BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.P(MD)No.7676 of 2024 and
W.M.P.(MD)Nos.7024 and 7025 of 2024

A.Velmurugan ... Petitioner

vs

1.The Authorised Officer,
Canara Bank,
Rayappanpatti Branch,
Rayappanpatti,
Uthamapalayam Taluk, Theni District.

2.The Branch Manager,
Canara Bank, Rayappanpatti Branch,
Rayappanpatti,
Uthamapalayam Taluk, Theni District.

3.The Chairman,
Canara HSBC OBC Life Insurance Company Limited,
No.139B, Sector-44,
Gurugram, Haryana State.

4.The Branch Manager,
Canara HSBC OBC Life Insurance Company Limited,
No.27/12A, ATP Tower, 3rd Floor,
Byepass Road, Madurai. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order, dated 24.08.2022 passed in Cr.M.P.No.5431 of 2022 on the file of the leaned Chief Judicial Magistrate, Theni and the same was served along with the consequential impugned notice, dated 11.03.2024 issued by the Counsel at the instance of the Respondents No.1 and 2 and to quash the same.

For Petitioner	: Mr.P.Sivachandran
For R1 and R2	: Mr.P.Madhan Alexnder

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ORDER

(Order of this Court was made by **G.ARUL MURUGAN, J.**)

The Writ Petition is filed challenging the impugned order, dated 24.08.2022 passed in Cr.M.P.No.5431 of 2022 on the file of the leaned Chief Judicial Magistrate, Theni and the impugned notice, dated 11.03.2024.

2.The case of the petitioner is that his father, namely, Anandan, had availed a housing loan from the second respondent Bank to a tune of

Rs.10,00,000/- in Loan A/c.No.1345619020603 on 31.08.2018 and further, a sum of Rs.10,00,000/- in Loan A/c.No.1345619020605 on 05.09.2018. For the purpose of availing the loan amount of Rs.20,00,000/-, his father had executed a registered mortgage deed in favour of the second respondent on 29.01.2018. Based on the instructions of the Bank, the petitioner's father had taken an insurance in respect of the loan amount and his father died on 12.05.2021. In spite of a representation, the Bank had not adjusted the loan amount from the insurance amount and therefore, the petitioner has approached the District Consumer Dispute Redressal Commission, Theni, in C.C.No.59 of 2022 and the Consumer Forum by order, dated 26.07.2023 directed the third respondent Bank to pay a sum of Rs.20,00,000/- and further directed the Bank to a pay sum of Rs.1,70,000/- at the rate of 9% interest from the date of complaint to the petitioner. But, however, without complying with the same, the Bank has initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”) and proceeded to take possession of the dwelling house by obtaining orders in Cr.M.P.No.5431 of 2022 on the file of the leaned Chief Judicial Magistrate, Theni.

3.The petitioner's mother had filed S.A.No.368 of 2022 on the file of the Debts Recovery Tribunal, Madurai, and by an order, dated 04.11.2022, the Tribunal had passed an order staying all further proceedings of the order passed under Section 14 of the SARFAESI Act by the learned Chief Judicial Magistrate, on condition that the petitioner shall deposit a sum of Rs.9,00,000/-., ie., Rs.4.5 lakhs on or before 02.12.2022 and further Rs.4.5 lakhs on 30.12.2022. Even though the petitioner had paid the first instalment, he did not comply with the second instalment. In the meantime, since the order of the Consumer Forum was not complied, the petitioner had filed an Execution Petition in E.P.No.49 of 2023, pursuant to which, the Bank had filed an appeal before the State Consumer Forum, Madurai, along with a delay application in C.M.P.No.904 of 2023 challenging the order passed by the District Consumer Forum, wherein, the delay was condoned and the appeal has been taken on file in F.A.No.24 of 2024. In the meantime, the petitioner received the impugned notice, dated 11.03.2024 for taking possession of the dwelling possession based on the orders passed under Section 14 of the SARAFAESI Act. Therefore, challenging the order passed under Section 14 of the SARAFAESI Act as well as the subsequent notice, the petitioner has preferred the above Writ Petition.

4.The learned Counsel appearing for the petitioner reiterating the averments made in the affidavit submitted that when an insurance had been by the petitioner's father and he died on 12.05.2021, the respondent Bank ought to have adjusted the loan amount from the insurance amount and further, when an order has been passed by the District Consumer Forum, the initiation of the proceedings under the SARFAESI Act by the respondent Bank is unsustainable. The learned Counsel further contended that when the order passed by the learned Chief Judicial Magistrate, Theni, under Section 14 of the SARFAESI Act has been challenged before the Tribunal and an interim order was granted, the further notice issued by the respondent Bank for taking possession of the property is arbitrary and therefore, the impugned order and the notice are liable to the quashed.

