



W.P(MD)No.3732 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU**

**W.P(MD)No.3732 of 2023
and
W.M.P(MD)No.3516 of 2023**

M.Jeyakumar

... Petitioner

VS.

The Authorized Officer,
M/s.Cholamandalam Investment and
Finance Company Limited,
Having its Registered Office at 1st Floor,
Dare House, No.2, NSC Bose Road,
Chennai – 600 001.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, forbearing the respondent, their officers, men, agents, representatives, assigns and / or anyone claiming under or through them or on their behalf of desist from in any manner taking any action or coercive steps so as to take physical possession of the house property situated at Survey No.358/1, Mayaman Kurichi Village, Alangulam Sub Registration Office, Tenkasi Registration District, Alangulam Taluk, Tenkasi District and without awaiting the outcome of S.A.S.R.No. 6509/2022 pending before the Debts Recovery Tribunal -



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Madurai filed by the petitioner challenging the order dated 19.09.2022 passed by the learned Chief Judicial Magistrate, Tirunelveli in CrI.M.P.No. 13793 of 2022.

For Petitioner : Mr.R.Venkatesan
for Mr.A.C.Vinayarajan
For Respondent : Mr.V.Sukumar
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 weekly once ie., on every Friday, the petitioner has filed the present Writ Petition for issuance of a Writ of Mandamus, forbearing the respondent from in any manner taking any action or coercive steps so as to take physical possession of the house property situated at Survey No.358/1, Mayaman Kurichi Village, Alangulam Sub Registration Office, Tenkasi Registration District, Alangulam Taluk, Tenkasi District and without awaiting the outcome of S.A.S.R.No. 6509/2022 pending before the Debts Recovery Tribunal - Madurai filed by the petitioner challenging the order dated



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WEB 19.09.2022 passed by the learned Chief Judicial Magistrate, Tirunelveli in
Crl.M.P.No.13793 of 2022.

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

3.According to the petitioner, he availed housing loan for a sum
of Rs.22,50,000/- from the respondent Bank and paid the instalments
regularly. Since the petitioner failed to repay the amount, the respondent
Bank issued a demand notice dated 24.01.2022 under Section 13(2) of the
SARFAESI Act. The respondent Bank filed a petition under Section 14 of the
SARFAESI Act in Crl.M.P.No.13793 of 2022 before the learned Chief Judicial
Magistrate, Tirunelveli, for taking possession of the property. On
19.09.2022, the learned Chief Judicial Magistrate, Tirunelveli, ordered to
take physical possession by appointing an Advocate Commissioner.
Aggrieved against the same, the petitioner filed a Writ Petition in
W.P(MD)No.24517 of 2022 and this Court, by order dated 14.11.2022,
closed the Writ Petition with liberty to the petitioner to work out his remedy
before the Debts Recovery Tribunal, Madurai. After receipt of the above said
order, the petitioner filed an application in S.A.SR.No.6509 of 2022 along



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with condone delay petition in I.A.No.1482 of 2023 before the Debts Recovery Tribunal, Madurai on 06.01.2023. In the meantime, the respondent Bank issued a recall notice dated 09.01.2023, calling upon the petitioner to pay a sum of Rs.22,23,880/- within a period of seven days. Hence, the petitioner filed an emergent petition in I.A.No.211 of 2023 along with an advance hearing petition in I.A.No.212 of 2023 to advance the main case in S.A.SR.No.6509 of 2022. On 03.02.2023, the Debts Recovery Tribunal adjourned the matter on 24.03.2023 for filing counter-affidavit. In the mean time, the Advocate Commissioner informed that the physical possession of the petitioner's property is ordered to be taken on 23.02.2023 at about 10.30 a.m., based on the application filed under Section 14 of the SARFAESI Act by the respondent in Crl.M.P.No.13793 of 2022. Hence, the petitioner has filed the present Writ Petition.

4.The learned counsel appearing for the respondent Bank submitted that the petitioner has not shown any bonafide for payment of the entire outstanding amount to the respondent Bank. If the petitioner shows any bonafide by paying some amount, the respondent Bank will not precipitate the issue, till the disposal of I.A.No.1482 of 2022. The learned counsel appearing for the respondent Bank also undertakes that the



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5.The learned counsel appearing for the petitioner submitted that the petitioner agreed to pay a sum of Rs.6,00,000/- to the respondent Bank on or before 01.03.2023.

6.Considering the submissions made on either side, this Court is inclined to pass the following order:-

(i) The Debts Recovery Tribunal, Madurai, is directed to dispose of the application in I.A.No.1842 of 2022 on the next hearing date, without granting any adjournment.

(ii) In the meantime, the order passed by the learned Judicial Magistrate, Tirunelveli in Cr.M.P.No.13793 of 2022, dated 19.09.2022 shall be kept in abeyance.

(iii) The petitioner is directed to pay a sum of Rs.6,00,000/- (Rupees Six Lakhs Only) to the respondent Bank on or before 01.03.2023,



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failing which, the interim direction granted to the petitioner shall stand vacated automatically, without further reference to this Court.

(iv) In the event of any default made, the respondent Bank is at liberty to proceed further in accordance with law.

7. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K.,J.] [P.D.A.,J.]
23.02.2023

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

The Authorized Officer,
M/s.Cholamandalam Investment and
Finance Company Limited,
Having its Registered Office at 1st Floor,
Dare House, No.2, NSC Bose Road,
Chennai – 600 001.

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D.KRISHNAKUMAR,J.
and
P.D.AUDIKESAVALU,J.

ps

ORDER MADE IN
W.P(MD)No.3732 of 2023

DATED : 23.02.2023