



W.P(MD)No.1592 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2023

CORAM:

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

**W.P(MD)No.1592 of 2023
and
W.M.P(MD)Nos.1448 & 1449 of 2023**

A.Elamvaluthi

... Petitioner

VS.

1.The Authorized Officer,
Karur Vysya Bank,
Asset Recovery Branch,
R.S.No.170/9, Uthangudi Village,
Near Mattuthavani Bus Stand,
Madurai – 625 107.

2.The Branch Manager,
Karur Vysya Bank,
Kombai Branch,
Theni District – 625 522.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order in CrI.M.P.No.6861 of 2022 on the file of the learned Chief Judicial Magistrate, Theni, dated 30.11.2022 and quash the same.



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For Petitioner : Mr.G.Mohan Kumar

For Respondents : Mr.R.Pandivel
Standing Counsel

ORDER

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

Mr.R.Pandivel, learned standing counsel takes notice for the respondents. By consent of both the parties, the Writ Petition is taken up for final disposal at the time of admission itself.

2.The petitioner has filed the present Writ Petition seeking for issuance of a Writ of Certiorari, to quash the impugned order in CrI.M.P.No. 6861 of 2022 on the file of the learned Chief Judicial Magistrate, Theni, dated 30.11.2022.

3.According to the petitioner, his brother and his son had availed loans from the respondent Bank and the petitioner had given his landed property as collateral security. After the issuance of the demand notice by the respondent Bank, dated 28.02.2019, the petitioner came to know that the loan amount was outstanding. Hence, the petitioner made a request to



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the Bank to discharge his property. However, the respondent Bank issued the auction sale notice on 14.10.2019 fixing the auction sale on 25.11.2020. Aggrieved over the same, the petitioner filed an application before the Debts Recovery Tribunal in S.A.No.349 of 2020 and the same is pending adjudication. In the meantime, the principal borrower had also filed an application in S.A.No.333 of 2020 and obtained an order of interim stay. The first respondent has also issued another auction sale notice dated 28.11.2022 fixing the auction sale on 21.12.2022. Challenging the same, the petitioner filed an appeal in S.A.No.398 of 2022 and the same is pending adjudication. Under the said circumstances, on 24.01.2022, the petitioner received a notice, dated 23.01.2022 from the Advocate Commissioner referring to an order passed by the learned Chief Judicial Magistrate, Theni in CrI.M.P.No.6861 of 2022, dated 30.11.2022 and intimating the petitioner for taking physical possession of his residential property on 25.01.2023. Challenging the same, the petitioner has filed the present Writ Petition.

4. According to the learned counsel appearing for the petitioner, the application in S.A.No.398 of 2022 is filed challenging the auction sale notice dated 28.11.2022. The respondent Bank has not chosen to file the



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counter affidavit in the said application. Therefore, the petitioner was not aware of the order passed by the learned Chief Judicial Magistrate, Theni, dated 30.11.2022. If the counter affidavit is filed by the respondent Bank, the petitioner is aware of the proceedings of the said order dated 30.11.2022. Therefore, the petitioner has filed the present Writ Petition before this Court on the ground that when the stay application is pending before the Debts Recovery Tribunal, the respondent Bank has made an attempt to take possession of the property is totally illegal and the same requires for the interference of this Court.

5.The learned standing counsel appearing for the respondent Bank disputed the contention of the petitioner and stated that the order passed by the learned Chief Judicial Magistrate, Theni in CrI.M.P.No.6861 of 2022, dated 30.11.2022 is a separate order. It is an admitted fact that the petitioner has filed S.A.No.398 of 2022 before the Debts Recovery Tribunal and the said application is also pending. Therefore, it is for the petitioner to seek an interim order before the Debts Recovery Tribunal and filing the Writ Petition cannot be entertained and the same is liable to be dismissed.



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6.Heard the learned counsel appearing on either and perused the materials available on record.

7.The point for consideration in the Writ Petition is that the petitioner filed an application in S.A.No.398 of 2022 challenging the auction sale notice dated 28.11.2022 before the Debts Recovery Tribunal and the same is pending. In the said application, notice has been ordered and posted for filing counter affidavit. It is not a disputed fact that the respondent Bank has not chosen to file the counter affidavit before the DRT. According to the respondent Bank, counter affidavit has been filed before the Debts Recovery Tribunal today ie., on 25.01.2023. Therefore, the petitioner is not aware of the order passed by the learned Chief Judicial Magistrate, Theni in Crl.M.P.No.6861 of 2022, dated 30.11.2022. If the counter-affidavit is filed by the respondent Bank, the petitioner is aware of the said proceedings. This Court also record the statement made by the respondent Bank that the counter affidavit has been filed today.

8.In view of the above, without expressing any opinion on the merits of the case, we are of the view that the petitioner ought to have approached the Debts Recovery Tribunal in the pending S.A.No.398 of 2022



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for getting interim order and it is open to the petitioner to approach the Debts Recovery Tribunal for getting interim order. It is needless to say that the Debts Recovery Tribunal shall consider the said application on the next hearing date and it is for the Debts Recovery Tribunal to consider and pass appropriate orders in the interim application. Till such time, the impugned order passed by the learned Chief Judicial Magistrate, Theni in Crl.M.P.No.6861 of 2022, dated 30.11.2022, shall be kept in abeyance for a period of ten days.

9.With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.,J.] [R.V.,J.]
25.01.2023

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

- 1.The Authorized Officer,
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Asset Recovery Branch,
R.S.No.170/9, Uthangudi Village,
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D.KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

ORDER MADE IN
W.P(MD)No.1592 of 2023

DATED : 25.01.2023