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W.P.No.14203 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.14203 of 2024

and

W.M.P.Nos.15400 & 15401 of 2024

M/s.Craft Knit Garments,
A partnership firm, Represented by
its Managing Partner, M/s.K.Rangasamy,
Having its office at S.F.No.4/684,
Nochipalayam Road, Veerapandi Post,
Tiruppur – 641 605.

... Petitioner

Vs.

1.The Board of Directors of Small Industries
Development Bank of India (SIDBI)
Represented by its Managing Director
and Chief Executive Officer,
15, Ashok Marg, Lucknow,
Uttar Pradesh – 226 001.

2.Small Industries Development Bank of India (SIDBI)
Represented by its Managing Director,
15, Ashok Marg, Lucknow,
Uttar Pradesh – 226 001.



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3. Authorised Officer,
Small Industries Development Bank of India (SIDBI),
1st Floor, K.S.N.Complex,
No.J.G.Nagar, 60 Feet Road,
Tirupur – 641 602.

4. Ministry of Micro Small and Medium Enterprises,
Represented by its Secretary,
Udyog Bhawan, Rafi Marg, New Delhi,
Delhi – 110 001.

5. Union of India,
Represented by its Secretary, Department of
Financial Services, Ministry of Finance,
3rd Floor, Jeevan Deep Building, Sansad Marg,
New Delhi – 110 001.

6. Reserve Bank of India,
Represented by its Governor,
Shahid Bhagat Singh Road, Fort,
Mumbai – 400 001.

7. State of Tamil Nadu,
Represented by its Chief Secretary,
Secretariat, Chennai - 600 009.

8. Adv.C.Murali,
Advocate Commissioner appointed in
Crl.M.P.No.9554/2024 in the files of CJM Tiruppur,
Tiruppur Bar Association,
Combined Court Campus, Palladam Road,
Tiruppur, Tamil Nadu – 641 604.

... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India for the following reliefs :

- (a) to declare that the Petitioner being an MSME within the meaning of the MSMED Act of 2006 and notification dated 29.05.2015 issued by the Central Government under Section 9 thereof, as also the circulars and guidelines issued by the Reserve Bank of India under Section 10 thereof, which provides for a mechanism of resolution of stress, no proceedings for recovery under the SARFAESI Act, RDB Act, IBC, will lie, except in the manner contemplated under the said notification, in particular Paragraph 5(4)(iii) of the same.
- (b) to declare that the MSME Act in so far as it has not created a special forum/tribunals to adjudicate the inter-se rights and obligations/remedies, which it has created in addition to those rights/obligations/remedies recognized by the common law, the jurisdiction of the Civil Court is not ousted, for it is impossible to oust the jurisdiction of the Civil Court without providing for an alternative forum/tribunal to adjudicate the inter se disputes between parties who are governed by the Act;
- (c) to declare that Sections 5 and 6 of the SARFAESI Act of 2002 is unconstitutional and void in as much as it permits alienation of the properties of a secured debtor/borrower without notice him, nay, entirely behind his back, thus impinging Articles 14, 19 and 21 of the Constitution;



- (d) to declare that the entire proceedings at the hands of the Respondent No.3, Authorised Officer of the Small Industries Development Bank (SIDBI), the Chief Judicial Magistrate, Tiruppur, under Section 13(2), 13(4) and 14 of the SARFAESI, Security Interest (Enforcement) Rules, are illegal and void and to grant a consequential writ in the nature of certiorari or any other appropriate writ or order quashing and setting aside the same;
- (e) to issue a writ of certiorari calling for the entire records and proceedings at the hands of the Authorized Officer u/s 13(2), 13(4), and the Magistrate under 14 of the SARFAESI Act and to quash and set aside the same as being without jurisdiction, in violation of fundamental principles of judicial procedure and most importantly, being in violation of Articles 14, 19 and 21 of the Constitution;
- (f) to issue a writ of mandamus, nay certiorarified mandamus directing Respondent no.1, Board of directors of the SIDBI to constitute a committee for the resolution of the stress in the unit of the Petitioner Company, an MSME, as contemplated in paragraph 2 of the notification dated 29.5.2015 issued under the MSMED Act, and further to direct the Committee to resolve the stress in accordance with the said notification and such other relevant notifications/regulations framed by the RBI;
- (g) to issue a writ of prohibition restraining and prohibiting the Respondent Bank from initiating or continuing any measures for recovery under any law, in particular, Sections 5.5, 6, 13 and 14 of



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SARFAESI Act / RDBA and the rules made thereunder, and in particular the sale of the Petitioner;s property.

