



WEB COPY



W.P.No.23555 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

CORAM :

THE HON'BLE MR. D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

and

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.23555 of 2024 and

WMP No.25765 of 2024

1. S.Sibhe

2. Minor V.S.Varsiya, rep. by her
next friend, guardian, paternal grandfather
K.Periyasamy

... Petitioner

Vs.

1. S.P.Suresh Kumar

2. C.Vanitha

3. The Authorized officer cum principal Manager,
Canara Bank, Mid Corporate Branch,
Salem.

4. Canara Bank, Mid Corporate Branch,
Salem.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India seeking to issue a writ of mandamus, directing the respondents 3 and 4



W.P.No.23555 of 2024

from dealing with the petitioners' properties and machineries with other landed properties was once owned by the petitioners' family into to including the 2/3 share of the petitioners pursuant to the memorandum of deposit of title deeds dated 20.12.2018.

For Petitioners : Mr. P.Ganesan

For respondents : Mr.M.A.Abdul Wahab for fourth respondent

ORDER

(Order of the Court was made by the Hon'ble Acting Chief Justice)

This writ petition has been filed to direct the respondents 3 and 4 from dealing with the properties and machineries with other landed properties, including the 2/3 share of the petitioners thereon, pursuant to the memorandum of deposit of title deeds dated 20.12.2018.

2. The case of the petitioners is that, they are sister and brother and their parents, namely first and second respondents have obtained loan by mortgaging the joint family properties with the third and fourth respondents to purchase the machineries for their business. Subsequently, in view of the default committed by them in paying the loan amounts, the respondents 3 and 4 have taken steps to take possession of the properties under the



W.P.No.23555 of 2024

SARFAESI Act. According to the petitioners, the respondents 1 and 2 have no right to mortgage the properties, including the shares of the minor petitioners and for the same, the respondents have no legal right to deal with the properties, in pursuant to the memorandum of title deeds. Further, they filed a suit in O.S.No.57 of 2023 for partition of the properties and the same is pending before the District Court, Namakkal. While so, the respondents 3 and 4 have obtained order under Section 14 of SARFAESI Act to take possession of the properties and hence this writ petition has been filed.

3. Mr.M.A.Abdul Wahab, learned counsel takes notice for the fourth respondent and submitted that, already, the petitioners have filed a civil suit in O.S.No.57 of 2023 seeking partition of the properties before the District Judge, Namakkal and the same is pending.

4.The Writ petitioners, aggrieved by the proposed action to be taken by the respondents 3 and 4 under SARFAESI Act, have filed the present writ petition. At this juncture, it is useful to refer the decision of the Hon'ble Supreme Court in **Phoenix ARC Private Limited Vs. Vishwa Bharati**



W.P.No.23555 of 2024

Vidya Mandir & Ors. reported in 2022 Live Law SC 45, wherein, it is observed as follows.

13.2 Applying the law laid down by this Court in the case of **Mathew K.C. (supra)** to the facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the Court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed herein above, even assuming that the communication dated 13.08.2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with

respect to the possession of the secured properties on payment of Rs.1 crore only (in all Rs.3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs.117 crores. The ad-interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the SARFAESI Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of Court. It appears that the High Court has initially granted an ex-parte ad-interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted



WEB COPY



W.P.No.23555 of 2024

by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed.

The petitioners are having alternative remedy and they can approach the Debt Recovery Tribunal under the Provisions of the SARFAESI Act, however, without availing the statutory remedy before the appellate forum, have filed the writ petition under Article 226 of the Constitution of India. As such, in the light of the decision of the Hon'ble Supreme Court, as stated supra and also considering the fact that a civil suit with regard to the properties in question is pending before the District Court, Namakkal, we are not inclined to entertain this writ petition.

5. Accordingly, this writ petition is dismissed. There shall be no order as to costs. No costs. Connected W.M.P.No.25765 of 2024 is closed.

(D.K.K., A.CJ.)

(P.B.B.J.)

Internet: Yes/No

Index : Yes/No

mst

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W.P.No.23555 of 2024

To

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Canara Bank, Mid Corporate Branch,
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THE HON'BLE ACTING CHIEF JUSTICE

and

P.B.BALAJI, J.

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