



W.P.(MD)No.6525 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS. JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.6525 of 2023

and

W.M.P(MD)No.6183 of 2023

B.Sudha

: Petitioner

Vs.

The Authorised Officer,
Punjab National Bank,
Industrial Area Branch @ Trichy-Thanjai Road,
Boiler Project, BHEL,
Tiruchirappalli City – 620014.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the Chief Judicial Magistrate, Trichy under Section 14 of the SARFAESI Act, 2002 in Crl.M.P.No.23967 of 2022 dated 20.12.2022 quash the same and consequential Auction Sale Notice issued by the respondent dated 17.03.2023 fixing the date of sale on 04.04.2023.



WEB COPY

W.P.(MD)No.6525 of 2023

For Petitioner : Mr.S.Suresh
For Respondent : Mr.S.Balasubramanian
Standing Counsel

ORDER

(Order of the Court was made by R.SUBRAMANIAN, J)

Mr.S.Balasubramanian, learned Standing Counsel takes notice for the respondent bank. By consent, this writ petition is taken up for final disposal at the admission stage.

2. Challenge is to the order, dated 20.12.2022, passed under Section 14 of the SARFAESI Act by the Chief Judicial Magistrate, Trichy.

3. The learned counsel for the petitioner would submit that a sale notice was issued by the bank on 01.11.2022. The said notice was challenged before the Debts Recovery Tribunal in S.A.No.378 of 2022. The Debts Recovery Tribunal, had granted stay on 18.11.2022 subject to the certain conditions. It is not in dispute that those conditions have been



W.P.(MD)No.6525 of 2023

WEB COPY

complied with. Therefore, the Securitization appeal has to be disposed of by the Debts Recovery Tribunal. Pending the same, the bank, which had obtained an order on 20.12.2022 under Section 14 of the Act, is attempting to enforce the same and take actual physical possession. The right of the bank to take actual physical possession, when a Securitization Appeal is pending before the Debts Recovery Tribunal, is no longer *res integra*. A Division Bench of this Court had held that once the Debts Recovery Tribunal had granted stay on condition in a Securitization Appeal, the same cannot be enforced by resorting to provision under Section 14 of the Act. While doing do, the Division Bench had observed as follows:-

“3.The learned counsel appearing for the third respondent also not disputed the said fact of the petitioner that the order has been obtained from the Chief Judicial Magistrate, by order dated 18.04.2022. The said order has been passed by the learned Chief Judicial Magistrate, Madurai, subsequent to the order passed in S.A.No.494 of 2021, dated 02.11.2021. When the appeal is pending and stay has been granted and the same is force, the third respondent proceeded under Section 14 of the SARFAESI Act is unsustainable and the same is liable to be set aside.



WEB COPY

W.P.(MD)No.6525 of 2023

4.In view of the above, the impugned order passed by the second respondent in Cr.M.P.No.275 of 2022, dated 18.04.2022 is set aside and the Writ Petition is allowed. However, liberty is granted to the third respondent Bank to approach the appropriate forum, at the later stage, by filing a fresh application under the provisions of the Act. No costs. Consequently, connected Miscellaneous Petitions are closed.”

4.We see no reason to deviate from the above view taken by the Division Bench. Hence, this writ petition is disposed of with a direction to the bank not to enforce the order of the Chief Judicial Magistrate till the disposal of the S.A.No.378 of 2022 by the Debts Recovery Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.] & [L.V.G., J.]
27.03.2023

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



WEB COPY



W.P.(MD)No.6525 of 2023

R.SUBRAMANIAN., J

AND

L.VICTORIA GOWRI.,J

skn

**W.P.(MD)No.6525 of 2023
and
W.M.P(MD)No.6183 of 2023**

27.03.2023