



W.P.No.13629 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.13629 of 2024

and

W.M.P.Nos.14787 & 14788 of 2024

1.An Rajasekaran Alur Nagarajaiah
2.Rajeshwari Alur Rajasekaran

... Petitioners

Vs.

1.Authorized Officer,
M/s.IDFC First Bank Limited,
3rd Floor, A-Wing, Asher IT Park,
Waghle Estate, Thane-West,
Mumbai, Maharashtra – 400 064
Also at,
KRM Towers, 7th Floor,
No.1, Harrington Road,
Chetpet, Chennai – 600 031.

2.Chief Judicial Magistrate,
Chengalpat.



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3.S.Kalaivani

Advocate Commissioner,
Chengalpat Bar Association,
Chengalpat – 603 001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for records in respect of the order in CrI.M.P.No.2427 of 2023 dated 05.08.2023 passed by the Chief Judicial Magistrate, Chengalpat, the 2nd respondent, to quash the same and to direct the 3rd respondent not to proceed with the order passed by the 2nd respondent.

For Petitioner : Mr.K.Pattabi

ORDER

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

This writ petition is filed challenging the proceedings of the learned Chief Judicial Magistrate, Chengalpattu, in CrI.M.P.No.2427 of 2023, dated 05.08.2023, in the application filed under Section 14 of the SARFAESI Act. The further prayer is to prevent the 3rd respondent from executing the warrant of the Advocate Commissioner.



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2.Learned counsel appearing for the petitioners now admits before this Court that the respondent Bank had taken possession pursuant to the order.

3.Normally, a writ petition cannot be entertained under Article 226 of the Constitution of India as the Court's jurisdiction is limited, especially in view of the effective alternative remedy available to the petitioner. In ***City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla*** reported in ***2009 [1] SCC 168***, the Hon'ble Supreme Court highlighted the parameters which are required to be kept in view by High Court while exercising its jurisdiction under Article 226 of the Constitution. The High Court is bound to consider:-

[1]Whether adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

[2]Whether the petition reveals material facts.

[3]Whether the petitioner has any alternative or effective remedy for the resolution of the dispute.



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[4]Whether the person invoking the jurisdiction is guilty of unexplained delay and laches.

[5]Whether relief is barred by any laws of limitation.

[6]Whether grant of relief is against public policy or barred by any law or cannot be granted for any other factors.

4.In *United Bank of India Vs. Satyawati Tondon and Others* reported in **2010 [8] SCC 110**, the Hon'ble Supreme Court, after considering all the judgments on the point including the judgment above referred to, has held that the writ petition under Article 226 is not maintainable as against any action in furtherance of notice issued under Section 13[4] of SARFAESI Act including the proceedings under Section 14 of the Act..

5.In *Trade Well, A Proprietorship Firm Vs. Indian Bank* reported in **2008 [8] SCL 173 [BOM]**, the Hon'ble Supreme Court has considered the scope of Section 14 and the maintainability of writ petition under Article 226 of the Constitution in the following lines:-

"90. Following conclusions emerge from the above discussion:-

1.The bank or financial institution shall, before



making an application under [Section 14](#) of the NPA Act, verify and confirm that notice under [Section 13\(2\)](#) of the NPA Act is given and that the secured asset falls within the jurisdiction of CMM/DM before whom application under [Section 14](#) is made. The bank and financial institution shall also consider before approaching CMM/DM for an order under [Section 14](#) of the NPA Act, whether [Section 31](#) of the NPA Act excludes the application of [Sections 13](#) and [14](#) thereof to the case on hand.

2. CMM/DM acting under [Section 14](#) of the NPA Act is not required to give notice either to the borrower or to the 3rd party.

3. He has to only verify from the bank or financial institution whether notice under [Section 13\(2\)](#) of the NPA Act is given or not and whether the secured assets fall within his jurisdiction.

4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under [Section 14](#) of the NPA Act by recording that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under [Section 14](#).

5. Remedy provided under [Section 17](#) of the NPA



Act is available to the borrower as well as the third party.

6. Remedy provided under [Section 17](#) is an efficacious alternative remedy available to the third party as well as to the borrower where all grievances can be raised.

7. In view of the fact that efficacious alternative remedy is available to the borrower as well as to the third party, ordinarily, writ petition under [Articles 226 and 227](#) of the Constitution of India should not be entertained.

8. In exceptional cases of gravest injustice, a writ petition could be entertained by this Court.

9. Great care and caution must be exercised while entertaining a writ petition because in a given case it may result in frustrating the object of the [NPA Act](#).

10. Even if a writ petition is entertained, as far as possible, the parties should be relegated to the remedy provided under [Section 17](#) of the NPA Act before the DRT by passing an interim order which will protect the secured assets. Adjudication and final order should be left to the DRT as far as possible."



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6.Hence, the petitioner has an effective alternative remedy to prefer a SARFAESI appeal before the Debts Recovery Tribunal challenging the order of Chief Judicial Magistrate under Section 14 of the Act. We do not find any exceptional circumstance to entertain this writ petition. Learned counsel for the petitioners states that there are inherent defects in the proceedings. It is open to the petitioners to raise all their grounds before the Debts Recovery Tribunal and it will not be appropriate for this Court to go into the factual issues. Therefore, this writ petition is dismissed, however, giving liberty to the petitioners to approach the Debts Recovery Tribunal as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

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(S.S.S.R., J.) (N.S., J.)
07.06.2024



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S.S. SUNDAR, J.
and
N. SENTHILKUMAR, J.

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Internet : Yes
Index : Yes / No
Neutral Citation : Yes / No

To

The Chief Judicial Magistrate,
Chengalpet.

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