BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2024

CORAM

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

W.P(MD)No.8534 of 2024
and
W.M.P.(MD)Nos.7762 and 7763 of 2024

R.M.Gunasekaran ... Petitioner

vs

State Bank of India,
Regional Office at 197, Annasalai,
Ponnmaravathy, Pudukottai,
represented by its Authorised Signatory,
Huliraj ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the learned Chief Judicial Magistrate, Pudukottai, in Cr.M.P.No.718 of 2024, dated 21.02.2024 and the consequential physical possession of the subject property taken on 25.03.2024 by the Advocate Commissioner and consequently, to direct the Respondent to re-deliver the possession of the subject property to the Petitioner.

For Petitioner : Mr.S.Suresh
For Respondent : Mr.G.Radhakrishnan

ORDER

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

This Writ Petition is filed challenging the order passed by the learned Chief Judicial Magistrate, Pudukottai, in Cr.M.P.No.718 of 2024, dated 21.02.2024 with a consequential direction to direct the respondent to re-deliver the possession of the subject property to the petitioner.

2.The petitioner has availed an agricultural loan from the respondent Bank for a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) on 02.07.2018 by mortgaging his dwelling house. As the loan was not repaid, the account was classified as non performing asset on 07.06.2021. Pursuant to which, a notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") was issued on 27.10.2021 calling upon the petitioner to pay a sum of Rs.9,03,179.02/-. As the loan was not paid, the respondent Bank took symbolic possession of the property on 06.01.2023 under Section 13(3) of the SARFAESI Act. Thereafter, the respondent Bank approached the learned Chief Judicial Magistrate, Sivagangai under Section 14(1) and (2) of the SARFAESI Act for taking possession of the secured asset. By order dated 21.02.2024 in Cr.M.P.No. 718 of 2024, orders has been issued appointing an Advocate Commissioner for taking possession of the secured asset. With the assistant of the Advocate Commissioner, the respondent Bank has taken physical possession of the mortgaged property on 25.03.2024. Challenging the order passed under Section 14(1) of the SARFAESI Act, the petitioner is before this Court.

3.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 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 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.*

.....

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]
04.04.2024

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

To

The Chief Judicial Magistrate, Pudukottai.

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.8534 of 2024

04.04.2024