For Petitioner : Mr.Maria Nedumpara K.
For R1 to R3 : Mr.Anand Samy & Dhurva
For R5 : Mr.S.Janarthanam
Senior Panel Counsel
For R6 : Mr.C.Mohan
& M/s.A.Rexy Josephine Mary
for M/s.King & Partridge

ORDER

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

The petitioner is a partnership firm which is engaged in manufacturing garments. The petitioner industry is also registered under the Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as “MSMED Act” for brevity). The Registration Certificate produced by the petitioner is valid upto 30.06.2022. The 1st respondent, Small Industries Development Bank of India (hereinafter referred to as “SIDBI”) is one of the principal financial institution for promotion, financing and development of micro small and medium enterprises sector.



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2.The petitioner availed credit facilities with the Union Bank of India which was later taken over by the 1st respondent. It is stated by the petitioner that a sum of Rs.3,85,00,000/- was obtained as loan by offering an extent of 59 Cents of non-agricultural property of the petitioner. It is admitted that the petitioner committed default in payment of installments. Therefore, the petitioner's account was declared as NPA on 10.04.2017. Thereafter, further proceedings under SARFAESI Act were initiated. It is also indicated that, as on date, the liability is more than Rs.9,00,00,000/-. A demand notice under Section 13(2) of the SARFAESI Act was issued on 28.06.2017. Thereafter, symbolic possession under Section 13(4) of SARFAESI Act was taken on 05.09.2017.

3.The petitioner earlier filed a writ petition in W.P.No.24067 of 2023 for issuance of a Writ of Certiorari to call for the proceedings classifying the petitioner's loan account as NPA, demand notice dated 28.06.2017 and possession notice dated 05.09.2017 and quash the same. The challenge to the proceedings under SARFAESI Act was mainly on the ground that the



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petitioner, as a MSME which comes under the purview of the MSMED Act, is entitled to protection under the notification issued vide S.O.1432(E), dated 29.05.2015 under the provisions of the MSMED Act. In other words, it was contended that the notification under MSMED Act prescribes certain procedure for rehabilitation and restructuring of the industries registered under the Act and that the respondents cannot proceed under the SARFAESI Act without any attempt to rehabilitate the petitioner industry and restructure the loan. The said writ petition was contested by the respondents referring to the continuous default committed by the petitioner and the attempt made by the petitioner and the sons of the partners in filing Civil Suit and taking other actions to prevent recovery of dues by resorting to the modes under SARFAESI Act. It was pointed out by the respondents therein that an e-auction notice was issued earlier on 30.12.2022, and the petitioner challenged the same in S.A.No.64 of 2023 before the Debt Recovery Tribunal, Coimbatore. Since the petitioner did not comply with the conditions imposed for grant of stay, the Bank proceeded with the sale. However, there were no bidders and therefore, the sale did not happen. It was contended by the respondent Bank that they had already formed a



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Committee vide its Circular No.11/2016-17, dated 07.10.2016 and 01.12.2016. Stating that the said framework under MSMED Act is only optional, the respondents pointed out that the petitioner did not approach the Bank for restructuring under the Act. It was also contended by the respondent Bank that the account of petitioner was declared NPA long back and the petitioner had already wound up its business. Hence, there is no scope for considering the petitioner's eligibility for rehabilitation.

