BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25/07/2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P(MD)No.17859 of 2023
and
W.M.P(MD)Nos.14842 and 14943 of 2023

1.P.Pandidurai
2.D.Nagewari ... Petitioners

Vs.

The City Union Bank Limited,
Rep. by its Authorized Officer,
TVS Nagar Branch,
Madurai – 625 003. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed by the learned Chief Judicial Magistrate, Madurai dated 16.06.2023 made in Cr.M.P.No.399 of 2023 and quash the same.

For Petitioners :Mr.M.Arunachalam

For Respondent :Mr.N.Dilip Kumar,
Standing Counsel

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ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

Heard Mr.M.Arunachalam, learned counsel for the petitioners and Mr.N.Dilip Kumar, learned Standing Counsel who takes notice for the respondent – Bank.

2. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3. This writ petition is filed by the petitioner seeking for issuance of a Writ of Certiorari, to quash the impugned order passed in an application filed by the respondent bank under Section 14 of the SARFAESI Act, 2002(hereinafter referred to as "the Act").

4. Brief facts which are necessary for the disposal of this writ petition are as follows:

(i) It is the case of the petitioners is that the first petitioner availed loan of Rs.60,00,000/- from the respondent bank, by way of mortgage, on

08.07.2015. The second petitioner, who is the wife of the first petitioner, stood as a guarantor. Again, on 14.09.2015, another sum of Rs.15,00,000/- was obtained from the respondent bank. It is the further case of the petitioner that despite substantial payment towards principal and interest to the tune of Rs. 72,59,557/- and odd, the respondent bank has classified the loan account of the petitioners as NPA on 26.03.2020 while the Covid-19 lock down was in force. Subsequently, the respondent bank has issued a demand notice on 13.08.2020.

(ii) It is not in dispute that possession notice dated 05.01.2021 was issued to the petitioner. However, the petitioner disputed receipt of any demand notice as alleged in the subsequent possession notice on 05.01.2021.

(iii) It is admitted that the respondent bank issued a tender-cum-auction sale notice, dated 02.02.2021, for the sale of mortgaged properties on 15.03.2021. Challenging the sale notice, the petitioners have filed an application in S.A.No.128 of 2021 before the Debts Recovery Tribunal at Madurai and obtained an order of interim stay on condition that the petitioners should pay a sum of Rs.8,43,000/- on or before 12.04.2021 towards first instalment and a further sum of Rs.8,43,000/- on or before 11.05.2023 towards second instalment. It is also admitted that the petitioners have complied with the conditional order of the Tribunal in its letter and spirit and the sarfaesi application is also pending for adjudication.

(iv) In the meanwhile, the respondent bank without disclosing the pendency of S.A.No.128 of 2021 and in the interim order obtained by the petitioners, filed an application before the Chief Judicial Magistrate, Madurai, under Section 14 of the Act, seeking assistance for taking possession of the mortgaged properties in Cr.M.P.No.399 of 2023 and the same was ordered on 16.06.2023. Challenging the same, the above writ petition is filed.

5. The learned counsel appearing for the petitioner submitted that the respondent bank ought not to have initiated parallel proceedings when the petitioners have promptly complied with the conditions. Since the petitioners did not foresee that the respondent bank would initiate proceedings again under Section 14 of the Act despite the interim order granted by the Debts Recovery Tribunal in the sarfaesi application filed by the petitioners, there was no specific prayer regarding the same.

6. It is admitted by the learned counsel appearing for the petitioners that the petitioners did not seek specific interim order restraining the bank from

proceeding under Section 14 of the Act.

7. The learned counsel relied upon following two decisions of a Division Bench of this Court:

(i) In W.P(MD)No.10182 of 2022, dated 30.01.2023***(V.K.Dharmaraj vs. The Debts Recovery Tribunal, Madurai and two others)***; and

(ii) In W.P(MD)No.3178 of 2023, dated 16.02.2023(***S.James vs. The Authorised Officer, Canara Bank, Madurai and another)***.

