



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:**11.09.2023**

CORAM:

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

W.P(MD)NO.22070 OF 2023

Ravindran Durainayagam,
Power of Attorney Agent of
Mr.B.Muthukumar

:Petitioner

.VS.

- 1.The Authorized Officer,
M/s.OMKARA ARC PRIVATE LIMITED,
having its Registered Office at
No.9, M.P.Nagar, First Street,
Kongu Nagar Extension,
Thiruppur – 641 607.
- 2.M/s.OMKARA ARC PRIVATE LIMITED,
represented by its Managing Director,
having its Registered Office at
C/5, Kanakia Zillion,
Junction of LBS Road and CST Road,
BKC Annexe, Kurla(W), Mumbai = 400 070.
- 3.The IndusInd Bank,
represented by its Branch Manager,
Madurai Branch, G.P.Building,
No.30, Kamala II Street,
Chinna Chokkikulam,
Madurai – 625 002.
- 4.M/s.J and J Traders,
represented by its Proprietor,
Mr.Benitkaran,



No.37, North Masi Street,
Madurai – 625 001.

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5.Mr.Benitkaran,

6.J.Dorah Crossbell,

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned Possession Notice issued by the first respondent in OMK.CHE:033 2023-2024, dated 14.07.2023 and to quash the same as illegal in respect of the Petitioner's properties is concerned and consequently to direct the respondents 1 to 3 to release the original title deeds of his mortgaged properties described in the impugned notice as properties Nos.1 to 3 vide Documents Nos.2179 of 2006, dated 19.05.2006, 4384 of 2004, dated 10.12.2004 and 3299 of 2004, dated 15.09.2004, on the file of the Sub- Registrar, Palayamkottai, Tirunelveli District.

For Petitioner :Mr.J.Lawrance

For Respondents :Mr.N.Balasubramanian
1 and 2

For Respondent-3 :Mr.B.Baskar

O R D E R

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

This Writ Petition is filed challenging the Possession Notice issued under Section 13(4) of the SARFAESI Act.



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2.Mr.N.Balasubramanian, learned counsel takes notice for the respondents 1 and 2 and Mr.B.Baskar, learned counsel takes notice for the third respondent. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3.The Petitioner is the Power of Attorney Agent of one B.Muthukumar, who is also the brother of the Petitioner. It is the case of the Petitioner that as a Guarantor to the loan,they have executed a mortgage in respect of several properties. It is the grievance that the third respondent-Bank has released several properties of the principal borrower, which attracts Section 139 of the Indian Contract Act to discharge the surety. When its liability is joint and several, this Court is unable to sustain the plea of Petitioner in the absence of any verifiable material.

4.This Court, in a Writ Petition filed under Article 226 of the Constitution of India, cannot go into the contractual obligations of the guarantor and the respondent/Bank on the basis of the loan agreement between the principal borrower and the Bank. The Petitioner may have an enforceable right as against the principal borrower. Even if he has real grievance against the principal



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borrower for doing something affecting the Petitioner's civil rights, the Bank's right under Securitization Act is not affected. Even if the Petitioner is aggrieved by the conduct of the third respondent/Bank, it is open to the Petitioner to seek appropriate remedy before the Civil Court or before the Debts Recovery Tribunal, in accordance with law. This Court cannot entertain the present Writ Petition, at the instance of the Guarantor, as he has only sought for the relief to quash the possession notice.

5. With the above observation, the Writ Petition stands dismissed. No costs.

[S.S.S.R.,J.] [D.B.C,J.]
11.09.2023

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

vsn



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S.S.SUNDAR, J.

AND

D.BHARATHA CHAKRAVARTHY, J.

vsn

ORDER MADE IN

W.P(MD)No.22070 of 2023

11.09.2023