5.Mr.P.Madhan Alexander, who takes notice on behalf of the respondents 1 and 2, on instructions, submitted that when the petitioner has defaulted in re-paying the loan amount to the Bank, the proceedings under the SARFAESI Act has been initiated and the petitioner has not challenged the possession notice issued under Section 13(4) of the SARFAESI Act and when the subsequent order passed under Section 14 of the SARFAESI Act has been challenged by the petitioner's mother before the Debts Recovery Tribunal, Madurai, the present Writ Petition filed challenging the very same impugned order is not sustainable. The learned Counsel further contended that when the petitioner has defaulted in making the payments complying with the conditional order passed by the Tribunal, the further proceedings for taking possession of the property has been taken and hence, the present Writ Petition filed by the petitioner is not maintainable.

Considered the rival submission and perused the materials on record.

6.The petitioner's father had availed a loan for a sum of Rs.20,00,000/- in two loan account numbers, for a sum of Rs.10,00,000/- each on 31.08.2018 and 05.09.2018, respectively. As there was default in repayment of the loan amounts, the accounts were classified as non performing asset on 04.01.2021 and pursuant to which, proceedings under the SARFAESI Act was initiated and the authorised officer had issued a notice on 11.02.2022 under Section 13(2) of the Act calling upon the petitioner to pay a sum of Rs.18,62,108/- being the due as on 11.02.2022 within a period of sixty days. As the payments were not made, the Bank had issued a possession notice under Section 13(4) of the Act on 20.04.2022 and the notices were published both in Tamil and English dailies on 06.05.2022. Admittedly, the petitioner has not challenged the possession notice issued under Section 13(4) of the Act before the appropriate forum. As such, the Bank has further proceeded to conduct e-auction in respect of the subject property.

7.Even though the learned Counsel for the petitioner contended that since insurance was taken in respect of the loan accounts and the petitioner's father died on 12.05.2021, as the Bank has not adjusted the loan amount from the insurance amount, the petitioner had filed a complaint before the District Consumer Forum, Theni, in C.C.No.59 of 2022 and obtained an order, dated 26.07.2023, whereby, the Bank was directed to pay a sum of Rs.20,00,000/- and also a further direction was issued to pay a sum of Rs.1,70,000/- at the rate of 9% interest from the date of complaint to the petitioner, but, however, the Bank has not made the payment. It could be seen that as against the order passed by the District Consumer Forum, the

Bank had filed an appeal before the State Consumer Forum, Madurai, and the same has also been taken on file in F.A.No.24 of 2024, which is pending.

8.Pursuant to the possession notice issued under Section 13(4) of SARFAESI Act, the respondent Bank/secured creditor had filed an application before the learned Chief Judicial Magistrate, Theni, in Cr.M.P.No.5431 of 2022. The learned Judicial Chief Judicial Magistrate, Theni, vide impugned order, dated 24.08.2022, passed orders under Section 14 of the SARFAESI Act by appointing an Advocate Commissioner to take possession of the property and hand it over to the secured creditor. Challenging the impugned order passed by the learned Chief Judicial Magistrate, Theni, the petitioner's mother had filed an appeal in S.A.No.368 of 2022 on the file of the Debts Recovery Tribunal, Madurai, in which, the order passed under Section 14 of SARFAESI Act was stayed by the interim order of the Debts Recovery Tribunal on 04.11.2022 on condition that the petitioner shall deposit a sum of Rs.9,00,000/-. ie., Rs.4,50,000/- on or before 02.12.2022 and further Rs.4,50,000/- on or before 30.12.2022. Admittedly, even though the first instalment of the payment was made, the petitioner defaulted in making the second instalment and thereby, have not complied with the interim order passed by the Debts Recovery Tribunal. As no further payments have been made, the impugned notice, dated 11.03.2024 has been issued for taking physical possession of the property.

9.When the petitioner's mother had already challenged the impugned order, dated 24.08.2022 passed by the learned Chief Judicial Magistrate, Theni, under Section 14 of the SARFAESI Act, before the Debts Recovery Tribunal in S.A.No.368 of 2022 and the same is still pending, the present Writ Petition filed by the petitioner before this Court challenging the very same impugned order passed by the learned Chief Judicial Magistrate, Theni, is not sustainable. If at all, the petitioner had any grievance in respect to the proceedings taken by the Bank, it is for him to pursue the matter before the Debts Recovery Tribunal, Madurai, admittedly, where, already the case in S.A.No.368 of 2022 is pending.

10.As the petitioner has an alternative and efficacious remedy available by filing an appeal before the Debts Recovery Tribunal, under Section 17 of the SARFAESI Act, as against the order passed under Section

14 of the SARFAESI Act, and particularly, when the petitioner's mother has already availed the remedy and approached the Tribunal and the SARFAESI Appeal is also pending, the present Writ Petition filed by the petitioner is not sustainable and accordingly, the Writ Petition stands dismissed giving liberty to the petitioner to agitate all his grievance in the pending appeal before the Debts Recovery Tribunal, Madurai. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

[R.S.K., J] & [G.A.M., J]
10.04.2024

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

cmr

To

The Chief Judicial Magistrate, Theni.

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.7676 of 2024

10.04.2024