with the conditional order by making the payment of Rs.70,00,000/-, of course, with a short delay, that has also been acknowledged by the second respondent, and considering the submission made by the learned counsel appearing for the petitioners before us that the petitioners are prepared to pay a sum of Rs.25,00,000/- within a week, we hereby direct the Debts Recovery Tribunal-III, Chennai to take up the



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S.A.No.143 of 2022, having been transferred from the Debts Recovery Tribunal-II, for hearing on production of the demand draft for a sum of Rs.25,00,000/- drawn in favour of the second respondent within a week by the petitioners and shall pass appropriate orders in accordance with law within a period of three weeks time. Needless to mention that on receipt of the payment of Rs.25,00,000/-, the second respondent is directed to de-seal the subject premises and handover possession to the petitioners, as it is a residential property. With this observation and direction, the writ petition is disposed of accordingly. Consequently, W.M.P.Nos.5502, 5504 & 5505 of 2023 are closed.

Speaking/Non speaking order

(T.R.,A.C.J.) (D.B.C.,J.)

Index : yes/no

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To

1. The Debts Recovery Tribunal-III
Chennai 600 002
2. The Chief Metropolitan Magistrate
Egmore, Chennai 600 008



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THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

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