



C.R.P.(MD)No.202 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.02.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

AND

THE HONOURABLE **MR.JUSTICE K.K. RAMAKRISHNAN**

C.R.P.(MD)No.202 of 2024

and

C.M.P.(MD)No.856 of 2024

G.Sreeram

...Appellant

/Vs./

1.The Authorized Officer,
Canara Bank,
Peraiyur Branch,
Madurai District.

2.The Branch Manager,
Canara Bank,
Peraiyur Branch,
Madurai District.

3.R.Rathinam

...Respondents

PRAYER:- Petition - filed under Article 227 of the Constitution of India
to allow the civil revision petition by setting aside the order dated

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C.R.P.(MD)No.202 of 2024

04.01.2024 made in I.A.No.181 of 2023 in S.A.No.36 of 2023, on the file of the Debts Recovery Tribunal, Madurai by allowing this civil revision petition.

For Appellant : Mr.H.Arumugam

For Respondents : Mr.V.S.Karthi (R1 & R2)

Mr.R.Narayanan (R3)

ORDER

(Order of the Court was made by **V.BHAVANI SUBBAROYAN, J.**)

The petitioner, who is the borrower of loan from the first respondent bank has filed this civil revision petition challenging the dismissal order passed in IA No.181 of 2023 in SA No.36 of 2023 on the file of the Debts Recovery Tribunal, Madurai.

2. According to the petitioner, he borrowed loan by depositing title deeds from the bank for agricultural purposes. A sale notice dated 28.11.2022 was issued under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest



C.R.P.(MD)No.202 of 2024

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Act, 2002 (in short 'SARFAESI Act') r/w Rule 8(6) of the Security Interest (Enforcement) Rules, 2002. Challenging the same, the petitioner herein filed a writ petition before this Court, wherein liberty was granted to the petitioner to approach the appropriate forum. The petitioner filed another writ petition in WP(MD)No.19637 of 2023 challenging the order passed by the learned Chief Judicial Magistrate, Madurai in CrI.M.P.No. 347 of 2023 dated 25.05.2023. This Court has passed an order and the relevant paragraphs are extracted hereunder:-

“3.The only contention of the Petitioner is that the lands which are mortgaged by the Petitioner are agricultural lands and that the loan itself was obtained for the purpose of doing agriculture. This Court is convinced that the entire lands are agricultural lands. However, the Petitioner states that SARFAESI Application is already filed by the Petitioner before the Debts Recovery Tribunal in S.A.No. 36 of 2023, in which, the Petitioner has raised the jurisdictional issue as to the competency of the respondents/Bank to proceed against the properties which are all agricultural lands.

4.Therefore, the Debts Recovery Tribunal, Madurai shall decide whether the properties in question are agricultural lands and the entire proceedings and the very



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C.R.P.(MD)No.202 of 2024

sale and the subsequent proceedings under Section 14 of the Tamil Nadu Land Encroachment Act shall stand hold, till it is decided by the Debts Recovery Tribunal. The Debts Recovery Tribunal, Madurai shall consider the application filed by the Petitioner I.A.No.181 of 2023 as well as S.A.No. 36 of 2023 within a period of four weeks from the date of receipt of a copy of this order. Till such time, the respondents- Bank shall not hand over possession of the properties in question to the auction purchaser. It is open to the Petitioner to implead the auction purchaser also as a party-respondent in the pending application before the Debts Recovery Tribunal.”

3. Pursuant to the order of this Court, IA No.181 of 2023 filed for appointment of an Advocate Commissioner was dismissed by the Debts Recovery Tribunal, Madurai, stating that the petition filed by the applicant to appoint an Advocate Commissioner is prematured. Challenging the same, the civil revision petition has been filed.

4. The learned counsel appearing for the petitioner submitted that the petitioner filed an application to appoint an Advocate Commissioner and the same was dismissed without properly appreciating



C.R.P.(MD)No.202 of 2024

the law laid down by the Hon'ble Supreme Court in the case of ***K.Sreedhar vs. M/s.Raus Constructions Private Limited and Others*** reported in ***2022 LiveLaw (SC) 13***. Further, it is necessary to get information as to whether agricultural activities are going or not. Hence, he prayed the order passed by the Debts Recovery Tribunal, Madurai, to be set aside.

5. The learned counsel appearing for the respondent bank submitted that the application for appointment of Advocate Commissioner is not maintainable and if the petitioner is aggrieved, he ought to have filed an appeal before the Debts Appellate Recovery Tribunal, Madurai under Section 18 of the SARFAESI Act. He also submitted that the bank has also sent a communication to assess the standing crops.

6. The learned counsel appearing for the third respondent auction purchaser submitted that the third respondent has invested huge amount and he also prayed for dismissal of this petition.



C.R.P.(MD)No.202 of 2024

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7. This Court has also considered the rival submissions on either side.

8. Admittedly, loan was granted by the bank to the petitioner in the event of depositing the title deeds. The same was not disputed. According to the respondent bank, the loan was granted for the purposes including the commercial purposes. Hence, the loan is not meant only for agricultural purposes alone. For the loan, the petitioner mortgaged the agricultural property. For which, the petitioner produced the documents to prove that the land is an agricultural land and the same was considered by this Court in the earlier writ petition, wherein it is held that this Court prima facie satisfied that the entire lands are agricultural lands.

9. In view of the above, this Court finds bonafide in the plea of the petitioner in seeking appointment of Advocate Commissioner. Hence, this Court considers the submissions of the petitioner and accepts the same. The petitioner has to prove his case by collecting more



C.R.P.(MD)No.202 of 2024

materials apart from the revenue documents. This Court is inclined to allow the civil revision petition. The order dated 04.01.2024 made in I.A.No.181 of 2023 in S.A.No.36 of 2023, on the file of the Debts Recovery Tribunal, Madurai, is set aside and accordingly, this civil revision petition is allowed.

10. The Debts Recovery Tribunal, Madurai, shall pass appropriate orders appointing the Advocate Commissioner, on merits and in accordance with law, by considering the request made by the petitioner as well as the respondents and decide as to whether the authorities can assess the standing crops. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) & (K.K.R.K.J.)
29.02.2024

NCC :Yes/No
Index :Yes/No
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C.R.P.(MD)No.202 of 2024

V.BHAVANI SUBBAROYAN, J.
and
K.K. RAMAKRISHNAN, J.

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TO:-

- 1.The Authorized Officer,
Canara Bank, Peraiyur Branch,
Madurai District.
- 2.The Branch Manager,
Canara Bank, Peraiyur Branch,
Madurai District.
- 3.The Debts Recovery Tribunal,
Madurai.

Order made in
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Dated:
29.02.2024