8. In the first case relied upon by the learned counsel for the petitioners, there is no indication as to the nature of interim order. In respect of the second case, the interim order was in the nature of status-quo pursuant to the sale notice and therefore, this Court held that the proceedings initiated under Section 14 of the Act, for taking possession of the properties cannot sustained in the wake of the interim order of status-quo.

9. In the present case, interim order of stay was granted in S.A.No. 128 of 2021, not to confirm the sale with respect to the mortgaged properties till 12.05.2021. Therefore, the two judgments relied upon by the learned

counsel for the petitioners cannot be applied to the present case.

10. The fact that the petitioners have filed an application as against the sale notice is not in issue. Having regard to the fact that the sarfaesi proceedings were initiated during the Covid-19 lock down period and the fact that the petitioners have complied with the conditional order, the respondent bank should wait before initiating proceedings under Section 14 of the Act.

11. Section 14 of the Act, reads as follows:

"*14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset*

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor:

[PROVIDED that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that-

(i)the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii)the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii)the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv)the borrower has committed default in repaymnt of the financial assistance granted aggregating the specified amount;

(v)consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi)affirming that the period of sixty days notice as required by the provisions of sub-section(2) of section 13, demaning payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii)the borrower has not made any repayment of the financial assistance in spite of the above notce and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section

14 of the principal Act.

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

PROVIDED FURTHER that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets [within a period of thirty days from the date of application].

PROVIDED ALSO that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days:]

PROVIDED ALSO that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

[(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him, -

(i)to take possession of such assets and documents relating thereto; and

(ii)to forward such assets and documents to the secured creditor.]

(2) For the purpose of securing compliance with the

provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

12. As per the said provision of the Act, where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may move the Chief Judicial Magistrate for taking possession. Object of Section 14 of the Act appears to be to protect the interest of the bank in realising the money by bringing the property for sale.

13. Therefore, this Court is of the view that when the sale is stayed, it is not necessary that the respondent bank should also proceed under Section 14 of the Act.

14. Further, a borrower cannot be harassed by multiple proceedings. Though Section 14 of the Act, enables the bank to initiate proceedings and there is no statutory bar to initiate action under Section 14 of the Act, applying

the equitable principles, this Court is of the view that the bank can wait or seek permission to initiate further proceedings under Section 14 of the Act. Without any notice or an indication to the petitioners, the respondent bank chose to initiate proceedings under Section 14 of the Act.

15. Therefore, this Court is of the view that the impugned order passed by the learned Chief Judicial Magistrate, Madurai in the application by the respondent bank under Section 14 of the Act, is liable to be set aside.

16. Accordingly, this writ petition is allowed and the impugned order of the learned Chief Judicial Magistrate, Madurai, in Cr.M.P.No.399 of 2023, dated 16.06.2023, is set aside. It is open to the respondent bank to initiate further proceedings after the outcome of the sarfaesi application filed by the petition which is pending before the Debts Recovery Tribunal, Madurai in S.A.No.128 of 2021.

17. Further, since S.A.No.128 of 2021 is pending for more than two years, both the parties requested this Court to issue a direction to the Debts Recovery Tribunal for early disposal of the sarfaesi application.

18. In the interest of justice, this Court expects the Debts Recovery

Tribunal, to dispose of S.A.No.128 of 2021 on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. Meanwhile, it is also open to the petitioners to approach the bank for any concession. If any such application is made by the petitioners, the respondent bank may consider it and pass appropriate orders and communicate the same to the petitioners. No Costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] **[D.B.C., J.]**
25.07.2023

Index : Yes / No
NCC : Yes/No
pm

To:

1. The Debts Recovery Tribunal,
   Madurai.

2. The Chief Judicial Magistrate,
   Madurai.

S.S.SUNDAR, J.

and

D.BHARATHA CHAKRAVARTHY, J.

pm

W.P(MD)No.17859 of 2023

25.07.2023