4. After hearing elaborately the learned counsel for the petitioner and the learned counsel for the respondents, the Division Bench, referring to judgment of the learned Single Judge of Kerala High Court in ***N.P.Abdul Nazer v. Union Bank of India and another*** reported in ***CDJ 2023 KerHC 911*** and the judgment of the Division Bench of Bombay High Court in ***M/s.A.Navinchandra Steels Pvt. Ltd., Mumbai and others v. Union of India and others*** reported in ***CDJ 2024 BHC 054*** and a few other judgments relied upon by the learned counsel appearing for the RBI, recorded a finding that the specific contention of the learned counsel appearing for the respondents that the business operations of the petitioner came to an end and



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there is no scope for rehabilitation and restructuring, was not refuted by the petitioner. It is also to be noted that the Division Bench also took note of the fact that there is no consequential prayer either for restructuring or rehabilitation by the petitioner. The Hon'ble First Bench doubted the *bona fides* of the petitioner, and ultimately dismissed the writ petition in W.P.No.24067 of 2023, giving liberty to the petitioner to raise all issues before the Debt Recovery Tribunal to be decided by the Debt Recovery Tribunal, Coimbatore.

5. Therefore, the question whether rehabilitation and restructuring of MSME under the notification, dated 29.05.2015, is a mandatory pre-requisite before initiating proceedings under SARFAESI Act or is it only optional which should be exercised only on the application of the parties, has also been relegated to the Tribunal, even though *bona fides* and legality of the petitioner's contentions was not accepted.



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6.The earlier writ petition in W.P.No.24067 of 2023 was dismissed as cited above on 06.03.2024. The petitioner has not preferred any Special Leave Petition as against the order dated 06.03.2024 in W.P.No.24067 of 2023. Therefore, we presume that the order dated 06.03.2024 is final.

7.Now, the petitioner has filed the present writ petition with multiple prayers which are as follows :

- (a) to declare that the petitioner being an MSME within the meaning of the MSMED Act of 2006 and notification dated 29.05.2015 issued by the Central Government under Section 9 thereof, as also the circulars and guidelines issued by the Reserve Bank of India under Section 10 thereof, which provides for a mechanism of resolution of stress, no proceedings for recovery under the SARFAESI Act, RDB Act, IBC, will lie, except in the manner contemplated under the said notification, in particular Paragraph 5(4)(iii) of the same.
- (b) to declare that the MSME Act in so far as it has not created a special forum/tribunals to adjudicate the inter-se rights and obligations/remedies, which it has created in addition to those rights/obligations/remedies recognized by the common law, the jurisdiction of the Civil Court is not ousted, for it is impossible to oust the jurisdiction of the Civil Court without providing for an alternative forum/tribunal to adjudicate the inter se disputes between parties who



are governed by the Act;

- (c) to declare that Sections 5 and 6 of the SARFAESI Act of 2002 is unconstitutional and void in as much as it permits alienation of the properties of a secured debtor/borrower without notice him, nay, entirely behind his back, thus impinging Articles 14, 19 and 21 of the Constitution;
- (d) to declare that the entire proceedings at the hands of the Respondent No.3, Authorised Officer of the Small Industries Development Bank (SIDBI), the Chief Judicial Magistrate, Tiruppur, under Section 13(2), 13(4) and 14 of the SARFAESI, Security Interest (Enforcement) Rules, are illegal and void and to grant a consequential writ in the nature of certiorari or any other appropriate writ or order quashing and setting aside the same;
- (e) to issue a writ of certiorari calling for the entire records and proceedings at the hands of the Authorized Officer u/s 13(2), 13(4), and the Magistrate under 14 of the SARFAESI Act and to quash and set aside the same as being without jurisdiction, in violation of fundamental principles of judicial procedure and most importantly, being in violation of Articles 14, 19 and 21 of the Constitution;
- (f) to issue a writ of mandamus, nay certiorarified mandamus directing Respondent no.1, Board of directors of the SIDBI to constitute a committee for the resolution of the stress in the unit of the Petitioner Company, an MSME, as contemplated in paragraph 2 of the notification dated 29.5.2015 issued under the MSMED Act, and



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further to direct the Committee to resolve the stress in accordance with the said notification and such other relevant notifications/regulations framed by the RBI;

(g) to issue a writ of prohibition restraining and prohibiting the Respondent Bank from initiating or continuing any measures for recovery under any law, in particular, Sections 5.5, 6, 13 and 14 of SARFAESI Act / RDBA and the rules made thereunder, and in particular the sale of the Petitioner;s property.

