BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.01.2024

PRONOUNCED ON : 08.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD).No.7858 of 2023
and WMP(MD).Nos.7281 & 11682 of 2023

Uma Maheshwari ...Petitioner

Vs

1.The Authorized Officer
M/s.Cholamandalam Investment & Finance Company Ltd.,
Dare House First Floor
No.2, NSC Bose Road, Parrys
Chennai 600 001

2.The Branch Manager
M/s.Cholamandalam Investment & Finance Company Ltd.,
Tiruchendur Road
Palayamkottai
Tirunelveli District

3.The Branch Manager
ICICI Prudential Life Insurance Company Ltd.,
No.25, Sundari Complex, First Floor
Office No.101, Nanguneri Branch, Near New Bus Stand
Tirunelveli, Tamil Nadu 627 007

4.The Registered Office
ICICI Prudential Life Insurance Company Ltd.,
ICICI Prulife Towers, Appasaheb Marathe Marg
Prabhadevi, Mumbai 400 025 ...Respondents

(R3 & R4 are suo moto impleaded vide Court order dated 24.04.2023)

Prayer : Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Certiorari, to call for the records pertaining to the alleged impugned order of Demand Notice under Section 13(2) dated 28.12.2022 and the Possession Notice dated 08.03.2023 under Section 8(1) SARFEASI Act, 2002, under SARFAESI Act issued by the first respondent under SARFAESI Act issued by the respondent and quash the same as illegal.

For Petitioner : Mr.S.Mani

For R1 & R2 : Mr.P.Pethu Rajesh

For R3 & R4 : Mr.Sachin Daga

:Mr.S.Srinivasa Raghavan
Amicus Curiae

O R D E R

(Made by **R.VIJAYAKUMAR,J.**)

The present writ petition has been filed challenging the demand notice issued under Section 13(2) and the possession notice under Section 13(4) of SARFAESI Act on 28.12.2022 and 08.03.2023 respectively and to quash the same.

(A)Facts leading to the filing of the present writ petition are as follows:

2.The petitioner's husband had applied for a Housing Loan of Rs.1,70,00,000/- with the respondent Housing Finance Company. The said amount was sanctioned on 22.12.2021. At the time of sanctioning of the amount, they have deducted a sum of Rs.3,35,825/- towards life insurance premium amount along with other deduction. After deducting, the balance amount was released through cheque. The petitioner's husband passed away in a road accident on 01.05.2022. The petitioner was under the impression that the life insurance premium amount would be adjusted towards the housing loan. Since there was no response, the petitioner had addressed a legal notice to the Housing Finance Company on 25.05.2022 requesting them to send a copy of the life insurance policy and the copy of the statement accounts for the period from 25.10.2021. The Housing Finance Company had sent a reply on 10.06.2022 informing that they had processed the life insurance policy through ICICI Insurance Company. However, the policy could not be issued in view of the fact that they have not received the document for proceeding the policy. With the said information, the premium amount that was deducted was re-credited back to the statement of accounts.

3.The petitioner again sent another two legal notices on 07.07.2022 and 28.07.2022 to indemnify the loan amount by the Insurance Company and to liberate the petitioner from the clutches of the loan amount. Since there was no proper response, the petitioner had filed the consumer complaint before the Consumer State Commission Redressal Forum in C.C.No.383 of 2022 as against the Housing Finance Company. The prayer in the said complaint was to direct the Housing Finance Company to pay a sum of Rs.1,80,00,000/-to the complainant for the negligent act of the opposite parties for not taking the insurance policy in proper time. The petitioner had further prayed for payment of a sum of Rs.20,00,000/- by way of damages. The Housing Finance Company has filed their written version and the Consumer Complaint is still pending.

4.The Housing Finance Company has chosen to issue a demand notice under Section 13(2) of SARFAESI Act on 28.12.2022. By way of a reply, an Advocate notice has been sent to the Housing Finance Company on 30.01.2023. On 13.02.2023, a detailed reply notice was sent on behalf of the Housing Finance Company to the counsel for the petitioner. Thereafter, the Housing Finance Company has chosen to issue a possession notice under

Section 13(4) of SARFAESI Act on 08.03.2023. Challenging the demand notice and the possession notice, the present writ petition has been filed.

