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W.P.(MD) No.327 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD) No.327 of 2024
and**

W.M.P.(MD) Nos.325 & 326 of 2024

1.Amina Barvin

2.Vartha Barvin

3.Minor Shaba Fatima
[3rd petitioner through her mother
and guardian / P1]

... Petitioners

-VS-

1.The Karur Vysya Bank Ltd.,
Karaikal Branch
through its Authorized Officer
No.10 & 11, Church Street
Karaikal-609 602

2.Mujipur Rahman

3.Abdul Nazar

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records relating to the possession notice of the first respondent, dated 30.08.2023 and quash the same and consequently directing the first respondent to take action against the third respondent and his property lone to settle his loan account, within the time stipulated by this Court.

For Petitioners : Ms.G.Kavitha

For Respondents : Mr.V.Sukumar for R1

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

Mr.V.Sukumar, learned counsel, takes notice for the respondent – Bank.

2. In view of the order to be passed, notice to the respondents 2 and 3 is dispensed with.



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3. With the consent of both sides, this writ petition is taken up for final hearing at the admission stage itself.

4. The possession notice, dated 30.08.2023, issued by the respondent – Bank, is under challenge in this writ petition.

5. According to the petitioners, the second respondent is her husband, father of the petitioners 2 and 3 and younger brother of the third respondent. There are some disputes between the first petitioner and the second respondent. Due to which, the first petitioner filed Cr.M.P.No.6082 of 2014, before the learned Judicial Magistrate Court No.II, Dindigul, under the Protection of Women from Domestic Violence Act, 2005, seeking maintenance and other remedies. Thereafter, the said petition was transferred to the file of the Additional Mahila Court, Dindigul and renumbered as D.V.O.P.No.21 of 2016. When the said petition was pending, on 05.02.2015, the second respondent executed a settlement deed in favour of his brother / third respondent in respect of the house property in Survey No.369/3 and other ancestral properties. On 12.05.2015, the first petitioner filed a suit in O.S.No.



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247 of 2015 as against the respondents 2 and 3, before the Principal Sub Judge, Dindigul, seeking half share in the house property in Survey No.369/3. When the domestic violence original petition and the suit were pending, the third respondent mortgaged the house property in Survey No.369/3 with the first respondent – Bank. Thereafter, the first petitioner filed a petition in M.C.No.31 of 2018, before the Family Court, Dindigul, seeking maintenance from the second respondent from the year 2014 onwards.

6. On 21.11.2019, the Additional Mahila Court, Dindigul, passed an order in favour of the petitioners directing the second respondent to pay monthly maintenance to them. However, the suit filed by the first petitioner came to be dismissed and in the appeal filed by her, an interim order has been passed in her favour. However, according to the petitioners, suppressing all these facts, the respondents 2 and 3 have obtained order from the learned Chief Judicial Magistrate, Dindigul, in Cr.M.P.No.17102 of 2022, under Section 14 of the SARAESI Act, without the knowledge of the petitioners. Hence, the petitioners have filed the present writ petition.



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7. Learned counsel appearing for the respondent – Bank strongly objected the above submissions by stating that when the Advocate Commissioner went to take possession of the subject property pursuant to the order passed by the learned Chief Judicial Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the first respondent, who is residing there along with her children / petitioners 2 and 3, threatened that she would commit suicide. Therefore, the Advocate Commissioner could not take possession of the subject property. Further, the the subject property was mortgaged with the respondent – Bank in the year 2017 and as on date, the outstanding amount is Rs.5,55,45,105/-. Further, the respondent – Bank was not made as a party respondent in the above proceedings.

8. When we expressed our opinion that we are not inclined to entertain this writ petition as the petitioners are having alternative remedy of approaching the Debts Recovery Tribunal for redressal of their grievance, learned counsel for the petitioners sought interim protection for a period of two weeks, otherwise, they will be thrown out from the house property.



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9. At this juncture, learned counsel for the respondent – Bank fairly submitted that without prejudice to their rights, the respondent – Bank will keep the impugned possession notice in abeyance for a period of two weeks.

10. Taking into consideration the above facts and circumstances of the case, liberty is granted to the petitioners to approach the jurisdictional Debts Recovery Tribunal on or before 22.01.2024 for redressal of their grievance. Till such time, the impugned possession notice shall be kept in abeyance.

11. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.]

[R.V., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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