8.A detailed common counter affidavit is filed by the respondents 1 to 3. Learned counsel appearing for the 6th respondent also made his elaborate submissions.

9.Mr.Dhurva, learned counsel appearing for the respondents 1 to 3, referring to the previous writ petition and the order passed by this Court, raised a preliminary objection as to the maintainability of the second writ petition on the principle of *res judicata* as well as constructive *res judicata*. He also referred to the antecedents and the vexatious nature of claims at every stage of proceedings initiated under SARFAESI Act. It is contended by the learned counsel that the petitioner has come forward with unclean hands with ulterior motive, as their GST registration had been cancelled *suo*



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motu and became inactive even in 2017 itself. Since the entire business of the petitioner had been shut down long back and the petitioner has not been submitting the balance sheet and other returns as per the terms of the loan agreement, the learned counsel submitted that the petitioner's claim for any protection under the garb of MSMED Act is ridiculous, specious and uncalled for. Referring to the conduct of the petitioner, its Managing Partners and their family members, the learned counsel submitted that the writ petition is nothing but one another delaying device to dodge and thwart every genuine effort of the respondent Bank in recovering its dues since 2017. It is specifically pleaded in the counter affidavit that the petitioner, who had availed loan of Rs.385 Lakhs during the year 2016, has paid only four initial monthly installments upto December, 2016, aggregating to Rs.9,00,000/- towards principal outstanding. Therefore, the learned counsel described the petitioner as a chronic defaulter whose intention was never to run the industry by availing certain benefits as a *bona fide* borrower. The learned counsel further submitted that the petitioner is not even eligible, even on the admitted facts, to seek any assistance for rehabilitation of the industry or restructuring of loan. The learned counsel, while refuting the



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averments of the petitioner made in the affidavit filed in support of the writ petition, submitted that none of the prayers sought for by the petitioner is maintainable.

10.The learned counsel for the respondents 1 to 3 further submitted that a plain perusal of the correspondences between the petitioner and the respondent Bank and the documents filed in O.A.No.100 of 2018 on the file of Debt Recovery Tribunal, Coimbatore, would reveal the falsity of the case pleaded by the petitioner. It is submitted by the learned counsel that, having deliberately failed to repay the loan, the petitioner is not entitled to any indulgence from this Court. The respondent Bank have also indicated in their counter affidavit how they were prevented from taking physical possession, by the petitioner who had amassed a group of assailants. A further averment is made against the petitioner by the respondents in the counter affidavit that the petitioner has willfully created a third party right by allowing one P.Vidhyaprakash, the sole Proprietor of M/s.T.S.S.Knitwear, to enter the First floor of the business premises of the petitioner, and to illegally operate an export garment business there. It is also pointed out that



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the said third party, who had agreed to hand over possession by 15.06.2024, has refused to vacate.

11.Learned counsel appearing for the 6th respondent has also relied upon a few judgments of Hon'ble Supreme Court mainly for the proposition how the writ petition is barred by principles of *res judicata* and constructive *res judicata*.

12.When confronted how the second writ petition is maintainable on the same cause of action, Mr.Maria Nedumpara K., learned counsel for the petitioner, submitted the following :

- a) In the earlier writ petition, the issue raised by the petitioner was not decided on merits and therefore, the earlier decision will not operate as *res judicata* to canvass the point on merits.
- b) The petitioner, in the present writ petition, has added some factual aspects and certain legal principles.
- c) The petitioner is entitled to enforce its right under the MSMED Act invoking the jurisdiction of this Court once again, by bringing to the



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notice of this Court that the interest of justice requires this Court alone to adjudicate the validity of the plea of petitioner in terms of notification dated 29.05.2015.

- d) There is no estoppel against law and therefore, the Doctrine of *res judicata* as a bar applies only when there is decision on facts and merits and it does not affect the legal right of the petitioner.