(B)Contentions of the learned counsel appearing for the petitioner are as follows:

5.When the premium amount has been deducted even before the disbursal of the loan amount from the account of the borrower, the Housing Finance Company is duty bound to transfer the said amount to ICICI Insurance Company for issuance of the policy document. Though the premium amount was deducted on 31.12.2021, the Housing Finance Company had never transferred the said amount to ICICI Insurance Company till the petitioner had sent a legal notice on 25.05.2022. After receipt of the legal notice, the Insurance Company has re-credited the premium amount to the credit of the housing loan account by way of letter dated 10.06.2022. Therefore, it is clear that when the borrower was alive till 01.05.2022, the premium was retained by the Housing Finance Company. Therefore, it is a clear case of fraud on the part of the Housing Finance Company. In case, if any further documents are required, they should have called upon the borrower for submission of those documents. However, nothing is placed on record to show that there was any negligence or dereliction on the part of the borrower in submitting the documents for the purpose of getting the

Insurance policy. After the death of the borrower came to the knowledge of the Housing Finance Company, they have taken a 'U' turn and contended that no policy at all been issued and hence, the Housing Finance is not covered by the Life Insurance Policy. Had there been a Life Insurance Policy covering the Housing Loan, the petitioner would not have suffered to such an extent. Therefore, when the fault is on the part of the Housing Finance Company, they cannot issue demand notice and the possession notice, demanding the balance housing loan amount from the borrower or his legal heirs. Hence, he prayed for quashing these two notices.

(C) Contentions of the learned counsel appearing for the respondents 1 and 2 /Housing Finance Company are as follows:

6.The petitioner is not merely a legal heir of the borrower, but she is also a co-applicant for the credit facility availed by her husband. The petitioner's husband has opted for life insurance with the respondents 3 and 4 Insurance Company on his own accord and a sum of Rs.3,35,825/- was debited from sanctioned loan amount for the premium. The subject matter of life insurance is a contract between the petitioner's husband and the respondents 3 and 4 Insurance Company.

7.The respondents 1 and 2 Housing Finance Company are no way responsible or connected with the said transaction. Since the petitioner's husband has not co-operated for the medical examination, the insurance premium amount was returned by the Insurance Company to the Housing Finance Company and the same was credited to the loan account of the petitioner and her husband on 07.04.2022. The premium amount was re-credited to the loan account much prior to the death of the borrower.

8.The learned counsel for the respondents 1 and 2 had further contended that as far as the Life Insurance Policy is concerned, there is privity of contract only between the borrower and the respondents 3 and 4. Except routing the premium amount by deducting the same from the loan amount, there is no connection whatsoever with regard to the insurance policy. It is for the borrower to co-operate with the Insurance Company and to submit the relevant documents that are sought for by the Insurance Company. Having failed to do so, they cannot blame the Housing Finance Company.

9.Taking insurance policy is the option of the borrower and therefore, the contention that the premium was compulsorily deducted from the loan amount without their consent is not factually correct. After deducting the said amount, the premium was immediately paid to the ICICI Insurance Company. When they made several attempts to call the borrower for submission of certain documents and medical records, the borrower had not responded. Therefore, the Insurance Company had re-credited the amount to the Housing Finance Company and in turn the Housing Finance Company had re-credited the amount to the account of the borrower even before his death. Merely because the premium has been deducted, that would not amount to issuance of policy unless a policy document is issued by the Insurance Company. The allegation of Implied Agency will not be applicable to the Housing Finance Corporation.

