



WP No.29362 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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Incred Financial Services Ltd.
formerly Visu Leasing & Finance Ltd.
rep. by its Authorised Officer : Petitioner

versus

1.The Chief Judicial Magistrate,
Salem District 636007

2.ARS Trust
rep. by its Chairman
P.R.Mohanaaraam

3.Pennadam Rajagoplan Manohar

4.Mohanaraam Kumutha

5.Mohana Raam Harsayan : Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling the order in Crl.M.P.No.544/2022 dated 31/5/2023 on the file of Chief Judicial Magistrate Salem and quash the same and further direct the first respondent to allow the Crl.M.P.No.544/2022 filed under Section 14 of the SARFAESI Act by appointing an advocate Commissioner to take possession of the property mentioned therein with the aid of the Inspector of Police



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Magudanchavadi Police Station Salem District and hand over the same to the Authorised Officer of the Petitioner Company.

For Petitioner : Ms.Srividhya Aravindan

For Respondents 2-5 : Mr.J.Prithivi

ORDER

(Made by the Hon'ble Chief Justice)

We have heard Ms.Srividhya Aravindan, learned counsel for the petitioner and Mr.J.Prithivi, learned counsel for respondents 2 to 5.

2. The application filed by the petitioner under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is rejected. Aggrieved thereby, the present writ petition is filed.

3. The application filed by the petitioner under Section 14 of the Act of 2002 is rejected on two counts: (i) the land is an agricultural land and as such, provisions of the Act of 2002 do not apply; (ii) there is discrepancy in the accounts.



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4. According to the learned counsel for the petitioner, loan was given for the construction of a college building on the said land. The schedule attached to the memorandum of mortgage, so also the loan sanction documents, specify the purpose of the loan.

5. According to learned counsel for respondents 2 to 5, the accounts filed by the petitioner are incorrect. The amount outstanding as on the date of filing of the petition has to be mentioned. The deposit of amount by respondents 2 to 5 of Rs.20,00,000/- (Rupees Twenty Lakh only) after the account was declared as non-performing asset is suppressed. As such, the accounts were illegal. The same has been rightly observed by the Chief Judicial Magistrate. The sale deed, by virtue of which the land was purchased, also denotes the land as an agricultural land. The building is constructed to the extent of 20,000 sq.ft. The rest of the land is still utilised for agricultural operations.

6. We have considered the submissions made by the parties.

7. The loan, it appears, has been given for construction of a



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college building. Once the land is being used for a non-agricultural purpose, it would lose its character of an agricultural land. However, the same will have to be considered by the Chief Judicial Magistrate. The Chief Judicial Magistrate will have to consider the position as on the date of filing of the application.

8. The petitioner also will have to submit true and correct accounts to the Chief Judicial Magistrate.

9. It appears that the Chief Judicial Magistrate proceeded only on the basis of the sale deed without considering the other documents.

10. In the light of the above, the impugned order passed by the Chief Judicial Magistrate is quashed and set aside. The petitioner is relegated to the Chief Judicial Magistrate for a decision on the application under Section 14 of the Act of 2002, filed by the petitioner, afresh.

11. The Chief Judicial Magistrate shall consider all the



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documents on record and the statement of accounts as may be filed by the petitioner.

12. The writ petition is disposed of. There shall be no order as to costs. Consequently, WMP No. 28992 of 2023 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

13.03.2024

Index : Yes/No
Neutral Citation : Yes/No
tar

To

The Chief Judicial Magistrate,
Salem District 636007



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THE HON'BLE CHIEF JUSTICE
AND
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