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W.P.(MD)No.25998 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

and

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.(MD)No.25998 of 2023

and

W.M.P.(MD)Nos.22374 & 22375 of 2023

V.Rajasekaran

: Petitioner

Vs.

1.The Authorized Officer,
Tamilnad Mercantile Bank Ltd.,
D.No.25/1, M.B.S.Araharam,
Trichy – Karur Main Road,
Kulithalai – 639 104.

2.Mrs.Devhichand Chilkendevi

3.K.Rajesh Kanna

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Chief Judicial Magistrate, Tiruchirapalli in CrI.M.P. No.28865 of 2022 dated 13.10.2023 and to quash the same and inconsequentially direct the respondents and to restore the Auctioned property Land to the extent of 12644 Sq.ft. situated



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at S. No.37/4 and 37/5 and Commercial building constructed threat to the extent of 3454 S.ft at D. No.V-4/39, Kambarasampatti, Srirangam Taluk, Tiruchirapalli District infavour of the petitioner.

For Petitioner : Mr.R.Venkatesh

For Respondents : Mr.N.Dilipkumar for R1

ORDER

Heard the learned counsel for the petitioner and the learned Standing Counsel for the first respondent-bank. Considering the nature of the order to be passed, issuance of notice to the respondents 2 and 3 is dispensed with.

2. M/s.Raja Rajeswari Marriage Hall of which the Writ Petitioner is the managing partner borrowed loan from Tamilnad Mercantile Bank Ltd. It committed default. Therefore, action under SARFAESI Act was taken. The property that was offered as collateral security was brought to sale. It was purchased by the second respondent herein. The petitioner had filed S.A.No.248 of 2022 on the file of Debt Recovery Tribunal, Madurai questioning the sale notice as well as the consequential action. The first respondent - bank has moved Chief Judicial Magistrate, Tiruchirapalli under Section 14 of the Act and



obtained an order dated 13.10.2023 for taking possession. Questioning the same, present Writ Petition has been filed.

3. Learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the Writ Petition and called upon this Court to set aside the impugned order.

4. Learned Standing Counsel appearing for the first respondent-bank pointed out that the petitioner was not successful in getting any interim relief at the hands of DRT. He also pointed out that W.P.(MD)Nos.25947 and 22648 of 2022 filed by the petitioner was disposed of by the Hon'ble First Bench on 01.09.2023 with liberty to the petitioner to avail an alternate remedy. Learned Standing Counsel further stated that conciliation talks between the petitioner on one hand and the purchaser on other hand did not fructify. He pointed out that the impugned order is very much amenable to challenge before DRT under Section 17 of the Act. He relied on a catena of judgments. He submitted that the present Writ Petition is not maintainable. He pressed for dismissal of the Writ Petition.

5. We carefully considered the submissions and went through the materials on record.



6. As pointed out by the learned counsel appearing for the petitioner, the Hon'ble First Bench while disposing of the earlier Writ Petitions made it clear that all the contentions of the respective parties are kept open. In fact, interim protection earlier granted was also permitted to continue for five more days so as to enable the petitioner to avail the alternate remedy. Second Appeal filed by the petitioner is still pending.

7. More than anything else, the petitioner is ready with a Demand Draft for a sum of Rs.10 laksh favouring the bank and the petitioner is ready to pay the balance amount by tomorrow evening itself. In our view this would adequately protect the interest of the bank. The petitioner is directed to deposit the entire amount of Rs.41 lakhs to the credit of S.A.No.248 of 2022 on the file of DRT, Madurai by tomorrow evening ie., 27.10.2023.

8. Impugned order was passed on 13.10.2023. It is stated by the petitioner that they received the order copy only on 18.10.2023. DRT, Madurai is not functioning since 21.10.2023. We are of the view that the petitioner did not have adequate time to move the DRT against the impugned order. Since the petitioner shown his bonafide by producing a Demand Draft for a sum of Rs.10 lakhs and is ready to pay



the balance amount by tomorrow itself, we are of the view that some interim protection can very well be given to the petitioner.

9. The learned counsel appearing for the petitioner also points out that since the property itself has been sold, the bank may not have a *locus standi* to move the jurisdictional Chief Judicial Magistrate under Section 14 of the Act. He relies on the order dated 01.09.2017 made in W.P.No.21814 (W) of 2017 passed by the Calcutta High Court.

10. Learned Standing Counsel appearing for the first respondent-bank relies on the decision of the Madras High Court. We are prima facie of the view that arguable contentions have been advanced. Since the bank's interest has been adequately protected, we relegate the petitioner to move the DRT, Madurai questioning the order impugned in this Writ petition.

11. Learned counsel for petitioner states that appeal under Section 17 of the Act against the impugned order dated 13.10.2023 made in CrI.M.PNo.28865 of 2022 on the file of Chief Judicial Magistrate, Tiruchirappalli will be filed within 10 days from today. Till the DRT Madurai, dispose of the said Second Appeal, the order impugned in the Writ Petition shall be put on hold.



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12. The Writ Petition is disposed of accordingly. We make it clear that all the contentions of both parties are left open. No costs. Consequently, connected miscellaneous petitions are closed.

13. We make it clear that if the petitioner fails to make the deposit by tomorrow evening, the benefit of the order shall stand automatically vacated. The Registrar, DRT Madurai is directed to redeposit the said amount in an interest bearing account. DRT, Madurai is directed to club the Second Appeal to be filed by the petitioner along with S.A.No.248 of 2022 and dispose of them on merits and in accordance with law within a period of twelve [12] weeks from the date of receipt of a copy of this order. We make it clear that we have not gone into the merits of the matter.

[G.R.S.,J.] & [P.D.B.,J.]

26.10.2023

Neutral Citation : Yes/No

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Note: Issue order copy on 27.10.2023.



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G.R.SWAMINATHAN, J.

and

P.DHANABAL, J.

vsm

ORDER MADE IN

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26.10.2023