



W.P.No.13745 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.05.2024

CORAM :

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

and

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.No.13745 of 2024

N.Somasundaram

.. Petitioner

Vs

1.The Authorised Officer,
M/s.City Union Bank Ltd.,
No.68, Vallal Pachaiyapan Street,
Kanchipuram-631 501.

2.The Registrar,
Debt Recovery Tribunal-II,
Addl. Building, 6th Floor, Sastri Bhavan,
Nungambakkam,
Chennai-600 006.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the first respondent to grant access to the petitioner and his family to the residential part of the secured property in enable them to survive with the basic sustenance of their livelihood, till the SA is decided by the DRT on a date to be fixed by this Court.



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For the Petitioner : Mr.Om Prakash
Senior Counsel
for M/s.N.Nagendra Dhivyarajann

For the Respondents : Ms.Ananda Gomathy
for respondent No.1

ORDER

The prayer in the writ petition is to direct the first respondent to grant access to the petitioner and his family members to the residential part of the secured property till the disposal of the Securitisation Appeal by the Debts Recovery Tribunal-II, Chennai.

2. When the matter is taken up for hearing, learned Senior Counsel appearing for the petitioner submitted that the Securitisation Appeal was listed for hearing on 25.04.2024. Since the Presiding Officer was on leave, the matter was adjourned to 24.07.2024. In this regard, the petitioner was directed to file an affidavit of undertaking that he does not seek possession of the property, but only access to the property where his family members are residing.



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3. Learned Senior Counsel for the petitioner has also filed the affidavit of undertaking. The affidavit of undertaking is extracted hereunder for ready reference:

"I, N. Somasundaram, S/o.Mr.Nithyanandam, aged about 49 years, residing at No.22, Bharathidasan Street, Vedachalam Nagar, Kancheepuram – 631 501, having temporarily come to Chennai, do hereby solemnly affirm and sincerely state as follows:

1. I am the Petitioner herein and as such I am well acquainted with the facts and circumstances of this case. The above Writ Petition was heard by this Hon'ble Court today (29.05.2024, Wednesday) and on the basis of the submissions made in the Court, this Affidavit of Undertaking is filed.

2. I state that I have sought for the access and occupation to myself and my family, to the residential portion of the property, situate at Plot No.22, Bharathidasan Street, Vedachalam Nagar Extn, Kanchipuram, situate in Survey No.31/7D1 (As per sub-division S. No.31/7D1f as per Patta No.1758) of No.54 Sevelimedu Village,



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Kanchipuram Taluk (secured asset), to survive with the basis sustenance of our livelihood till the S.A filed before the Hon'ble DRT II, Chennai is decided. The subject property, including the two portions occupied by the tenants, was sealed on 24.04.2024 with all personal belongings and household articles kept inside. The two tenants have later vacated the portion by removing their things. I am seeking relief in respect of my residential portion alone.

3. I hereby submit that, on this Hon'ble Court granting me the relief sought for, I undertake to vacate the said premises on the sale of the subject property under the provisions of SARFAESI Act, being upheld in the pending proceedings in S.A.451 of 2023 on the file of the Hon'ble DRT II, Chennai.

4. I shall unconditionally abide by the undertaking given by this Affidavit and such other directions as may be issued by this Hon'ble Court in the above Writ Petition.

5. I therefore submit that this Hon'ble Court may be pleased to accept this Affidavit of Undertaking and pass appropriate orders in the above Writ Petition and thus render justice."



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4. Learned counsel appearing for the first respondent bank would submit that as per Section 17(3) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, "*the Act of 2002*"), the Court does not have the power to grant an interim relief till the steps that have been taken by the bank are finally set aside. She would place reliance on Section 17(3) of the Act of 2002 in order to press her arguments. She would also rely upon a judgment of the Full Bench of this Court in the case of *Lakshmi Shankar Mills (P) Ltd. and others v. The Authorised Officer/Chief Manager, Indian Bank and others*, reported in 2008-2-LW 381 and a judgment of the Division Bench of this Court in *Sri Manicka Vinayagar Spinning Mills, rep. by Joint Managing Director Vetrivel Kannan, 163, Nethaji Road, Madurai-625 001 v. Authorised Officer, State Bank of India, Circle Office, Madurai and others* (W.P.No.4048 of 2008, decided on 29.09.2008).