13.The learned counsel for the petitioner went to the extent of stating that, even for arguments sake, if there was an adjudication in the previous writ petition on the question of law, it would not constitute a bar, as it is the fundamental principle of law that there can be no estoppel against law. Since the proceedings initiated under the SARFAESI Act in toto is illegal, the learned further submitted that the entire proceedings initiated under SARFAESI Act, including the order passed by the learned Chief Judicial Magistrate, is a nullity, as the Tribunal has no power to sideline the proceedings which ought to have been initiated at the instance of the respondent Bank.



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14.Learned counsel appearing for the petitioner relied upon a judgment of the Hon'ble Supreme Court in ***A.R.Antulay v. R.S.Nayak and another*** reported in ***(1988) 2 SCC 602***, where, the Constitution Bench of Hon'ble Supreme Court has observed that “*Powers of review can be exercised in a petition filed under Article 136 or Article 32 or under any other provision of the Constitution if the Court is satisfied that its directions have resulted in the deprivation of the fundamental rules of a citizen or any legal right of the petitioner*”. The learned counsel for the petitioner relied upon another judgment of Hon'ble Supreme Court in ***Mafatlal Industries Ltd. and others v. Union of India and others*** reported in ***(1997) 5 SCC 536***, where, the Hon'ble Supreme Court has held that a suit or petition under Article 226 of Constitution of India is maintainable to assail the levy or order which is unconstitutional, illegal, void or unauthorised or without jurisdiction. In this case, the respondent Bank has initiated recovery proceedings which was authorized under Section 13 of SARFAESI Act.

15.Learned counsel appearing for the petitioner, though referred to



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several principles which have no application in the context, did not produce any authority to overcome the principle of *res judicata*.

16.The principle of *res judicata* is founded on equity, justice and good conscience. It has been repeatedly held in several cases that Section 11 of Code of Civil Procedure is not the real basis of the Doctrine. Section 11 of CPC is nothing but a statutory recognition of the Doctrine which rests on public policy, particularly, following two principles i.e., to give finality to judicial decisions, and to avoid frivolous and multifarious re-litigations. The idea that there must be a finality to litigation and the principle that no man can be vexed twice for the same cause were adopted by law Courts long before and this principle evolved as a Doctrine applied by law Courts in the larger interest of public.

17.The principle of constructive *res judicata* is embodied in Explanation IV to Section 11 of CPC. Every ground or issue which could and ought to have been raised and advanced in support of one's claim shall be deemed to have been adjudicated upon against the person whether it was



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actually urged or not. The judgment of the Constitution Bench of Hon'ble Supreme Court in the case of ***Devilal Modi v. States Tax Officer, Ratlam and others*** reported in ***AIR 1965 SC 1150*** was followed and explained later by a three member Bench of Hon'ble Supreme Court in the case of ***State of U.P. v. Nawab Hussain*** reported in ***(1977) 2 SC 806***, wherein, it is held that principle of constructive *res judicata* is applicable to writ petitions. The Hon'ble Supreme Court further observed that the Doctrine is based on two theories (i) the finality and conclusiveness of judicial decisions in the general interest of the community as a matter of public policy, and (ii) the interest of the individual litigants who should also be protected from multiplication of litigation. Another three member Bench of Hon'ble Supreme Court in the case of ***Forward Construction Co. and others v. Prabhat Mandal (Regd.) and others*** reported in ***(1986) 1 SCC 100***, has also held that the principle of constructive *res judicata* is applicable to writ petitions. It is explained in the said judgment that, where the parties have had an opportunity to controvert a matter, that should be taken to be the same thing as if the matter had been actually controverted and decided. It is categorically held that the judgment of High Court in the earlier writ petition



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would operate as *res judicata* even where one of the grounds taken in the subsequent writ petition before the High Court was absent in the earlier writ petition.

