IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

CORAM

THE HONOURABLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.8332 of 2023

V.Manikandan .. Petitioner

Versus

M/s.Equitas Small Finance Bank,
Spencer Plaza 4th Floor,
Phase II, No.769, Anna Salai,
Chennai – 2. .. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking for issuance of a writ of certiorari to call for the records of the order passed in Crl.M.P.No.6834 of 2022, dated 01.02.2023, by the learned Chief Judicial Magistrate, Tiruvallur, and quash the same.

For Petitioner : Mr.P.Paneerchelvam

For Respondent : Mrs.A.S.Neela Narayanan

ORDER

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

M/s.Equitas Small Finance Bank Limited, formerly known as M/s.Equitas Finance Limited, Chennai, has approached the Court of Chief Judicial Magistrate, Tiruvallur, by filing an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), against the petitioner herein, citing a reason that the petitioner herein had borrowed a sum of Rs.8,50,000/- on 25.01.2019 by depositing title document of settlement deed dated 28.01.2019 with the respondent bank. However, they were irregular in making the payment and therefore, the loan account of the petitioner herein was classified and declared as Non-Performing Assets on 04.02.2022. Subsequently, a notice under Section 13(2) of the Act was issued on 04.02.2022, but, since there was no response from the petitioner herein, the respondent bank approached the learned Chief Judicial Magistrate, Tiruvallur, seeking to take possession of the land in question. Learned Chief Judicial Magistrate, Tiruvallur, vide order dated 01.02.2023, allowed the application by appointing one Mr.M.Sureshbabu as Advocate Commissioner to take physical possession of the land and hand over the same to the respondent bank. Questioning the said order, the petitioner has filed this writ petition.

2. Learned counsel for the petitioner submitted that as per the proviso to Section 14 of the SARFAESI Act, learned Chief Judicial Magistrate has to pass suitable order within 30 days from the date of application; and if no order is passed within such period for reasons behind his control, he may pass order within 60 days after recording reasons in writing for the same. But, in this case, learned Chief Judicial Magistrate, Tiruvallur, has not passed the order even beyond the period of 60 days. Thus, he has committed breach of mandatory conditions adumbrated in Section 14 of the Act, therefore, the impugned order passed by the learned Chief Judicial Magistrate is liable to go.

3. The above said issue has already been authoritatively answered by the Hon'ble

Apex Court in ***C.Bright Vs. District Collector and others [(2021) 2 SCC 392].*** For better appreciation, paragraph No.21 thereof is extracted hereunder:-

> *20. The Act was enacted to provide a machinery for empowering banks and financial institutions, so that they may have the power to take possession of secured assets and to sell them. The DRT Act was first enacted to streamline the recovery of public dues but the proceedings under the said Act have not given desirous results. Therefore, the Act in question was enacted. This Court in Mardia Chemical, Transcore and Hindon Forge Private Limited has held that the purpose of the Act pertains to the speedy recovery of dues, by banks and financial institutions. The true intention of the Legislature is a determining factor herein. Keeping the objective of the Act in mind, the time limit to take action by the District Magistrate has been fixed to impress upon the author-ity to take possession of the secured assets. However, inability to take possession within time limit does not render the District Magistrate Functus Officio. The secured creditor has no control over the District Magistrate who is exercising jurisdiction under Section 14 of the Act for public good to facilitate recovery of public dues. Therefore, Section 14 of the Act is not to be interpreted literally without considering the object and purpose of the Act. If any other interpretation is placed upon the language of Section 14, it would be contrary to the purpose of the Act.* ***The time limit is to instill a confidence in creditors that the District Magistrate will make an attempt to deliver possession as well as to impose a duty on the District Magistrate to make an earnest effort to comply with the mandate of the statute to deliver the possession within 30 days and for reasons to be recorded within 60 days.*** *In this light, the remedy under Section 14 of the Act is not rendered redundant if the District Magistrate is unable to handover the possession. The District Magistrate will still be enjoined upon, the duty to facilitate delivery of possession at the earliest.*

4. In view of the explicit ruling of the Hon'ble Apex Court as stated supra, the contention of the petitioner that the order passed by the learned Chief Judicial Magistrate, Tiruvallur, beyond the statutory period of 60 days is liable to go, is not sustainable.

5. At this juncture, Mrs.A.S.Neela Narayanan, learned counsel, accepting notice for the respondent bank, submitted that as against order passed by the learned Chief Judicial Magistrate, the remedy lies only before the DRT. In our considered view, such an argument also has no legs to stand in view of the ruling of the Hon'ble Apex Court in ***C.Bright's case (cited supra)***.

6. In fine, in the light of the aforesaid judgment of the Hon'ble Apex Court, the writ petition stands dismissed. No Costs. Consequently, WMP.No.8530 of 2023 is closed.

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

rkm

To

Chief Judicial Magistrate,
Tiruvallur.

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

W.P.No.8332 of 2023

17.03.2023