BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2023

CORAM:

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

W.P.(MD) No.23695 of 2023
and
W.M.P.(MD) Nos.19868 & 19870 of 2023

P.R.Manoharan ... Petitioner

-vs-

1.The Authorized Officer
Tamilnad Mercantile Bank Ltd.,
Thoothukudi Regional Office
(For Udangudi Branch)
S.No.261/3A (D.No.6)
Sathyamoorthy Bazar
Udangudi, Thoothukudi-628 203

2.Tamilnad Mercantile Bank Ltd.,
Rep.by its Branch Manager
Thoothukudi Regional Office
(For Udangudi Branch)
S.No.261/3A (D.No.6)
Sathyamoorthy Bazar
Udangudi, Thoothukudi-628 203 ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records pertaining to the impugned order of the learned Chief Judicial Magistrate, Thoothukudi, in Crl.M.P.No.11419 of 2023, dated 27.07.2023, obtained by the first respondent and quash the same.

For Petitioner	:	Mr.J.David Ganesan
For Respondents	:	Mr.Devan, Standing Counsel

O R D E R

[Order of the Court was made by S.S.SUNDAR, J.]

Mr.Devan, learned counsel, takes notice for the respondent – Bank.

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

3. This writ petition is filed challenging the order, dated 27.07.2023, passed by the learned Chief Judicial Magistrate, Thoothukudi, in Crl.M.P.No.11419 of 2023, on the application filed by the respondent – Bank under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, “SARFAESI Act”).

4. The petitioner states that he is a trader and obtained overdraft and credit facilities to the tune of Rs.1.15 Crores in 2019 and 2021 for development of his business. It is admitted by the petitioner that the respondent – Bank has initiated proceedings under the SARFAESI Act, after declaring his loan account as “non-performing asset (NPA)” on 26.01.2023. Despite the petitioner's loan account is declared as NPA very recently, the first respondent issued a demand notice on 02.02.2023 and possession notice on 10.04.2023. Meanwhile, a sale notice dated 27.06.2023 was also issued fixing date of auction on 10.08.2023. It appears that simultaneously, the respondent – Bank has also initiated proceedings under Section 14 of the SARFAESI Act for taking physical possession of the mortgaged property through the learned Chief Judicial Magistrate.

5. The petitioner challenged the sale notice dated 27.06.2023 before the Debts Recovery Tribunal, Madurai, in S.A.No.289 of 2023. It is now admitted that the petitioner obtained an interim order on condition that he should pay a sum equivalent to 25% of the total amount due in three equal installments. It is also stated by the petitioner that he has complied with the conditions imposed by the Debts Recovery Tribunal and deposited a sum of Rs.5,93,000/- on 08.08.2023, Rs.16,89,000/- on 14.08.2023 and Rs.16,89,000/- on 19.09.2023. The grievance of the petitioner is that though he has complied with the conditions imposed by the Debts Recovery Tribunal by paying a substantial amount, the respondent – Bank has again obtained an order on 27.07.2023, from the learned Chief Judicial Magistrate, Thoothukudi, to take physical possession of the mortgaged property.

6. Learned Standing Counsel appearing for the respondent – Bank pointed out that the order in the application filed by the respondent – Bank under Section 14 of the SARFAESI Act was passed by the learned Chief Judicial Magistrate earlier than the interim order stay granted by the Tribunal and therefore, the decision relied upon by the learned counsel for the petitioner may not be appropriate. However, the learned Standing Counsel has no objection for keeping the impugned order in abeyance till such time, the S.A.No.289 of 2023 pending before the Debts Recovery Tribunal, Madurai, is disposed of on merits.

7. In the said circumstances, this writ petition is disposed of with the following directions:

(i) The respondent – Bank shall keep on hold the impugned order dated 27.07.2023, passed by the learned Chief Judicial Magistrate, Thoothukudi, in Crl.M.P.No.11419 of 2023, till such time S.A.No.289 of 2023 pending before the Debts Recovery Tribunal, Madurai, is disposed of on merits and in accordance with law

(ii) The Presiding Officer of the Debts Recovery Tribunal, Madurai, is directed to dispose of S.A.No.289 of 2023, within a period of twelve weeks from the date of receipt of a copy of this order.

(iii) In the meanwhile, the petitioner is permitted to approach the respondent – Bank and submit a representation, 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 respondent – Bank.

(iv) The respondent – Bank shall consider the same and pass appropriate orders in accordance with law.

(v) It is also made clear that if the petitioner gives scope for any settlement and it is agreeable for the respondent – Bank, it is open to the Debts Recovery Tribunal, Madurai, to consider the same and give sufficient time for the parties for settlement.

(vi) No costs. Consequently, connected miscellaneous petitions are closed.

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

27.09.2023

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

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To:
The Chief Judicial Magistrate,
Thoothukudi.

S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

krk

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