18. In this case, the issue previously considered was also whether the petitioner is entitled to canvass its contentions relying upon the provisions of MSMED Act and the notification dated 29.05.2015. Even though issue whether rehabilitation or restructuring is optional or mandatory was not decided earlier, the decision that the petitioner's remedy is to raise these issues only before the Debt Recovery Tribunal where he has challenged the proceedings initiated under the SARFAESI Act, has become final. Therefore, the petitioner cannot again reiterate the same in this re-litigation. In the counter affidavit filed by the respondents 1 to 3, it is categorically pointed out that the petitioner has committed default even from 2017 and that the contention of respondent Bank that the petitioner is not in business as seen from the balance sheet and tax filings in terms of loan agreement, have not been denied. The fact that the petitioner has borrowed a sum of



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Rs.385 Lakhs in 2017, but has repaid only Rs.9 Lakhs in a period of 7 years, shows that the petitioner is a chronic defaulter. It is to be noted that the respondents, in the counter affidavit, have also referred to the fact that one P.Vidhyaprakash, Proprietor of M/s.T.S.S.Knitwear had entered into tenancy and was allowed to operate garments export business in the same premises. It is stated by the respondent Bank that, at the request of the third party, time was given to vacate the premises by 15.06.2024. Hence, the petitioner is not in business. No material is produced before this Court to suggest that anytime earlier, the petitioner while operating his business had approached the respondent Bank for rehabilitation or restructuring.

19.The notification, dated 29.05.2015, relied upon by the learned counsel for the petitioner refers to an application to the Committee by the eligible micro small and medium enterprise or Bank or Creditor which has provided credit facilities to such enterprise. From the notification, we are unable to see any requirement of Banks to voluntarily resort to rehabilitation of industry or restructuring of loan, or any mandate for the Committee to initiate proceedings for corrective action plan. The restructuring case can be



taken up by the Committee only in respect of assets reported as Standard, Special Mention Account or Sub-Standard by one or more lenders of the Committee. The willful defaulters are not eligible for restructuring. The Committee has the absolute discretion to consider the restructuring of the debt where the debt is doubtful. Further, the notification also refers to the eligibility of industries. Finally, there must be initiation by the petitioner to avail the benefit of rehabilitation or restructuring. Going by the admitted facts, the Bank was never in a position to consider a reference to the Committee.

20. The petitioner whose account was declared NPA in 2017, did not give any representation. Reason is obvious. The petitioner has practically closed down the business and never shown any interest to run the industry. The few facts which are stated in the counter affidavit filed by the respondent Bank would show beyond reasonable doubt that there is no *bona fides* or truth in any of the contentions raised by the petitioner requiring this Court to examine and decide the issue on merits. In the absence of any material produced before this Court to project/justify the idea of



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rehabilitation, this litigation is nothing but a vexatious re-litigation. The petitioner, who relied upon the notification which was issued under MSMED Act, has not satisfied this Court as to how it is eligible for rehabilitation. As a matter of fact, the learned counsel appearing for the petitioner has not even made an attempt to convince this Court by referring to the provisions of the notification, from where, according to him, the Bank is under legal obligation to resort to rehabilitation and restructuring before initiating proceedings under SARFAESI Act. Though this Court observed in the earlier writ petition that there is no scope for rehabilitation at this length of time and the petitioner did not pray for any consequential prayer, gave liberty to agitate the point before Tribunal in the pending Original Application. The decision in the earlier writ petition will operate as *res judicata* to maintain this writ petition on the same cause raising same points with additions. This Court is compelled to describe this writ petition as re-litigation and hence, unsustainable. Prayer (a) is barred by principle of constructive *res judicata*. Prayer (b) is couched to seek a declaration that civil Court's jurisdiction is not ousted to adjudicate *inter se* rights and obligations/remedies which is created under MSMED Act. When we



examine the general averments in Para 10 to 13 of the affidavit, this Court is unable to find any relevance to the petitioner's case. The petitioner who is a defaulter and who has not made an attempt at the initial stage for revival immediately after his account was classified as NPA, is now making a huge cry when the liability has gone high. Having regard to the statement of objects and reasons of MSMED Act, 2006, this Court examined every provision of the Act. The scope and object of the MSMED Act does not contemplate any interplay with SARFAESI Act. MSMED Act does not control or override the provisions of SARFAESI Act and the argument based on subordinate legislation, namely, the notification issued under MSMED Act, has no legal basis. SARFAESI Act, 2002, is upheld by Hon'ble Supreme Court in *Mardia Chemicals Ltd. v. Union of India* reported in **2004 (4) SCC 311** and the petitioner challenges the same ignoring Rule 8 and Rule 9 of Security Interest (Enforcement) Rules, 2002. Hence, prayer (c) does not survive. Prayer (d), (e) and (g) are barred by principles of *res judicata*. Prayer (f) is highly belated and liable to be dismissed on the ground of delay and laches, particularly where the petitioner's attempt is to reset the clock without *bona fides*. The petitioner has filed the writ petition



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for multiple reliefs by paying single Court fee.

