



W.P(MD)No.10182 of 2022

**WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 30.01.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR  
and  
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P(MD)No.10182 of 2022  
and  
W.M.P(MD)Nos.7221 & 7222 of 2022**

V.K.Dharmaraj

... Petitioner

VS.

- 1.The Debts Recovery Tribunal,  
IVth Floor, Kalyani Tower,  
Melur Road,  
Madurai.
- 2.The Chief Judicial Magistrate,  
District Court Buildings,  
Madurai District.
- 3.The Authorised Officer,  
Canara Bank,  
Madurai Ramnad Road Branch,  
Aryempi Towers,  
132, East Masi Street,  
Madurai – 625 001.

... Respondents



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**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 pertaining to the impugned order passed by the second respondent dated 18.04.2022 made in Cr.M.P.No.275 of 2022 and quash the same.

For Petitioner : Mr.S.Suresh

For R – 3 : Mr.K.Shankar Raman

### **ORDER**

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

The petitioner has filed the present Writ Petition seeking for issuance of a Writ of Certiorari, to quash the impugned order passed by the second respondent, dated 18.04.2022 made in Cr.M.P.No.275 of 2022.

2.According to the petitioner, he has challenged the auction sale notice issued by the third respondent Bank on 06.10.2021 fixing the date of sale on 09.11.2021 in S.A.No.494 of 2021 before the first respondent and by order dated 02.11.2021, the Debts Recovery Tribunal, Madurai granted an interim conditional order. The petitioner has also complied with the said conditional order. Thereafter, when the said application is pending and the interim conditional order also granted on 02.11.2021, the third respondent



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Bank approached the second respondent in CrI.M.P.No.275 of 2022 under Section 14 of the SARFAESI Act and the learned Chief Judicial Magistrate, by order dated 18.04.2022, allowed the said application. According to the petitioner, though the conditional order has been passed by the Debts Recovery Tribunal and the same has been complied with and the stay is in force, the third respondent has obtained an order of possession before the Chief Judicial Magistrate, which is illegal and the same is liable to be set aside.

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 in force, the third respondent proceeded under Section 14 of the SARFAESI Act is unsustainable and the same is liable to be set aside.

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



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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.

**[D.K.K.,J.] [R.V.,J.]**  
**30.01.2023**

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



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

ps

**ORDER MADE IN**  
**W.P(MD)No.10182 of 2022**

**DATED : 30.01.2023**