



W.P(MD)No.3178 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P(MD)No.3178 of 2023
and
W.M.P(MD)Nos.2964 & 2966 of 2023**

S.James

... Petitioner

VS.

1.The Authorised Officer,
Canara Bank,
(Formerly Syndicate Bank),
Regional Office : Madurai,
Claret Plaza, IIIRD Floor,
145, Melakkal Main Road,
Kochadai, Madurai – 625 016.

2.Canara Bank,
Represented by its Branch Manager,
(Formerly Syndicate Bank),
Nagal Nagar Dindigul Branch,
No.73, Railway Station Road,
Nagal Nagar, Dindigul – 624 003.

... 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 relating to the impugned order dated 07.01.2023 in Cr.M.P.No.20653 of 2022 passed by the learned Chief Judicial Magistrate, Dindigul and quash the same.

1/8



W.P(MD)No.3178 of 2023

WEB COPY

For Petitioner : Mr.S.Suresh
For Respondents : Mr.R.Pandivel
Standing Counsel

ORDER

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

Since the Presiding Officer, Coimbatore, is in-charge of the Debts Recovery Tribunal, Madurai and the Debts Recovery Tribunal, Madurai is functioning once in a week ie., on every Friday, the petitioner has filed the present Writ Petition.

2.By consent of both the parties, the Writ Petition is taken up for final disposal at the time of admission itself.

3.The prayer in this Writ Petition is seeking for issuance of a Writ of Certiorari, to quash the impugned order, dated 07.01.2023 in Cr.M.P.No.20653 of 2022 passed by the learned Chief Judicial Magistrate, Dindigul.



W.P(MD)No.3178 of 2023

WEB COPY

4. According to the petitioner, he stood as a guarantor for the loan facility availed by M/s.Vignesh Traders to the tune of Rs.25 lakhs from the second respondent Bank. Since the borrower failed to repay the loan amount, the second respondent classified the loan account as Non-Performing Asset on 30.06.2017. The second respondent issued a demand notice, dated 06.08.2018 to the petitioner under Section 13(2) of the Act. Thereafter, the first respondent issued a possession notice, dated 22.10.2018 under Section 13(4) of the Act. Subsequently, the first respondent issued an E-Auction sale notice 28.11.2018 fixing the E-Auction sale on 31.12.2018. Hence, the petitioner preferred an application under Section 17(1) of the SARFAESI Act, challenging the E-Auction sale notice dated 28.11.2018 in S.A.No.690 of 2018 before the Debts Recovery Tribunal, Madurai along with stay petition in I.A.No.3284 of 2018. The Debts Recovery Tribunal, Madurai, by order, dated 29.12.2018, granted an order of interim stay on condition that the petitioner shall pay a sum of Rs.6,72,000/- in two instalments. The said conditional order, dated 23.03.2019 has been complied with. In the meantime, when the said appeal in S.A.No.690 of 2018 is pending, the first respondent issued a sale notice, dated 07.01.2020 fixing the date of sale on 12.02.2020 for the same property. Hence, the petitioner filed a contempt application in I.A.No.281 of



W.P(MD)No.3178 of 2023

WEB COPY

2020 along with a stay petition in I.A.No.282 of 2020 and the Debts Recovery Tribunal, Madurai, by order, dated 12.02.2020 granted an order of *status quo*. Whiles, the first respondent filed an application under Section 14 of the SARFAESI Act, for taking physical possession of the property before the learned Chief Judicial Magistrate, Dindigul in Cr.M.P.No.20653 of 2022, dated 07.01.2023 and the learned Chief Judicial Magistrate, Dindigul, by order, dated 07.01.2023, appointed an Advocate Commissioner to take physical possession of the properties and handover the same to the first respondent Bank. The said impugned order, dated 07.01.2023, is challenged in the present Writ Petition.

5.The learned standing counsel appearing for the respondent Bank has not refuted the fact that the petitioner has filed an application in S.A.No.690 of 2018 before the Debts Recovery Tribunal, Madurai and obtained a conditional interim order and the same has also been complied with.

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



W.P(MD)No.3178 of 2023

WEB COPY

7. Even though the respondent Bank has tried to justify this Court that it is an independent proceeding for taking possession of the property under Section 14 of the SARFAESI Act, when an application in S.A.No.690 of 2018 is pending before the Debts Recovery Tribunal, Madurai and obtained an order of interim stay of all further proceedings, without getting any further orders from the Debts Recovery Tribunal, the respondent Bank preferred an application before the learned Chief Judicial Magistrate, Dindigul in Cr.M.P.No.20653 of 2022 and obtained an order, dated 07.01.2023, which is wholly unjustifiable.

8. When the application in S.A.No.690 of 2018 is pending before the Debts Recovery Tribunal, Madurai, the respondent Bank being a public sector normally, should get further orders from the Debts Recovery Tribunal, Madurai or to wait till the aforesaid application is disposed of. Further, when the Debts Recovery Tribunal, Madurai, by order, dated 12.02.2020 has granted an order of *status quo*, pursuant to the sale notice, dated 07.01.2020, the respondent Bank has preferred an application under Section 14 of the SARFAESI Act for taking physical possession of the property before the learned Chief Judicial Magistrate, Dindigul in Cr.M.P.No.



W.P(MD)No.3178 of 2023

WEB COURT 20653 of 2022 and obtained an order, dated 07.01.2023, which is unsustainable and the same is liable to be set aside.

9.At this juncture, the learned standing counsel appearing for the respondent Bank seeks indulgence of this Court to issue appropriate direction to the Debts Recovery Tribunal, Madurai to dispose of the appeal at an earliest.

10.In fine, this Court is inclined to pass the following orders:-

(i) The impugned order, dated 07.01.2023 passed in Cr.M.P.No.20653 of 2022 by the learned Chief Judicial Magistrate, Dindigul is set aside.

(ii) Liberty is granted to the respondent Bank, if necessary, to file necessary application.

(iii) The Debts Recovery Tribunal, Madurai is directed to dispose of the application in S.A.No.690 of 2018, as early as possible, preferrably within a period of three months from the date of receipt of a copy of this order.



W.P(MD)No.3178 of 2023

WEB COPY

11.With the above direction and observation, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.,J.] [L.V.G.,J.]
16.02.2023

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

To

- 1.The Authorised Officer,
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WEB COPY



W.P(MD)No.3178 of 2023

D. KRISHNAKUMAR,J.
and
L.VICTORIA GOWRI,J.

ps

ORDER MADE IN
W.P(MD)No.3178 of 2023

DATED : 16.02.2023