



W.P(MD)No.15557 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2023

CORAM :

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.P(MD)No.15557 of 2022

and

WMP(MD)Nos.11205 and 11206 of 2022

1. A.M.S.Sheik Dawood
2. Rehimath Nisha
3. M.Nabeesha alias Ayisha Siddika
4. A.K.Ayesha Banu
5. M.Najma Banu
6. A.Subaitha Begam

... Petitioners

VS.

1. Bank of Baroda, Karaikudi Branch,
Represented by its Authorized Officer,
Mr.Santhosh, S/o. K.R.Jayachandran,
Karaikudi, Sivangangai District.

2. M/s.Y.A.Mohideen Andavar Rice Mill
Through its Proprietor, M.S.Mohamed Shabudeen,
10.05.6, Nagappa Chettiar Street,
Puduvayal, Karaikudi Taluk,
Sivagangai District.

3. A.M.S.Mohamed Shabudeen

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to proceedings made in CRL.MP.No.1035 of 2021 on the file of Chief Judicial Magistrate, Sivagangai, and dated 24.06.2022 quash the same.

For Petitioners	: Mr.R.Sundar
For R1	: Mr.P.Pethurajesh, Standing Counsel
Ms.M.Vinitha	: Advocate Commissioner

ORDER

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

The prayer in this writ petition is for issuance of a Writ of Certiorari, calling for the records relating to proceedings made in CRL.MP.No.1035 of 2021 on the file of Chief Judicial Magistrate, Sivagangai, and dated 24.06.2022 quash the same.

2. On 06.02.2023, we passed the following order:-

"Challenging the impugned proceedings passed by the learned Chief Judicial Magistrate, Sivagangai in Crl.M.P.No.1035 of 2021, dated 24.06.2022, the petitioners have filed the present



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2. According to the petitioners, in the schedule mentioned properties, which is shown as item No.4 is a residential building and the petitioners stayed there along with the family members. Now, SARFAESI Act. The petitioners have already filed a suit in O.S.No.46 of 2015 and the same has been re-numbered as O.S.No.89 of 2022 on the file of the learned District Munsif, Karaikudi and the same is pending. Without prejudice to the rights in the suit, the petitioners have requested that they may be permitted to take away their belongings, namely, the household articles from the aforesaid property.

3. The learned counsel appearing for the first respondent Bank submitted that if the petitioners are ready to take away the household articles, the first respondent Bank has no objection for taking away the same, but notice has to be served to the respondents 2 and 3.

4. Considering the submissions made on either side, this Court is inclined to appoint an Advocate Commissioner, for which, the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent Bank have no objection for the same.

5. In view of the above, Ms.M.Vinitha [M/ S.No.1930 of 2022, No.2, Rakesh Illam, Palanganatham, Madurai – 03, Cell No.90922 53533] is appointed as an Advocate Commissioner and the Advocate Commissioner is directed to inspect the property in



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question and identify the household articles belonging to the petitioners and prepare an inventory of the articles and if there is no objection for the respondents, the same shall be handed over to the petitioners with proper endorsement from the parties concerned.

6.As agreed by the learned counsel appearing for the petitioners and the first respondent Bank, the presence of the parties in the aforesaid premises is fixed on 12.02.2023 at 10.00 a.m. Before making such inspection of the said property in S.F.No.75/22 and 75/23, since notice has not been served to the respondents 2 and 3, the Advocate Commissioner is directed to serve notice to the respondents 2 and 3, indicating the date and time for the inspection.

7.The Advocate Commissioner shall be paid a sum of Rs. 20,000/- (Rupees Twenty Thousand Only), towards her initial remuneration by the petitioners within a period of two days. All the parties shall extend their fullest co-operation to the Advocate Commissioner to complete the task assigned to her, within the time stipulated by this Court.

8.The Advocate Commissioner shall file a detailed report before this Court on or before 20.02.2023.

9.Registry is directed to issue a warrant to the Advocate Commissioner forthwith."



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3. Now, learned counsel for the petitioners has filed a memo stating that he has handed over the case bundle to the petitioners on 11.02.2023 itself and informed this Court that no new counsel is engaged on behalf of the petitioners and the same is admitted by the petitioners who are present before this Court.

4. Learned standing counsel appearing for the 1st respondent Bank submitted that as per the order of this Court dated 06.02.2023, when the advocate commissioner visited the property in question for inspection, the petitioners were not present and they also did not respond to the phone call from the advocate commissioner. Learned counsel also submitted that the petitioners have not paid the initial remuneration of Rs.20,000/- as fixed by this Court to the advocate commissioner. Thus, he submitted that the petitioners have disobeyed the order of this Court by not co-operating with the advocate commissioner for inspection of the property in question.



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5. The aforesaid submission is not disputed by the petitioners who are present before this Court. As per the order of this Court, the advocate commissioner has visited the property in question, but for the failure of the petitioners to co-operate with the advocate commissioner, the advocate commissioner could not discharge her duty assigned by this Court. Thus, we are of the view that the advocate commissioner shall be paid her remuneration.

6. Under such circumstances, the 1st respondent Bank is directed to pay the initial remuneration of Rs.20,000/- fixed by this Court to the advocate commissioner within a period of two weeks from the date of receipt of a copy of this order. Considering the aforesaid conduct of the petitioners and the facts of the case where the petitioners have challenged the order passed under Section 14 of the SARFAESI Act and normally, the writ petition under Article 226 of the Constitution against the proceedings under the SARFAESI Act, is not maintainable, we are not inclined to entertain this writ petition.



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7. Accordingly, this Writ Petition is dismissed. No costs. It is for the petitioners to work out their remedy in the manner known to law. Connected miscellaneous petitions are closed.

[D.K.K.,J.] & [L.V.G.,J.]
22.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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D.KRISHNAKUMAR, J.
and
L.VICTORIA GOWRI, J.

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ORDER MADE IN
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DATED : 22.02.2023