IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.1520 of 2024

Umar Pasha Ousman Mhammed .. Petitioner

Vs.

1. The General Manager (Housing Finance)
   Chennai Circle, Reserve Bank of India
   Fort Glacis, No.16, Rajaji Salai
   Chennai – 600 001.

2. M/s.Piramal Capital & Housing Finance Ltd.
   Rep. by its Authorized Officer
   Unit No.601, 6th Floor, Amiti Building
   Agastya Corporate Park, Kamani Junction
   Opp. Fire Station, LBS Marg, Kurla (West)
   Mumbai – 400 070.

3. M/s.Diwan Housing Finance Corporation Ltd.
   Office at Warden House, 2nd Floor
   Sire P.M.Road, Fort
   Mumbai – 400 001. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus, directing the first respondent to consider the representation dated 14.12.2023 submitted by the petitioner.

For the Petitioner : Mr.P.K.Sabapathi

ORDER
(Made by the Hon'ble Chief Justice)
Heard Mr.P.K.Sabapathi, learned counsel for the petitioner.

2. The petitioner is seeking directions against the first respondent to consider the representation.

3. The grievance of the petitioner, it appears, is that the petitioner has borrowed Housing Loan from the third respondent and now, the second respondent is recovering the amount. Learned counsel for the petitioner submits that there is no privity of contract existing between the petitioner and the second respondent. Installments have been unilaterally increased by the second respondent. In fact, the petitioner has paid more than Rs.22 lakhs (Rupees Twenty Two Lakhs Only). The Housing Loan was borrowed in the year 2018. The account of the petitioner was regular. In view of that, the second respondent cannot resort to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement

of Security Interest Act, 2002 [for brevity, "the SARFAESI Act"]. It is further submitted that notice under Section 13(2) of the SARFAESI Act was issued by the second respondent to the petitioner.

4. The petitioner has the remedy to raise an objection under Section 13 (3A) of the SARFAESI Act. If the said objection is negated and action under Section 13(4) of the SARFAESI Act is taken, the petitioner can challenge the action taken under Section 13(4) of the SARFAESI Act by filing a securitisation application, as provided under Section 17 of the SARFAESI Act. Moreover, if a bank or a financial institution indulges in any illegal transaction, the petitioner can approach the Banking Ombudsman in that regard.

5. The learned counsel for the petitioner submits that the petitioner has already approached the first respondent by filing a representation.

6. The petitioner may file necessary application before the Banking Ombudsman. In case such application is filed by the

petitioner, the Banking Ombudsman shall consider the same on its own merits.

7. With these observations, the writ petition stands disposed of. The contentions of the petitioner are kept open, to be adjudicated in appropriate proceedings. There shall be no order as to costs. Consequently, W.M.P.No.1537 of 2024 is closed.

(S.V.G., CJ.) (D.B.C., J.)
30.01.2024

Index : Yes/No
Neutral Citation : Yes/No

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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

(drm)

W.P.No.1520 of 2024

30.01.2024