



W.P.(MD) No.2791 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2024

CORAM:

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

**W.P.(MD) No.2791 of 2024
and W.M.P.(MD) No.2789 of 2024**

V.Chinnaiah

... Petitioner

-VS-

1.The Chief Judicial Magistrate,
Sivagangai.

2.M/s.Ujjivan Small Finance Bank Ltd.,
Having its Branch Office,
at Door No.19/1, Ground Floor,
Ward No.71,
Pandiarajapuram Main Street,
Bypass Road,
Madurai – 625 016.
Represented by its Authorised Signatory

3.V.Ayyanar

4.C.Vellaiappan

5.V.Kaliammal

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the order passed by the 1st Respondent in Crl.M.P.No.13269 of 2023, dated 30.01.2024 and quash the same.

For Petitioner : Mr.S.Vakeeswaran

ORDER

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

This Writ Petition has been filed challenging the order passed by the learned Chief Judicial Magistrate, Sivagangai, in Crl.M.P.No.13269 of 2023, dated 30.01.2024.

2. According to the petitioner, the petitioner availed loan from the 2nd respondent and due to various reasons he defaulted in paying the EMI. Therefore, the 2nd respondent initiated SARFAESI proceedings. The 2nd respondent has also approached the jurisdictional Magistrate Court under Section 14 of the SARFAESI Act, 2002 for taking possession through the Advocate Commissioner



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and the said petition was allowed. Therefore, the petitioner has come forward with this Writ Petition.

3. Against the order passed by the learned Chief Judicial Magistrate, Sivagangai, in CrI.M.P.No.13269 of 2023, dated 30.01.2024, the petitioner is having an efficacious alternative remedy before the Debts Recovery Tribunal. Without exhausting the said remedy, the petitioner has approached this Court by filing this Writ Petition.

4. Further, this writ petition is not maintainable in view of the following judgments:-

(i) In ***ICICI Bank Limited and Others Vs. Umakanta Mohapatra and Others*** reported in ***2019 (13) SCC 497***, the Hon'ble Supreme Court in paragraph Nos.2 & 3 has held as follows:

“2. Despite several judgments of this Court, including a judgment by Hon'ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in *Authorized Officer, State Bank of Travancore and Anr. v. Mathew K.C.*, MANU/SC/0054/2018 : (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and



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Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs). 3. The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows: 17. We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr.* MANU/SC/0639/1997 : (1997) 6 SCC 450, observing:

32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops”.

(ii) In *C.Bright Vs. The District Collector and Others* reported in *AIR 2020 SC 5747*, the Hon'ble Supreme Court in



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WEB COPY paragraph No.22 has held as follows:

“22. Even though, this Court in *United Bank of India v. Satyawati Tondon and Ors. MANU/SC/0541/2010 : (2010) 8 SCC 110* held that in cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which will ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Hindon Forge Private Limited has held that the remedy of an aggrieved person by a secured creditor under the Act is by way of an application before the Debts Recovery Tribunal, however, borrowers and other aggrieved persons are invoking the jurisdiction of the High Court Under Articles 226 or 227 of the Constitution of India without availing the alternative statutory remedy. The Hon'ble High Courts are well aware of the limitations in exercising their jurisdiction when affective alternative remedies are available, but a word of caution would be still necessary for the High Courts that interim orders should generally not be passed without hearing the secured creditor as interim orders defeat the very purpose of expeditious recovery of public money”.



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5. In view of the above, the petitioner is directed to approach the jurisdictional Debts Recovery Tribunal against the order passed by the learned Chief Judicial Magistrate, Sivagangai, in Crl.M.P.No.13269 of 2023, dated 30.01.2024. Registry is directed to return the original order to the petitioner, after replacing the same with a xerox copy.

6. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

[D.K.K., J.] [R.V., J.]
08.02.2024

Index : Yes / No
Internet : Yes / No
SJ

To

1.The Chief Judicial Magistrate,
Sivagangai.



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and
R.VIJAYAKUMAR, J.

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