



W.P.No.22827 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM :

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

and

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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P.Krishnakumar

... Petitioner

Vs.

1.The Branch Manager,
DBS Bank Ltd., (Erstwhile Lakshmi Vilas Bank),
Dharmapuri Branch, 9-C, Nethaji Bye-pass Road,
Hotel Agarwal Bavan Building,
Dharmapuri 636 701.

2. Ms.R.Jayalakshmi,
Advocate Commissioner,
VH44 Thadangam, Dharmapuri 636 705. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India seeking to issue a writ of mandamus, restraining the respondents from taking possession of the property of the petitioner, without a valid warrant and proper notice to him.

For Petitioner : Mr.S.Shunmuga Raja



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ORDER

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This writ petition has been filed by the petitioner to restrain the respondents from taking possession of the property of the petitioner, without a valid warrant and proper notice to him.

2. The petitioner along with his family members had three accounts viz. i) Overdraft Account of Sri Krishna Exports, ii) Overdraft Account of Sri Kalai Krishna Plastic Industry and iii) Term Loan Account with the respondent. Due to heavy loss in the business, the said three accounts were classified as non performing asset on 13.04.2018, 25.04.2019 and 22.04.2019 respectively. The first respondent initiated recovery proceedings against the petitioner before the Debt Recovery Tribunal-III, Chennai by filing OA No.379/2019 and O.A.No.483/2019 and the same are pending. Simultaneously, the first respondent has initiated SARFAESI proceedings also against the petitioner and issued demand notice under Section 13(2) and subsequently issued possession notice under Section 13(4) Rule 8 and took symbolic possession of the properties. Further the first respondent initiated proceedings under Section 14 of SARFAESI Act and filed MP



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No370/2020 before the Chief Judicial Magistrate, Dharmapuri for taking physical possession of mortgaged property, wherein, the second respondent was appointed as Advocate Commissioner to take possession of the property. When the validity of the warrant had expired on 24.03.2021, the first respondent, without issuing any notice, had intimated the occupants of the building that they are going to take physical possession of the property. Hence this petition has been filed.

3. Heard the learned counsel for the petitioner and we have perused the materials on record.

4. The Writ petitioner, aggrieved by the proposed action to be taken by the respondent under SARFAESI Act, has 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 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



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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 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.



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The petitioner without availing the statutory remedy before the appellate forum, has filed the writ petition under Article 226 of the Constitution of. As such, in the light of the decision of the Hon'ble Supreme Court, as stated supra, we are not inclined to entertain this writ petition.

5. Accordingly, this writ petition is dismissed. No costs.

(D.K.K., A.CJ.) (P.B.B.J.)

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THE HON'BLE ACTING CHIEF JUSTICE

and

P.B.BALAJI, J.

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