BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.3073 of 2024
and
W.M.P.(MD)Nos.3051 and 3052 of 2024

P.Jeyakumari ... Petitioner

-Vs-

The Authorized Officer,
Indian Bank,
Car Street Branch,
No.6, Car Streeet, Karur,
Karur-639 001. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to order dated 28.11.2023 passed by the CJM, Karur in Crl.M.P.No.6431 of 2023 under Section 14 of the SARFAESI Act, 2002 in pursuance thereof advocate commissioner issued notice dated 05.02.2024 fixing to take physical possession of the securer assets on 13.02.2024 and quash the same.

For Petitioner : Mr.F.Thevan
For Respondent : Mr.C.Karthick
Standing Counsel

ORDER

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

This writ petition has been filed challenging the order of the Chief Judicial Magistrate, Karur made in Crl.M.P.No.6431 of 2023 under Section 14 of the SARFAESI Act, 2002 fixing the date to take physical possession of the secured assets.

2.Mr.C.Karthick, learned counsel takes notice for the respondent. By consent of both parties, this writ petition is taken up for final disposal at the time of admission itself.

3.The petitioner has availed a loan for a sum of Rs.1,26,16,000/- from the respondent bank for doing real estate business by mortgaging her properties. The petitioner has been regularly paying the loan dues. Due to Covid-19 pandemic, the petitioner incurred heavy loss in her business and she could not repay the loan dues. Hence, the respondent bank had declared the petitioner's account as NPA on 15.04.2022. Thereafter, on 25.04.2022 issued a demand notice demanding a sum of Rs.1,08,73,064.90/- with subsequent interest and costs. On receipt of the same, the petitioner approached the respondent bank and requested to enhance the loan accounts to develop her business. However, all of a sudden on 06.08.2022, the respondent bank had issued a possession notice and on 05.02.2024, the Advocate Commissioner appointed by the Chief Judicial Magistrate Court, Karur issued a notice informing that on 13.02.2024 possession of the secured assets will be taken. Challenging the same, this writ petition is filed.

4.The learned counsel for the petitioner submitted that the petitioner was not aware of the proceedings initiated by the respondent bank before the Chief Judicial Magistrate under Section 14 of the SARFAESI Act. No notice was issued either by the respondent or by the Court concerned about the proceedings initiated by the respondent bank before the Court. Only after receiving the notice from the Advocate Commissioner, the petitioner came to know the fact that the respondent bank has moved an application before the Court concerned for taking possession of the secured assets.

5.According to the petitioner, she is entitled to file an appeal before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, provided that the said appeal is filed within 45 days from the date of knowledge of the order passed by the learned Magistrate. Therefore, he shall be permitted to file an appeal before the Tribunal within a period of one week from the date of receipt of a copy of this order, so as to enable the petitioner to get necessary orders as against the order of the Chief Judicial Magistrate in Crl.M.P.No.6431 of 2023.

6.The learned counsel for the respondent submitted that despite repeated requests calling upon the petitioner to pay the due amounts together with interest, the petitioner failed to repay the dues. Hence, the possession notice was issued, after issuing proper notice to the petitioner.

7.Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent bank.

8.The order impugned in this writ petition was passed under Section 14 of SARFAESI Act on 28.11.2023. The said order was communicated to the petitioner only on 05.02.2024. However, the respondent bank states that prior notice was issued to the petitioner, but no materials were produced to substantiate the same.

9.In such circumstances, we are of the view that the petitioner shall be permitted to file an appeal before the Debt Recovery Tribunal. The petitioner is directed to give all the necessary details before the Tribunal along with the appeal petition. If the Tribunal found that the order of the Chief Judicial Magistrate was communicated to the petitioner only on 05.02.2024, then the petitioner's appeal can be entertained by the Tribunal without insisting upon a condone delay application. If it is found that the petitioner had knowledge about the order of the Chief Judicial Magistrate prior to the said date, then it is for the Tribunal to decide whether the appeal can be entertained without filing any application for condonation of delay. It is open to the respondent bank to canvas their objections before the Debt Recovery Tribunal, at the time of hearing of the appeal.

10.At this juncture, the learned counsel for the petitioner, on instructions, submits that the petitioner is ready to pay 25% of the outstanding amount to show her bonafide. The learned counsel for the respondent bank in response to the proposal of the petitioner insists the petitioner to pay 50% of the outstanding amount.

11.Considering the request made by the petitioner, we direct the petitioner to pay 25% of the outstanding amount on or before 19.02.2024, failing which the respondent bank shall proceed in accordance with law for taking possession of the secured assets as per the order impugned in this writ petition. For the remaining 25% of the outstanding amount insisted by the respondent bank, it is open to the respondent bank to adjudicate the same before the Tribunal, when the appeal is taken on file.

12.With the above direction this writ petition is disposed of. No costs. Consequently connected miscellaneous petitions are closed.

[D.K.K., J.] & [R.V., J.]
12.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

The Authorized Officer,
Indian Bank,
Car Street Branch,
No.6, Car Streeet, Karur,
Karur-639 001.

D.KRISHNAKUMAR, J.

AND

R.VIJAYAKUMAR, J.

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