IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM:

THE HON'BLE MR. D. KRISHNAKUMAR, ACTING CHIEF JUSTICE
and
THE HONOURABLE MR. JUSTICE P.B. BALAJI

W.P. No.24658 of 2024 and W.M.P. No.26980 of 2024

Sri Venkatachalapathy Traders
represented by its Proprietor
A. Rajavel
No.6, Cuddalore Main Road
Keel Bhuvanagiri
Chidambaram Taluk, Cuddalore 608 601 Petitioner

v

1. The Presiding Officer
Debts Recovery Tribunal II, Chennai

2. The Authorised Officer
DBS Bank India Ltd.
No.199-205, Rangapillai Street
Pudhucherry 605 001
For Lakshmi Vilas Bank Ltd.
(Now part of DBS Bank India Ltd.) Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the second respondent bank to deseal the house premises situated at Survey No.154/4 bearing Door No.6, Cuddalore Main Road, Keel Bhuvanagiri, Chidambaram Taluk, Cuddalore 608 601.

For petitioner Mr. M.D. Thirunavukkarasu

R1	Tribunal
For R2	Mr. L. Thiyagaiya M/s. Surya Associates

ORDER

(made by the Hon'ble Acting Chief Justice)

This writ petition has been filed seeking a writ of mandamus directing the second respondent bank to deseal the premises situated at Survey No.154/4 bearing Door No.6, Cuddalore Main Road, Keel Bhuvanagiri, Chidambaram Taluk, Cuddalore 608 601.

2. The facts leading to the filing of this writ petition are succinctly given as under:

2.1 By mortgaging his house property, the petitioner availed a loan of Rs.70 lakhs from the second respondent bank and owing to his default in repayment of the said loan, the petitioner's account was declared as Non Performing Asset (NPA) and consequently, the second respondent bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, for recovery of a sum of Rs.75.27 lakhs and odd as on 14.11.2021, together with interest.

2.2 On account of the petitioner's failure to settle the loan account, the second respondent took recourse to Section 13(4) of the SARFAESI Act and took symbolic possession of the secured asset. The second respondent bank further filed an application under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate, Cuddalore, seeking to take physical possession of the secured assets which was allowed *vide* order dated 16.05.2023. The said order was put to challenge in S.A. No.247 of 2023 before the Debts Recovery Tribunal-II, Chennai, in which, interim stay was granted on condition that the petitioner pays a sum of Rs.25.50 lakhs in three instalments and in the event of the petitioner's failure, the second respondent bank shall proceed further in accordance with law.

2.3 Since the petitioner chose to remain absent for subsequent hearings, the SARFAESI Application was dismissed for non prosecution. Subsequently, the second respondent took physical possession of the property in question.

2.4 In this backdrop, this writ petition has been filed seeking the relief sought in the opening paragraph.

3. Today, when this writ petition was taken up for hearing, the learned counsel for the petitioner submitted that pursuant to the direction issued by this Court, the petitioner has repaid a sum of Rs.20 lakhs and only a sum of Rs.49 lakhs is due.

4. However, the aforesaid submission of the learned counsel for the petitioner is refuted by the learned counsel for the second respondent bank, according to whom, the total outstanding amount pertaining to two loans works out to Rs.94,80,747/-.

5. In view of the above, it is clear that the submission of the learned counsel for the petitioner that only a sum of Rs.49 lakhs is outstanding is incorrect.

6. Be that as it may, it is submitted by the learned counsel for the second respondent bank that if the petitioner approaches with a *bona fide* intention for one time settlement, the second respondent bank will consider the petitioner's claim as per norms.

7. Given the penurious state of the petitioner as claimed by him and considering the offer made by the learned counsel for the second respondent bank *qua* one time settlement, it is for the petitioner to approach the second respondent bank for one time settlement and clear the outstanding loan amount. While observing so, this Court makes it clear that this Court is not issuing any positive direction in this regard. In the event of the petitioner approaching the second respondent bank, the latter shall consider the petitioner's claim as per norms. Further, in view of the one time settlement offer made by the learned counsel for the second respondent bank, the second respondent bank shall return the sum of Rs.20 lakhs paid by the petitioner pursuant to the direction of this Court.

D. KRISHNAKUMAR, A.C.J.

and

P.B. BALAJI, J.

cad

This writ petition stands dismissed on the above terms. No costs. Connected W.M.P. is closed.

(D.K.K., A.C.J.) (P.B.B., J.)
02.09.2024

cad

To

The Authorised Officer
DBS Bank India Ltd.
No.199-205, Rangapillai Street
Pudhucherry 605 001
For Lakshmi Vilas Bank Ltd.
(Now part of DBS Bank India Ltd.)

W.P. No.24658 of 2024