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W.P.(MD) No.4277 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2024

CORAM:

THE HONOURABLE **MR.JUSTICE D.KRISHNAKUMAR**

AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.P.(MD)No.4277 of 2024

and

W.M.P.(MD)Nos.4105 and 4107 of 2024

Vijayaraghavan

... Petitioner

-Vs-

1.The Authorized Officer,
M/s.REPCO Home Finance Limited,
Promoted by REPCO Bank,
Government of India Enterprise,
No.26, Ground Floor, ARR Complex,
Kenikarai, Ramanathapuram District.

2.Kalyanaraman

3.Aarthi

4.Boopathiraja

5.Anithjesinthal

6.Amutha

7.Anushiya

8.Sethuraja

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for all further proceedings under SARFAESI Act pursuant to the impugned order dated 17.05.2023 in Cr.M.P.No.1594 of 2023

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issued by the learned Chief Judicial Magistrate, Ramanathapuram and quash the same.

For Petitioner : Mr.K.Rajeshwaran

For R1 : Mr.B.Ramanathan

ORDER

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

The order of the learned Chief Judicial Magistrate, Ramanathapuram dated 17.05.2023 made in Cr.M.P.No.1594 of 2023, is under challenge in this Writ Petition.

2.According to the petitioner, the 3rd respondent borrowed a sum of Rs.8,50,000/- from the petitioner by signing promissory note. Since she did not come forward to repay the loan amount, the petitioner filed a suit in O.S.No.244 of 2023 on the file of the Subordinate Court, Ramanathapuram, seeking permanent injunction restraining the 3rd respondent not to alienate or encumber the properties in Survey Nos.61/27A1A and 61/27 situated in Maravettivalasai Village, Pirappanvalasai Group, Ramanathapuram Taluk and District, in which he also filed an application in I.A.No.2 of 2023 for attachment before judgment and the same was ordered and therefore, the properties were lock



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and sealed on 24.07.2023. Thereafter, the petitioner came to know that the 3rd respondent along with respondents 2, 4 to 8 borrowed loan from the 1st respondent Bank by mortgaging the properties in Sub Division Survey Nos.61/11, 61/4A1B, 61/4A1, 61/4A2A and 61/4A situated at Eurmeni Village, Ramanathapuram District. Since they did not pay the loan dues regularly, the respondent Bank initiated SARFAESI proceedings and filed a petition in Cr.M.P.No.1594 of 2023 before the learned Chief Judicial Magistrate, Ramanathapuram to take possession of the properties of the 3rd respondent and the same was ordered on 17.05.2023, which is impugned in this Writ Petition.

3.The learned counsel appearing for the petitioner states that the property in Survey Nos.61/27A1A and 61/27 belongs to the petitioner. Taking advantage of the order passed by the learned Chief Judicial Magistrate, Ramanathapuram, the respondent Bank has erroneously taken possession of the property in Survey No.61/27A1A, which was already lock and sealed by the order of the Sub Court, Ramanathapuram and the respondent Bank has no right to interfere with the possession of the petitioner.

4.The learned counsel appearing for the 1st respondent Bank has strongly denied the said contention and submitted that the respondent Bank



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approached the learned Chief Judicial Magistrate, Ramanathapuram to take possession of the properties belong to the 3rd respondent and the same was ordered on 17.05.2023 and thereafter only, the petitioner filed a suit in O.S.No.244 of 2023 and got an order of attachment on 24.07.2023.

5.Considering the aforesaid submissions, we are of the view that these are all the disputed facts, which have to be established before the competent Court by adducing oral and documentary evidence or before the Debts Recovery Tribunal as per the provisions of SARFAESI Act and this Court cannot entertain this Writ Petition under Article 226 of Constitution of India. Therefore, this Writ Petition stands dismissed with liberty to the petitioner to seek his remedy before the appropriate forum. 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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AND

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