IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM :

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

W.P.No.28629 of 2024

S.SANGEETHA .. Petitioner

Vs

1. THE MANAGEMENT
HDFC LIFE INSURANCE COMPANY LIMITED,
OFFICE AT LODHA EXCELUS,
13TH FLOOR, APOLLO MILLS COMPOUND
N.M.JOSHI MARG, MAHALAXMI
MUMBAI - 400 011.

2. THE MANAGER
HDFC BANK, EVN ROAD
OPP POWERHOUSE ROAD,
CHIDAMBARAM COLONY, ERODE. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned demand notice dated 10.9.2024 issued by the 2nd respondent under section 13(2) of the SARFAESI Act, 2002 and quash the same and direct the respondents to stay the recovery of demand until the disposal of the consumer complaint filed by the petitioner before the District Consumer Redressal Commission, Erode.

For the Petitioner : Mr.R.Balaramesh

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

Seeking quashment of the demand notice dated 10.9.2024 issued by the second respondent/bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the petitioner has filed this writ petition. The ancillary relief sought is to stay the recovery of the demand until the disposal of the consumer complaint filed by the petitioner before the District Consumer Redressal Commission, Erode.

2. The petitioner and her late husband availed home loan from the second respondent to the tune of Rs.29,65,682/-, as per sanction order dated 29.11.2021. To safeguard the loan amount, the petitioner's husband took an insurance policy from the first respondent. The petitioner's husband went into eternal sleep on 22.10.2023. The petitioner made a representation to redeem the insurance policy, but the same was rejected by the first respondent

vide order dated 17.10.2023 on the ground that the petitioner's husband was suffering from chronic cancer and the same was suppressed by the petitioner's husband at the time of taking the insurance policy. Challenging the said order, the petitioner has already filed a complaint before the District Consumer Redressal Commission, Erode, and the same is pending. When things stood thus, the second respondent issued the impugned notice under Section 13(2) of the Act demanding a sum of Rs.30,54,713/-.

3. The scheme of SARFAESI Act, 2002 postulates that the notice under Section 13(2) of the Act is not merely a show-cause notice, but it is a notice of demand. The notice of demand is issued on the premise that the debtor is under a liability and that her account in respect of such liability has become substandard, doubtful or a loss. Section 13(3-A) of the Act provides for an opportunity to the borrower to make representation to the secured creditor. Section 13(2) of the Act is a condition precedent to the invocation of Section 13(4) of the Act by the secured creditor. An application under Section 17 of the Act can be filed only against the

measure taken under Section 13(4) of the Act.

4. In the instant case, the petitioner did not submit her representation or raise any objection as contemplated under Section 13(3-A) of the Act. Without following the procedure mandated under the provisions of the Act, the petitioner has straightaway knocked the doors of this court seeking exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

5. It is well-settled proposition of law that a writ petition is not maintainable against the demand notice issued under Section 13(2) of the Act. All that the borrower has to do at this stage is to submit her representation or raise any objection as contemplated under Section 13(3-A) of the Act. When such is the statutory mandate, any deviation therefrom is uncalled for.

6. We, therefore, grant liberty to the petitioner to file her representation or raise objection to the notice issued under Section

13(2) of the Act within one week from the date of receipt of a copy of this order to the second respondent/bank. If any such representation or objection is received by the second respondent/ bank within the aforesaid period, the same shall be considered by the second respondent/bank and the reasons shall be communicated to the petitioner as contemplated under Section 13(3-A) of the Act.

The writ petition is dismissed. There shall be no order as to costs. Consequently, W.M.P.Nos.31222 and 31224 of 2024 are closed.

(D.K.K., ACJ.) (M.J.R., J.)
26.09.2024

Index : Yes/No
NC : Yes/No
sasi

To:
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AND
M.JOTHIRAMAN,J.

(sasi)

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