



W.P.(MD) No.2094 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2023

CORAM:

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR**

**W.P.(MD) No.2094 of 2023
and
W.M.P.(MD) No.1875 of 2023**

1.Dr.R.Bino Robin

2.Dr.M.Jeenisha Julie

... Petitioners

-vs-

1.The learned Chief Judicial Magistrate
Chief Judicial Magistrate Court
Kanniyakumari District @ Nagercoil
Kanniyakumari

2.The Authorized Officer
LIC Housing Finance Limited
S.S.Tower 4th Floor
78/4, Bye Pass Road
Madurai-625 010

3.The Branch Manager
LIC Housing Finance Limited
Area Office
Opposite to Collectorate
Nagercoil
Kanyakumari District

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to impugned order passed by the first respondent learned Chief Judicial Magistrate, Kanniyakumari District at Nagercoil, in CrI.M.P.No.13264 of 2022, under Section 14 of SARFAESI Act and quash the same.

For Petitioners : Mr.P.Sujai Krishna

For Respondents : R1 – Court
Mr.P.Veerapandian
for M/s.Vast Law Associates for R2 & R3

ORDER

[Order of the Court was made by The Hon'ble ACTING CHIEF JUSTICE]

This writ petition has been filed to quash the order dated 02.01.2023, passed by the first respondent, in CrI.M.P.No.13264 of 2022, filed under Section 14 of SARFAESI Act, appointing Advocate Commissioner to assist the secured creditor to take possession of the secured asset, after taking inventory of the articles and handover the same to the secured creditor.



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2. On 02.02.2023, after hearing the learned counsel for the petitioner, this Court has passed the following order:

“Petitioners are running a Hospital with a capacity of 25 beds and they have obtained a loan from the 3rd respondent to the tune of Rs. 4,82,40,000/-. However, in view of the COVID-19 Pandemic situation, which intervened from 15th March '2020, they got paralysed for about three years and they could not make regular repayment to the 3rd respondent. Therefore, they suffered a notice dated 17.06.2021, under Section 13(2) of the SARFAESI Act (hereinafter referred to as 'the Act') followed by the possession notice dated 03.12.2021 under Section 13(4) of the Act. As per the notice under Section 13(4) of the Act, the petitioners are liable to pay a sum of Rs. 5,89,31,965/- towards the loan amount and as on today, the outstanding payable to the respondent bank would come to Rs.6,90 Lakhs.

2.On instructions, the learned counsel for the petitioners would submit that the petitioners are ready to pay a sum of Rs.60 Lakhs within a period of one week from today and another sum of Rs.60 Lakhs within one month from today and the balance amount would be cleared at the rate of Rs.



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1 Crore in every month. Finally, within six months period, the entire outstanding will be cleared. Learned counsel is directed to file an affidavit of undertaking to that effect.

3.Learned counsel appearing on behalf of the Bank is also directed to get instructions tomorrow, ie., on 03.02.2023.

4.For filing an undertaking affidavit with regard to the payment of the outstanding amount, as aforesaid, list the matter by 03.02.2023.”

3. Pursuant to the above directions, today, the petitioners have filed an undertaking affidavit, dated 02.02.2023, before this Court. The relevant portions of the undertaking affidavit are extracted hereunder:

“3.I further submit that the outstanding amount as per the Possession notice under Section 13(4) of the Sarfaesi Act, 2022 dated 03.12.2021 is Rs.5,89,31,965/- and I file this affidavit and undertakes that I am ready to deposit a sum of Rs. 60,00,000/- (Sixty lakhs Only) on or before 10.02.2022. And another sum of Rs.60,00,000/- (Sixty lakhs only) on or before 28.02.2023.

4.I further submit that I also undertake that I am ready to settle the entire remaining outstanding amount periodically within a period of



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six months i.e.on or before 03.08.2023 as fix by this Hon'ble Court.”

4. Learned counsel for the respondent – Finance Company is also agreeable for the above undertaking given by the petitioners, however, seeks liberty to the respondent – Finance Company to proceed against the petitioners in case of default in payment of any of the installments.

5. In view of the above undertaking affidavit given by the petitioners, they shall pay a sum of Rs.60,00,000/- (Rupees sixty lakhs only) on or before 10.02.2023, another sum of Rs.60,00,000/- (Rupees sixty lakhs only) on or before 28.02.2023, thereafter, pay Rs.1,00,00,000/- (Rupees one crore only) in four consecutive monthly installments commencing from the month of March, 2023 and pay the balance amount of Rs.69,31,965/- on or before 03.08.2023. Till such time, no coercive steps shall be taken by the respondent – Finance Company. If the petitioners fail to pay any one of the above payments, it is open to the respondent – Finance Company to proceed further in accordance with law.



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6. Accordingly, the writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

[T.R., A.C.J.] [D.K.K., J.]

03.02.2023

(3/3)

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

krk / smn2

To:
The learned Chief Judicial Magistrate
Chief Judicial Magistrate Court
Kanniyakumari District @ Nagercoil
Kanniyakumari



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T.RAJA, A.C.J.
and
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