BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2023

CORAM:

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

W.P.(MD) No.26609 of 2022
and
W.M.P.(MD) No.20811 of 2022

R.Sheeba ... Petitioner

-vs-

Hinduja Leyland Finance Ltd.,
rep.through its Authorized Officer
No.27A, Developed Industrial Estate
Guindy, Chennai-600 032 ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the impugned demand notice dated 03.08.2022 issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 (SARFAESI) and the impugned possession notice dated 14.10.2022, issued under Section 13(4) of the Securitization and Reconstruction of Financial

Assets and Enforcement of Security Act, 2002 (SARFAESI) issued by the respondent and quash the same.

For Petitioner : Mr.AL.Kannan

For Respondent : Mr.B.Baskar

ORDER

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

The demand notice, dated 03.08.2022, under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, "SARFAESI Act") and the possession notice dated 14.10.2022, under Section 13(4) of the SARFAESI Act, both issued by the respondent – Financial Institution, are under challenge in this writ petition.

2. The only objection raised by the petitioner is on the competency of the respondent – Financial Institution to invoke the provisions of the SARFAESI Act, in view of the amount due, for which the SARFAESI proceedings are initiated.

3. Learned counsel appearing for the respondent – Financial Institution has produced before this Court a copy of the notification, dated 12.02.2021, issued by the Ministry of Finance, to show that by virtue of the amendment, the ceiling limit has been reduced from from Rs.50,00,000/- to Rs.20,00,000/-.

4. Since the claim in the present case exceeds Rs.20,00,000/-, the respondent – Financial Institution is entitled to invoke the provisions of the SARFAESI Act. Therefore, having regard to the fact that the petitioner is having an effective alternative remedy of approaching the Debts Recovery Tribunal, this writ petition is dismissed with liberty to the petitioner to approach the Debts Recovery Tribunal for appropriate relief.

5. However, it is open to the petitioner to submit a representation to the respondent – Financial Institution either for waiver of penal interest or One Time Settlement or for restructuring the loan and other concession, as may be permissible under the guidelines of the Reserve Bank of India or the norms applicable to the respondent – Financial Institution, within a period of one week from the date of receipt of a copy of this order and on receipt of the same, the respondent – Financial Institution shall pass appropriate orders in accordance with law. Till such time an order is passed on the petitioner's representation by the respondent – Financial Institution and the same is communicated to the petitioner, the respondent – Financial Institution shall not initiate any coercive action against the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

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

24.07.2023

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

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

krk

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