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21.Learned counsel appearing for the petitioner has exhibited a peculiar style by reiterating his arguments ignoring and unmindful of all the relevant questions that are put forth by Court either on facts or on legal principles. Except citing the two judgments as referred to above, the learned counsel for the petitioner did not rely upon any other judgment, even though he argued as if the law is settled in his favour. This Court granted sufficient time to substantiate the points raised. It is also to be noted that the matter was moved before Vacation Court and at request, it was posted before us on 03.06.2024. Thereafter, the matter was adjourned to 06.06.2024. On 06.06.2024, the learned counsel on record made his submissions. Though this Court was not convinced to admit the writ petition in view of the order passed by the Bench in the earlier writ petition filed on the same cause, the learned counsel took an adjournment under the pretext that he would come with judicial precedents to support his arguments. Thereafter, this Court adjourned the matter at the instance of the learned counsel for the petitioner, despite serious objections being raised by the learned counsel appearing on



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the other side. Finally, the matter was heard on 22.07.2024. The learned counsel, who was appearing through video conference, repeated the same arguments which he had advanced earlier before this Court which we could not accept. It is sad to record that the counsel on record was not inclined to permit us to lead him on important issues we have raised. Ultimately, we had to close the arguments of learned counsel appearing for the petitioner as no new point was urged in the course.

22.The petitioner, who is a chronic defaulter, has challenged the proceedings before the Tribunal. A Civil Suit is pending at the instigation of the sons of partners of the petitioner who have made independent claims that the properties mortgaged are ancestral properties in which they are entitled to an undivided share. The purpose of this litigation is to just prevent the respondent Bank from taking possession and to proceed with the sale, for no acceptable reason. This litigation is not only vexatious, but an abuse of process of law. The petitioner has filed this vexatious litigation with ulterior motive and in the process, has put the interest of the Bank at stake. This re-litigation for the same cause of action cannot be permitted. Therefore, this



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writ petition is devoid of merits and is liable to be dismissed. This Court, though was inclined to impose a cost of Rs.5,00,000/-, taking into consideration the fact that this re-litigation appears to be a move by the borrower out of frustration, reduce the cost.

23. Therefore, the writ petition is dismissed with cost of Rs.50,000/- (Rupees Fifty Thousand only) payable to the Tamil Nadu State Legal Services Authority, Chennai, within a period of two weeks from the date of receipt of a copy of this order. Connected miscellaneous petitions are closed.

24. Post the matter after two weeks under the caption “for reporting compliance”.

**(S.S.S.R., J.) (N.S., J.)
22.07.2024**

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



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- 1.The Managing Director and Chief Executive Officer,
Board of Directors of Small Industries
Development Bank of India (SIDBI)
15, Ashok Marg, Lucknow,
Uttar Pradesh – 226 001.
- 2.The Managing Director,
Small Industries Development Bank of India (SIDBI)
15, Ashok Marg, Lucknow,
Uttar Pradesh – 226 001.
- 3.The Authorised Officer,
Small Industries Development Bank of India (SIDBI),
1st Floor, K.S.N.Complex,
No.J.G.Nagar, 60 Feet Road,
Tirupur – 641 602.
- 4.The Secretary,
Ministry of Micro Small and Medium Enterprises,
Udyog Bhawan, Rafi Marg, New Delhi,
Delhi – 110 001.
- 5.The Secretary, Department of Financial Services,
Ministry of Finance, Union of India,
3rd Floor, Jeevan Deep Building, Sansad Marg,
New Delhi – 110 001.
- 6.The Governor,
Reserve Bank of India,
ShahidBhagat Singh Road, Fort,
Mumbai – 400 001.



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7. The Chief Secretary,
State of Tamil Nadu,
Secretariat, Chennai - 600 009.

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

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