



W.P.No.13201 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2023

CORAM :

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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R.Chandra

.. Petitioner

Vs

1.Indian Bank,
rep. by its Chief Manager/Authorised Officer,
Komarapalayam,
Namakkal District.

2.A.Poongulali,
Advocate-Commissioner,
Door No.189-A, Rasikomarapalayam,
Mohanur Post, Mohanur Taluk,
Namakkal District-637 015.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records relating to the order of the Chief Judicial Magistrate, Namakkal, dated 20.1.2023 in CrI.M.P.No.1168 of 2022 (CNR No.TNNM02-001611-2022) and quash the same only in so far as it relates to the petitioner and consequently permit the petitioner to



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settle the entire loan account of her deceased father M.Sengoda Gounder.

For the Petitioner : Mr.K.Selvaraj
For the Respondents : Mr.Jayesh B Dolia
Senior Counsel
assisted by
Mr.Kalyanaraman
for respondent No.1

ORDER

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

R.Chandra, daughter of Late M.Sengodan, has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records relating to the order passed by the learned Chief Judicial Magistrate, Namakkal, dated 20.1.2023 in CrI.M.P.No.1168 of 2022 (CNR No.TNNM02-001611-2022) and quash the same insofar as it relates to the petitioner and to consequently permit the petitioner to settle the entire loan account of her deceased father.

2. Mr.K.Selvaraj, learned counsel for the petitioner, assailing the impugned order dated 20.1.2023, submitted that although the



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notices issued under Sections 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on 7.9.2021 and 8.2.2022, respectively, indicate the name of the petitioner therein, the said notices were not effectively served on the petitioner, as the petitioner is not residing at her parental house in Komarapalayam, Namakkal District, as stated in the said notices, but is residing since her marriage at her matrimonial house in Karuveppampatti Village, Tiruchengode.

3. Learned counsel for the petitioner further submitted that the first respondent/secured creditor is aware of the death of the petitioner's father, which is evident from the notices issued under Sections 13(2) and 13(4) of the Act, but they have not taken any steps to effect service on the petitioner, who is residing elsewhere that in the address stated in the notices. Without affording an opportunity to put forth her case, the impugned order has been passed by the learned Chief Judicial Magistrate, Namakkal, under Section 14 of the Act, he pleaded.



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4. It is further submitted by learned counsel for the petitioner that although the property has been sold away in the public auction held on 31.1.2023, the petitioner is ready and willing to pay the entire outstanding amount of Rs.1,56,19,000/- together with the stamp duty and registration charges and, therefore, the first respondent/secured creditor may be enjoined from taking physical possession of the property.

5. Mr.Jayesh B.Dolia, learned Senior Counsel appearing on behalf of the first respondent/secured creditor, would submit that the plea of the petitioner that service of notice has not been effected at the place where she is residing cannot be countenanced, inasmuch as it is impossible for the first respondent/bank to ascertain the whereabouts of the petitioner after she got married and left the parental house. In such circumstances, the notices were served at the last known residential address of the petitioner and, therefore, the first respondent/secured creditor has duly complied with the procedure contemplated under the the Act, he pleaded.



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6. Learned Senior Counsel appearing on behalf of the first respondent/secured creditor further submitted that, after taking physical possession of the property, the same was sold away in the public auction held on 31.1.2023 and the sale deed has also been registered on 11.4.2023 and, therefore, the question of exercising the right to redeem the property does not exist. He, therefore, submitted that the petitioner has to work out her remedy in the manner known to law before the Debts Recovery Tribunal, Coimbatore.

7. In response to the aforesaid submission, learned counsel for the petitioner submitted that inasmuch as in the case on hand the notices under Sections 13(2) and 13(4) of the Act, dated 7.9.2021 and 8.2.2022, respectively, have not been served on the petitioner, by virtue of the proposition laid down by a Division Bench of this Court in ***Sheeba Philominal Merlin and another v. The Repatriates Co-op Finance and Development Bank Ltd and others, 2010 (5) CTC 449***, the entire proceedings initiated



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by the bank under the Act and the Security Interest (Enforcement) Rules, 2002 are vitiated and invalid. The relevant portion of the said decision reads as under:

*"34. As rightly pointed out by Mr.G.Rajagopalan, learned Senior Counsel that the guarantor S.Jayakumar died on 08.09.2005 and the demand notice was issued only on 02.01.2008 i.e. about three years after his death, even if it is assumed that the death of S.Jayakumar was not known to the Bank officials, a notice by simple "registered post with acknowledgment due" to the said S.Jayakumar would have revealed the aforesaid fact. Records produced prove the absence of service of notice. **As the Bank miserably failed to issue notice as per the Act, this Court has to necessarily declare any other notice purported to have been issued under Section 13(2) and 13(4) as invalid as they were issued against the dead person. In view of the settled position of law and in the absence of notices as per Section 13(2) and 13(4) and in the absence of service as per Rule 3 of the Security Interest (Enforcement) Rules, 2002, the entire proceedings initiated by the bank under the Act and the Rules made***



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thereunder are vitiated and invalid.”

[emphasis supplied]

8. We find merit in the aforesaid submission made by learned counsel for the petitioner. In the case on hand, although in the notices issued under Sections 13(2) and 13(4) of the Act, dated 7.9.2021 and 8.2.2022, respectively, the name of the petitioner is mentioned and is stated to be residing at Komarapalayam, Namakkal District, after her marriage, she is residing in Karuveppampatti Village, Tiruchengode. Therefore, in effect, notices have not been served on the petitioner. No contra evidence has been produced by the first respondent/secured creditor to show that notices have been served on the petitioner at her present address.

9. Considering the aforesaid facts and in the light of the proposition laid down by the Division Bench of this court in ***Sheeba Philominal Merlin and another***, supra, to the effect that in the absence of service of notices under Sections 13(2) and 13(4) of the



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Act on the legal heirs of the deceased borrower, the entire proceedings are vitiated, we hereby dispose of this writ petition with the following directions:

- (i) the petitioner is directed to file an appropriate application before the Debts Recovery Tribunal, Coimbatore, within two weeks from the date of receipt of a copy of this order questioning the correctness of the proceedings initiated under Sections 13(2), 13(4) and 14 of the Act and all consequential proceedings;
- (ii) on the petitioner filing such application, the Debts Recovery Tribunal, Coimbatore, shall consider the same on its own merits and proceed in accordance with law;
- (iii) the petitioner shall deposit the entire amount of Rs.1,56,19,000/- together with the stamp duty and registration charges with the first respondent/secured creditor within two weeks from the date of receipt of a copy of this order;



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- (iv) the first respondent/secured creditor is directed to inform the petitioner the amount to be paid by the petitioner towards stamp duty and registration charges within one week from the date of receipt of a copy of this order.
- (v) On compliance of condition (iii) supra, the first respondent/secured creditor shall not disturb the petitioner's physical possession of the property in question. In default of compliance, the first respondent/secured creditor is at liberty to proceed further and the writ petition shall be considered to be dismissed.

There will be no order as to costs. Consequently,
W.M.P.Nos.12942 and 12943 of 2023 are closed.

(T.R., ACJ.) (D.B.C., J.)
27.04.2023

Index : No
Neutral Citation : No
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To:

1. The Chief Manager/Authorised Officer,
Indian Bank,
Komarapalayam,
Namakkal District.
2. The Assistant Registrar
Debts Recovery Tribunal
Coimbatore.



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

(sasi)

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