5. A careful perusal of the judgment of the Full Bench of this



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Court in the case of *Lakshmi Shankar Mills (P) Ltd.* (supra) would show that this Court had held that the Debts Recovery Tribunal does not have power to grant interim possession of the property pending disposal of the Securitisation Appeal. Similarly, in the case of *Sri Manicka Vinayagar Spinning Mills* (supra), this Court affirmed the order of Debt Recovery Appellate Tribunal setting aside the order of Debts Recovery Tribunal had granting interim possession of the property/management of the Spinning Mill that had been taken over by the respondent bank.

6. In this particular case, we are neither granting possession of the property which has been taken by the first respondent bank nor handing over the management of the property to the writ petitioner. However, taking into consideration (i) the extreme climate situation that is prevailing in this State; (ii) that the petitioner does not have roof over his head and he seeks only access to the property till the disposal of the Securitisation Appeal, we feel that the two judgments relied upon by the respondent bank are distinguishable on facts and are inapplicable to the present



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case.

7. We make it clear that we are not granting possession of property. All that we grant is only access and occupation of the property till the disposal of S.A.No.451 of 2023 on the file of the Debts Recovery Tribunal-II, Chennai.

8. The aforesaid order is passed *ex debito justitiae* in exercise of the discretionary powers vested with the Court. This power is not available to the Debts Recovery Tribunal, which is creature of the Act of 2002. Section 17(3) of the Act of 2002 is an interdict against the Debts Recovery Tribunal. The power of this Court under Article 226 of the Constitution of India cannot be restricted by the said enactment. We are aware that we have to take notice of the provisions of the Act while passing orders. The power of this Court though unbridled is restricted by the self-imposed restrictions that have been laid down by the Supreme Court and by this Court in several judgments.

9. Considering the fact that the petitioner does not have a



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roof over his head for himself and his family members, as an interim measure and that too till the Debts Recovery Tribunal takes a call on the Securitisation Appeal, we are inclined to grant access to the petitioner to the residential part of the property, as he pleads that all his articles are in the said portion which has been sealed by the bank. The possession that has been taken over by the bank from the tenants will continue to be with it. The legal and constructive possession of the property will be with the bank. It is made clear that the petitioner will have access and occupation of the residential part of the secured property alone. In case the Securitisation Appeal is decided against the petitioner, the petitioner shall hand over possession of the property, as per his undertaking affidavit.

10. At this juncture, learned Senior Counsel for the petitioner would state that the petitioner will deposit a sum of Rs.40.00 lakh (Rupees Forty Lakh only) by 31.05.2024 and a further sum of Rs.1.30 crore (Rupees One Crore Thirty-Lakh only) on or before 10.06.2024 to the loan account. This submission of learned Senior



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Counsel for the petitioner is recorded.

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11. It is made clear that the deposit will not create any equity in favour of the petitioner and it is only to show his bona fides to have access and occupation of the property. The deposit depends upon the further orders that would be passed by the Debts Recovery Tribunal on or before 15.07.2024.

12. We have been informed that the matter is listed before the Debts Recovery Tribunal on 24.07.2024. The Debts Recovery Tribunal-II, Chennai is requested to advance the hearing and commence the hearing on 14.06.2024 and dispose of the same on or before 15.07.2024. Both sides agree that they will appear before the Debts Recovery Tribunal-II, Chennai, on 14.06.2024. The date is fixed with the consent of both the counsel. The Debts Recovery Tribunal-II, Chennai, shall ensure that unnecessary adjournments are not granted in the matter and the final verdict is rendered on or before 15.07.2024.

13. On the petitioner depositing Rs.40.00 lakh (Rupees Forty



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Lakh only) on or before 31.5.2024, the bank shall afford access and occupation to the petitioner's residential portion alone.

14. With the aforesaid observations and directions, the writ petition is disposed of. There shall be no order as to costs. Consequently, W.M.P.No.14912 of 2024 is closed.

(J.S.N.P.,J.)

(V.L.N., J.)

29.05.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

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