BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2023

CORAM

The Honourable Mr. Justice **R.SURESH KUMAR**
and
The Honourable Mr. Justice **K.K.RAMAKRISHNAN**

W.P.(MD)No.8596 of 2023
and WMP(MD) Nos.7904 and 7906 of 2023

1.M/s.Viswa Medical Agencies,
No.36/1 Kaja Street,
Subramaniyapuram
Madurai 625 011.

2.V.Hemalatha

3.V.Vijayakumar

4.A.Selvam .. Petitioners

Vs.

City Union Bank Ltd.,
Villapuram Branch
Old No.35/103, New No.75/103
Aruppukottai Main Road
Near Padma Theatre Bus Stop
Villapuram
Madurai 625 012
represented by its Authorised Officer
P.Ganesan .. Respondent

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order dated 11.11.2022 in Crl.M.P.No.7895/2022 on the file of the learned Chief Judicial Magistrate, Sivagangai and quash the same.

For Petitioner	:	Mr.R.Narayanan
For Respondents	:	Mr.N.Dilipkumar

ORDER

[Order of the Court was made by **R.SURESH KUMAR, J.**]

The petitioner borrowed loan from the respondent Bank, which become NPA. Therefore, the respondent bank taken action under the SARFAESI Act. In fact, the date for auction had been fixed as 30.03.2023 to bring the properties of the petitioner for auction and to realize the due. At the time when the SARFAESI appeal filed before the Debts Recovery Tribunal, Madurai in SA No.107/2022, the Debts Recovery Tribunal passed an interim order on 18.03.2022, in which, 50% of the due that was Rs.14 lakhs out of Rs.28 lakhs was directed to be paid on or before 28.04.2022 and 13.05.2022 with each instalment of Rs.7 lakhs.

2. Both the instalments of Rs.7 lakhs each had been paid by the petitioner on or before the date fixed by the Tribunal.

3. In this context, it is the grievance of the petitioner that despite the said conditional order passed by the Tribunal having been complied with, the respondent bank already approached the Chief Judicial Magistrate under Section 14 of the SARFAESI Act and he has passed an order in Crl.M.P.No. 7895/2022 dated 11.11.2022 to take physical possession. Therefore, aggrieved over the same, the present writ petition has been filed.

4. The learned counsel for the petitioner would submit that 50% of the dues that have been calculated by the respondent bank, for which, the auction was fixed, was paid pursuant to the interim order passed by the Tribunal, therefore, the respondent Bank ought not to have proceeded further. When that being so, the order now issued by the bank through the Judicial Magistrate under Section 14 of the SARFAESI Act, on 11.11.2022 would definitely prejudice the interest of the petitioners. Therefore, that order has to be interfered with, he contended.

5. The learned counsel for the petitioner would also submit that insofar as the remaining due payable by the petitioner is concerned, if the bank has come forward to grant instalments, the petitioners are ready and willing to pay the dues.

6. However, the learned counsel for the respondent bank would submit that it is either before the auction or after the auction, power of the Chief Judicial Magistrate under Section 14 of the SARFAESI Act, cannot be denuded. Hence, the bank rightly approached the Chief Judicial Magistrate and got an order with regard to dispossession and that has been passed by the Chief Judicial Magistrate on merits under Section 14 of the SARFAESI Act. Therefore, it cannot be linked with the pending Sarfaesi Appeal before the Debts Recovery Tribunal.

7. However, insofar as the interim order passed by the Debts Recovery Tribunal, it has been complied with by the petitioner is concerned, for making remaining payments, some reasonable instalments may be given by the Debts Recovery Tribunal or a direction may be given to dispose of

the Sarfaesi Appeal itself, till such time, no prejudicial action would be taken and to that effect alone, the respondent bank is to be urged.

8. We have considered the said submissions and perused the materials available on record.

9. The interim conditional order passed by the Debts Recovery Tribunal since had been complied with, certainly, the petitioners are entitled to get the benefit of not subjected to any precipitative action at the hands of the respondent bank. When that being so, if the order passed by the Chief Judicial Magistrate under Section 14 of the SARFAESI Act dated 18.03.2022 is permitted to be executed, certainly, that will cause some prejudice to the interest of the petitioner, especially when they want to make remaining due by instalments for which, they approached the respondent bank unmindful of the pendency of the appeal.

10. In such view of the matter and the stand taken by the learned counsel for the petitioner, this Court is inclined to pass the following order:

- That the Debts Recovery Tribunal at Madurai (in-charge Debts

Recovery Tribunal, Coimbatore) can proceed with SA No.107/2022 on priority basis and decide the same on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order;

- During the pendency of the Sarfaesi Appeal, it is open to the petitioners to make a request to the respondent Bank making their plea to convert the remaining loan due or due payable by way of equal instalments and if any request has come from the petitioner, that shall be considered by the respondent and an order shall be passed on merits and in accordance with law within a period of four weeks from the date of such representation, unmindful of the pendency of the Sarfaesi Appeal, as referred to above;
- Depending upon the decision to be taken by the bank or depending upon the decision of the Debts Recovery Tribunal to be taken in the appeal, further course of action can be worked out by the parties concerned in accordance with law within the four corners of the SARFAESI Act; and
- Till such time, no further proceedings including any precipitative action even pursuant to the order passed by the Chief Judicial

Magistrate under Section 14 of the Act shall be made or proceeded on behalf of the bank.

11. With these observations and direction, this writ petition is disposed of. No costs. consequently connected Miscellaneous Petitions are closed.

(R.S.K.,J.) (K.K.R.K.,J.)
27.04.2023

Index : Yes/No
Internet : Yes
RR

R.SURESH KUMAR,J.
and
K.K.RAMAKRISHNAN,J.

RR

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