



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2023

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD) No.13821 of 2023
and
W.M.P.(MD) Nos.11648, 11650 of 2023

Selin Jijini

... Petitioner

-vs-

1. The General Manager,
Tamilnad Mercantile Bank Ltd.,
Head Office, Thoothukudi.
2. The Authorized Officer,
Tamilnad Mercantile Bank Ltd.,
Tirunelveli Region, Tirunelveli.
3. The Branch Manager,
Tamilnad Mercantile Bank Ltd.,
Vicramasingapuram Branch,
Tirunelveli District - 627 425.
4. The Branch Manager,
Tamilnad Mercantile Bank Ltd.,
Verkizhambi Branch, Makkamandapam Post,
Kanyakumari District.
5. Selin Sharmini
6. E.Edwin Ajith
7. The Sub - Registrar,
SRO, Verkilambi, Kalkulam Taluk,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 21.04.2023 passed

<https://www.mhc.tn.gov.in/judis>



in Cr.M.P.No.3899 of 2023, on the file of Learned Chief Magistrate, Kanyakumari District @ Nagercoil, filed under section 14 of SARFAESI Act, 2002 by the respondent bank and quash the same as illegal and consequently direct the 2nd respondent bank to accept the re-payment in installments basis with the waiver of interest.

For Petitioner : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.P.Thevan for R1 to R4

O R D E R

[Order of the Court was made by R.SUBRAMANIAN, J.]

Mr.P.Thevan, learned counsel, takes notice for the respondents 1 to 4.

2. Considering the nature of the relief, notice to the private respondents is deemed unnecessary.

3. With the consent of both sides, this writ petition is taken up for final hearing at the admission stage itself.

4. The petitioner claims that she is in possession of the property pursuant to a mortgage instrument that has been executed by the borrower on 15.06.2006 and therefore, the proceedings of the bank under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are bad, since the mortgage in favour of the bank created only in the year 2018.

5. A perusal of the mortgage instrument produced by the petitioner shows that it is not a usufructuary mortgage and the petitioner was not put in possession pursuant to the said instrument. The petitioner being an ordinary mortgagee is not entitled to claim possession of the property under the mortgage.

6. Hence, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar()

// True Copy //

/07/2023

Sub Assistant Registrar(CS)



W.P.(MD) N



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To

The Sub - Registrar,
SRO, Verkilambi, Kalkulam Taluk,
Kanyakumari District.

+1 CC to M/s.P.M.VISHNUVARTHANAN, Advocate (SR-28218[F] dated
15/06/2023)

W.P. (MD) No.13821 of 2023
13.06.2023

MK/08.07.2023 3P 3C