



W.P(MD)No.1002 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2023

CORAM :

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD)No.1002 of 2023
and
WMP(MD)No.947 of 2023

M.Kathiravan

... Petitioner

VS.

1. The Authorised Officer,
Tamilnadu Mercandile Bank Ltd.,
Thoothukudi Regional Office,
(For Tiruchendur Branch),
Thoothukudi.

2. The Branch Manager,
Tamilnadu Mercandile Bank Ltd.,
Tiruchendur Branch,
Thoothukudi District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to the Impugned Physical Possession order passed by the Learned Chief Judicial Magistrate - Thoothukudi in Crl.M.P.No.14589 of 2022 dated 03.01.2023 and quash the same as illegal.

For Petitioner : Mr.A.Joseph Jerry

For Respondents : Mr.N.Dilipkumar, Standing Counsel



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ORDER

(Order of the Court was made by D.KRISHNAKUMAR, J.)

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The prayer in this writ petition is for issuance of a Writ of Certiorari, calling for the records relating to the impugned physical possession order passed by the learned Chief Judicial Magistrate, Thoothukudi, in CrI.M.P.No.14589 of 2022 dated 03.01.2023 and quash the same.

2. On 19.01.2023, we passed the following order:-

"Challenging the impugned physical possession order passed in CrI.M.P.No.14589 of 2022, dated 03.01.2023 by the learned Chief Judicial Magistrate, Thoothukudi, the petitioner has filed the present Writ Petition.

2.Mr.N.Dilip Kumar, learned standing counsel takes notice for the respondents and submitted that the petitioner filed an application in S.A.No.181 of 2022 before the Debts Recovery Tribunal, wherein, the Debts Recovery Tribunal has passed a conditional interim order for payment of Rs.5,00,000/- on or before 31.03.2022 and a further sum of Rs.5,00,000/- on or before, 13.05.2022 and further observed that the respondent Bank shall proceed with the sale, but shall not confirm the auction sale. Though the conditional interim order has been complied with, the petitioner did not repay the balance amount due to the respondent Bank. Hence, the respondent Bank has



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filed a petition under Section 14 of the SARFAESI Act in Crl.M.P.No.14589 of 2022 on the file of the learned Chief Judicial Magistrate, Thoothukudi, to take physical possession of the property.

3.The learned counsel appearing for the respondent Bank submitted that the interim order granted by the Debts Recovery Tribunal is only for the stay of confirmation alone and there is no impediment for the respondent Bank to take possession of the property.

4.Considering the fact that the petitioner has filed an application in S.A.No.181 of 2022 before the Debts Recovery Tribunal, Madurai and conditional interim order has been granted and the said conditional interim order has been complied with and a stay of confirmation has been granted, the respondent Bank has proceeded to file a petition under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate, Thoothukudi, stating that the petitioner has not paid the balance amount, the statement made by the learned counsel for the respondent Bank is shocking to us, there shall be an order of interim stay.

5.Further, we direct the respondent Bank to file an affidavit whether the same yardstick shall apply for all the cases, where an interim stay of confirmation of sale has been granted by the Debts Recovery Tribunal.

6.Post on 30.01.2023 at 02.15 p.m. for filing counter-affidavit."

3. Learned standing counsel appearing for the respondents, based on the letter dated 28.01.2023 of the respondent Bank



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addressed to him, submitted that because of the long pendency of SARFAESI applications before the Debts Recovery Tribunal and the non repayment of the loan by the borrower, the respondent Bank was compelled to file application under Section 14 of the SARFAESI Act. He further submitted that the respondent Bank undertakes that it will not seek to enforce the impugned order till the disposal of S.A.No.181 of 2022. Learned standing counsel also prayed for a direction for early disposal of S.A.No.181 of 2022.

4. In view of the undertaking given by the respondent Bank that they will not seek to enforce the impugned order till the disposal of S.A.No.181 of 2022, the impugned order passed by the learned Chief Judicial Magistrate, Thoothukudi, in CrI.M.P.No.14589 of 2022, dated 03.01.2023, is set aside and the Debts Recovery Tribunal, Madurai, is directed to dispose of S.A.No.181 of 2022 on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order.

5. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.



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[D.K.K.,J.] & [R.V.,J.]
30.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes

To

The Presiding Officer,
Debts Recovery Tribunal,
Madurai.



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D.KRISHNAKUMAR, J.
and
R.VIJAYAKUMAR, J.

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ORDER MADE IN
W.P(MD)No.1002 of 2023
DATED : 30.01.2023