



W.P.(MD)No.8629 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.04.2024

CORAM

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

**W.P(MD)No.8629 of 2024
and
W.M.P.(MD)Nos.7897 and 7898 of 2023**

P.Ramesh

... Petitioner

VS

**1.PNB Housing Finance Limited,
represented by its Authorised Officer,
Nandhini Buildings 3rd Floor,
Door No.48, Bypass Road,
Madurai – 625 010.**

**2.T.Baskaran
3.B.Maheswari**

**4.Bas Publication through Proprietor
T.Baskaran,
Madurai – 625 002.**

**5.The Commissioner,
Commissioner Office Building,
Alagarkoil Road, Madurai – 625 002.**

**6.The Sub Inspector of Police,
Sellur Police Station, Madurai – 625 002.**



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7.The Sub Inspector of Police,
Karimedu Police Station,
Madurai – 625 010.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the learned Chief Judicial Magistrate, Madurai, in Cr.M.P.No. 522 of 2023, dated 08.08.2023 and to quash the same as illegal.

For Petitioner : Mr.N.Pandivelrajan

ORDER

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

This Writ Petition is filed challenging the order, dated 08.08.2023 passed in Cr.M.P.No.522 of 2023 on the file of the learned Chief Judicial Magistrate, Madurai, under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”).

2.According to the Petitioner, he is neither the borrower nor the guarantor. He is a lessee of the property under the second and fourth respondents. He had entered into a lease agreement with the second



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Respondent on 15.05.2015 for a period of two years. The petitioner claims that along with him, twelve other persons have also are the lessees under the second respondent and since they were cheated, they have preferred a complaint with Sellur Police Station on 10.02.2023 and got C.S.R.No.123 of 2023. While so, the officials of the first respondent on 05.06.2023 issued a possession notice and thereafter, had filed an application before the learned Chief Judicial Magistrate, Madurai, under Section 14 of the Act. The impugned order, dated 08.08.2023 has been passed under Section 14 of the Act appointing an Advocate Commissioner to assist the secured creditor for securing the secured asset.

3.It is seen that the borrower had availed a loan of Rs.77,90,000/- from the first respondent Bank and as the loan was not re-paid, the account was classified as Non Performing Asset on 30.04.2021. Thereafter, notice under Section 13(2) of the Act was issued and as the amount was not re-paid, possession notice under Section 13(4) of the Act also came to be issued, thereby, symbolic possession of the property was taken. It is seen that as on 05.06.2023, a due of Rs.4,48,06,877.53/- is outstanding and in the application filed by the secured creditor/first respondent under Section 14 of



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the Act, the learned Chief Judicial Magistrate, Madurai, by order impugned order, dated 08.08.2023, has allowed the application and appointed an Advocate Commissioner to assist the secured creditor to take possession of the property. This impugned order has been passed as early as on 08.08.2023 and now, the same is challenged by the petitioner almost, after a period of eight months without filing necessary application before the Debts Recovery Tribunal under Section 17 of the Act.

4.As against the order passed under Section 14(1) of the SARFAESI Act, the petitioner is having an effective and alternative remedy under Section 17 of the SARFAESI Act by filing an appeal before the Debts Recovery Tribunal. In the decision reported in **(2010) 8 SCC 110** in the case of ***Union Bank of India -vs- Satyawadi Tondon and others***, the Hon'ble Supreme Court has held that the party aggrieved by any orders passed under Section 14 of SARFAESI Act, had to file an appeal before the Debts Recovery Tribunal and held as follows:

“42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression “any person” used in Section 17(1) is



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of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order



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ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

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55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

5.The dictum laid down by the Hon'ble Supreme Court was also reiterated by the Hon'ble Supreme Court in the case of ***South Indian Bank Limited and others vs Naveen Mathew Philip and another***, reported in ***2023 SCC OnLine (SC) 435***.

6.As such, the Writ Petition is not maintainable. Hence, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[R.S.K., J] & [G.A.M., J]
05.04.2024



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

1.The Chief Judicial Magistrate, Madurai.

2.The Commissioner,
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3.The Sub Inspector of Police,
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AND

G.ARUL MURUGAN, J.

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