



W.P.(MD)Nos.9143, 10815 and 15612 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.07.2023

CORAM

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

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and

W.M.P.(MD) Nos.8262 to 8264 of 2023 in W.P.(MD) No.9143 of 2023

and

W.M.P.(MD) Nos.9497 & 9499 of 2023 in W.P.(MD) No.10815 of 2023

and

W.M.P.(MD) Nos.13113, 13114 & 13116 of 2023 in W.P.(MD) No.15612 of 2023

W.P.(MD) No.9143 of 2023:

A.Kumar

... Petitioner

Vs.

M/s.Equitas Small Finance Bank Ltd.,
Represented by The Authorized Officer,
Office at Plot No.16, 2nd Floor,
Near 7th Cross Street,
T.M.Nagar,
Madurai – 625 107.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the Chief Judicial Magistrate,



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Madurai, in CrI.M.P.No.111 of 2023 dated 09.02.2023 and quash the same as illegal and consequently direct the respondent to restore the petitioner's possession in his property in Natham Old S.No.11 part new S.No.39/2B situated at Pottapanaiyur Village, Madurai North Taluk, Madurai District.

For Petitioner	: Mr.N.S.Karthikeyan
For Respondent	: Mr.N.Bala Subramanian
Amicus Curiae	: Mr.K.Govindarajan Deputy Solicitor General of India

W.P.(MD) No.10815 of 2023:

T.Rajan ... Petitioner

Vs.

Ujjivan Small Finance Bank Limited,
Nagercoil Branch,
Rep. by its Authorized Officer,
Thiru.R.Pushpakanth,
Having registered office,
Grape Garden,
No.27, 3rd 'A' Cross 18th Main,
16th Block Koramangala,
Bengaluru – 560 095.
Karnataka State.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari Mandamus, to call for the records of the culminating into the order dated 17.02.2023 in Cr.M.P.No.638 of 2023



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u/s 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) impugned order passed by the learned Chief Judicial Magistrate, Nagercoil and quash the same as illegal.

For Petitioner : Mr.N.S.Ramakrishna Dass

For Respondent : Mr.V.Veerapandian

W.P.(MD) No.15612 of 2023:

Mohankumar ... Petitioner

Vs.

M/s.Jana Small Finance Bank Limited,
No.74, Lucky Land Plaza,
Salai Road, Thillai Nagar,
Tiruchirappalli – 620 018,
Rep. by its Authorized Signatory,
Mr.Prasanna

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Cr.M.P.No.231 of 2023 on the file of Learned Chief Judicial Magistrate, Pudukkottai dated 31.03.2023 and to quash the same.

For Petitioner : Mr.R.Maheswaran

For Respondent : Mr.S.Babu



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shall be entitled for enforcement of security interest in secured debts of rupees fifty lakh and above, has been specified as financial institutions for the purpose of SARFAESI Act. Subsequently, the secured debts of rupees fifty lakh was reduced to rupees twenty lakh by notification dated 12.02.2021, issued by the Ministry of Finance (Department of Financial Services).

4. Section 13 of SARFAESI Act gives an indication as to the power under Chapter III for Enforcement of Security Interest is available to the secured creditors. The secured creditors is defined under Section 3 (dz) of the SARFAESI Act, which reads as follows:-

“(zd) “secured creditor” means—

(i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (l);

(ii) debenture trustee appointed by any bank or financial institution; or

(iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or



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(iv) debenture trustee registered with 12[the Board and appointed] for secured debt securities; or

(v) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created by any borrower for due repayment of any financial assistance.”

5. Section 5 of Banking Regulation Act, 1949 defines the bank and banking company. In view of the notification of the Reserve Bank of India (Department of Banking Regulation) dated 03.07.2017 and the Gazette Notification dated 25.02.2020 issued by the Ministry of Finance (Department of Financial Services), this Court is convinced that the respondents are banking companies entitled to invoke the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6. Therefore, against the order of the respective learned Chief Judicial Magistrates, the petitioners are having an effective alternative remedy before the Debts Recovery Tribunal, Madurai. Hence, these Writ Petitions are disposed of with a direction to the petitioners to approach



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the Debts Recovery Tribunal for appropriate relief. However, the petitioners may approach the respective respondent finance companies and submit a representation within a period of two weeks from today either for waiver of penal interest or for One Time Settlement or for restructuring the loan or for any other concession, as may be permissible under the guidelines of Reserve Bank of India or the norms applicable to the respondents. The respondents shall consider the same and pass appropriate orders in accordance with law. Till such time, the respondents consider the representations of the respective petitioners on merits and communicate the decision taken to the respective petitioners, the respondents shall not initiate any coercive action against the respective petitioners. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

[S.S.S.R., J.] [D.B.C., J.]
19.07.2023

NCC : Yes / No
Index : Yes / No
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S.S.SUNDAR, J.

and

D.BHARATHA CHAKRAVARTHY, J.

sj

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