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.5006 of 2022
and
WMP(MD)Nos.4106 and 4107 of 2022

Mrs.T.Poornaselvi ... Petitioner

vs.

1. The Authorised Officer,
Housing Development Finance Corporation Ltd.,
406, Sakthi Sivam Plaza,
Pumping Station Road,
9th Cross Street, K.K Nagar (East),
Madurai-625 020.

2. The General Manager,
HDFC ERGO General Insurance Company Ltd.,
1st Floor, HDFC House,
165-166, Backbay Reclamation,
H.1, Parekh Marg,
Churchgate, Mumbai-400 020.

3. The Branch Manager,
HDFC ERGO General Insurance Company Ltd.,
No.68, 3rd Floor, Kamarajar Salai,
Madurai-625009.

4. N.Kaleeswaran, BA., BL.,
Advocate Commissioner,
(E.No.Ms.2098/2013)

No.5, Ramamoorthy Road,
Chokkikulam, Madurai-625 002,
Cell 99408 97286. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in C.R.M.P.No.942 of 2021 dated 17.12.2021 on the file of the Chief Judicial Magistrate, Madurai and quash the same as illegal and consequently directing the 1st respondent to adjust the loan outstanding with the insurance claim amount.

For Petitioner	: Mr.A.Joseph Jerry for Mr.M.Mohamed Ajeesdheen
For R1	: Mr.Pala Ramasamy
For R2 & R3	: Mr.S.Srinivasaraghavan

ORDER

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

The writ petition is challenging the order made in C.R.M.P.No.942 of 2021 dated 17.12.2021 on the file of the Chief Judicial Magistrate, Madurai, and for a consequential direction to the 1st respondent to adjust the loan outstanding with the insurance claim amount.

2. The writ petitioner is the wife of the deceased borrower and living with two minor daughters. The petitioner's husband was staying and working in the United States of America. In order to purchase the secured properties, he availed housing loan to the tune of Rs.22,50,000/- from the 1st respondent Bank on 18.04.2018. According to the petitioner, her husband was very prompt in repaying the EMI for the said housing loan and there was no default committed by him. However, due to his sudden death on account of heart attack, the petitioner and her daughters were placed in financial crisis and they did not have any source of income for payment of the housing loan. According to the petitioner, her husband had taken insurance policy for the said housing loan from the respondents 2 and 3 and therefore, she submitted an insurance claim form to the respondents on 09.04.2019, requesting the insurance amount and to adjust the same with the outstanding amount. Despite several communications, the respondents did not sanction the insurance claim amount, but classified the said housing loan account as non-performing asset and called upon the petitioner to pay the entire outstanding amount. The petitioner requested the

respondent Bank either to adjust the loan amount with insurance claim amount or to permit her to settle the loan amount by way of one time settlement, but the same was not considered. In the meantime, the respondent Bank obtained the impugned order under Section 14 of the SARFAESI Act for taking possession of the secured properties. Hence, the petitioner has filed this writ petition for the relief stated supra.

3. Learned counsel for the respondents 2 and 3 submitted that the claim raised by the petitioner for settlement of the sum assured under the policy of insurance was repudiated as early as 26.04.2019 stating that she is not entitled to the insurance claim amount and the same has been communicated to the petitioner by the insurance company on the same day itself.

4. Learned counsel for the petitioner submitted that the petitioner made several communications to the respondent insurance company, for which, the insurance company replied stating that the claim will be examined and also sought for clarification and further details. According to the learned counsel, till date, the respondent

insurance company have not passed any final order on the insurance claim made by the petitioner.

5. At this juncture, learned counsel for the respondent insurance company fairly submitted that if the petitioner appears before the 3rd respondent and produces the required documents and particulars, the 3rd respondent based on the same, will take appropriate decision and communicate the same to the petitioner at an earliest, for which, learned counsel for the petitioner has agreed.

6. Thus, recording the aforesaid submissions, we direct the petitioner to approach the 3rd respondent on 30.01.2023 and to produce the required documents and particulars to the 3rd respondent. If any further documents/particulars are required, the 3rd respondent can seek the same from the petitioner within the stipulated time. Thereafter, the 3rd respondent is directed to consider the documents/particulars produced by the petitioner and then take appropriate decision. Such decision shall be communicated to the petitioner on or before 28.02.2023. Considering the contentions of the petitioner and the fact that the

petitioner is a widow of the deceased borrower and living with two minor daughters in the secured property which is a dwelling house, we direct the respondents not to take any coercive action against the petitioner till 06.03.2023. Thereafter, based on the decision of the respondent insurance company, the respondent Bank can proceed further in accordance with law.

7. With the above direction, the 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
bala

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

bala

ORDER MADE IN
W.P(MD)No.5006 of 2022
DATED : 25.01.2023