10.The learned counsel for the respondents 1 and 2 had further contended that alleging deficiency of service, the petitioner had already filed a consumer complaint before the State Consumer Redressal Forum in November 2022. Thereafter, the present writ petition has been filed in March 2023 challenging the proceedings initiated under SARFAESI Act. If at all the petitioner has got any remedy, the same has to be worked out before the Consumer Redressal Forum. Since due amount has not been paid, the Housing Finance is legally entitled to invoke the provisions of the SARFAESI Act. Hence, he prayed for dismissal of the writ petition.

(D)Contentions of the learned counsel appearing for the respondents 3 and 4 are as follows:

11.The learned counsel for the respondents 3 and 4 had raised a preliminary objection with regard to the maintainability of the writ petition as against the private Insurance Company. They had further contended that the Life Insurance Company has received a duly filled proposal and an application form through respondents 1 and 2 requesting for issuance of Life Insurance Policy along with one time premium deposit of Rs.3,35,825/-. Thereafter, several communications were addressed to the borrower to appear for a medical test which is precondition for issuance of Life Insurance Policy. Since there was no response from the borrower, it was kept in the proposal stage and the contract of insurance never got concluded. No policy document was ever issued covering the life of deceased borrower.

12.The respondents 3 and 4 had further contended that the premium amount was refunded vide RTGS to HDFC Bank Account on 04.04.2022 and it was credited on 06.04.2022 that is even prior to the death of the proposer. In fact, on 04.07.2023, the Insurance Company had received an e-mail from Housing Finance Company confirming the fact that the proposal was declined on medical ground and the premium amount was duly settled. Therefore, the Insurance Company has fully discharged of its liability. There is no complaint of deficiency in service or unfair trade practice, especially when there is no contract of service between the parties. Since the borrower has not accepted the offer and has not appeared for medical test, the contract of Insurance has not been concluded. Therefore, the prayer as against the Insurance Company is not sustainable and the same is liable to be dismissed.

13.We have carefully considered the submissions and perused the material records.

(E) Discussion:

14.The petitioner's husband had applied for housing loan for a sum of Rs.1,70,00,000/- from the respondents 1 and 2 Housing Finance Company. The said loan was sanctioned on 22.12.2021. At the time of sanctioning the loan amount, several charges were deducted before disbursement of the loan amount. A deduction of a sum of Rs.3,35,825/- towards life insurance premium amount is one of the deduction. The borrower's husband had passed away on 01.05.2022. Thereafter, when the wife of the borrower/writ petitioner attempted to make a claim over the Life Insurance Policy, she came to know that the premium amount has been re-credited to the bank account alleging that the borrower had not co-operated for the medical test. Thereafter, the demand notice and possession notice have been issued by the Housing Finance seeking to recover the loan amount. These facts are not in dispute.

15.According to the Housing Finance Company, they have deducted the premium amount and they have paid the same to the Insurance Company along with proposal form. Thereafter, they have no further role for issuance of the Insurance Policy. According to the Insurance Company, though they have received the premium amount, since the borrower had not appeared for the medical test, the contract of insurance had not concluded and therefore, no policy document was issued.

16.It is the specific case of the Insurance Company that after waiting for a few months, they have refunded the premium amount vide RTGS in HDFC bank account bearing No.00040310005866 on 04.04.2022 and the amount was credited on 06.04.2022 to the account of the Housing Finance Company namely respondents 1 and 2. Therefore, it is clear that the respondents 1 and 2 have refunded the premium amount even while the borrower was alive. Since the Insurance Company had not issued any policy document covering the life of the deceased borrower and they have refunded the premium amount to the Housing Finance Company even before the death of the borrower, they cannot be found fault with.

17.As far as the case of the Housing Finance Company namely respondents 1 and 2 are concerned, there is no record to show on what date the premium amount was credited to the borrower's account or whether the borrower was put on notice about the fact that the proposal has been declined by the Insurance Company. These issues have to be adjudicated before the consumer complaint pending before the State Consumer Redressal Forum in C.C.No.383 of 2022. Unless it is decided by the competent forum relating to deficiency of service, the rights of the Housing Finance Company to proceed under SARFAESI Act cannot be curtailed. When the non payment of loan amount is an admitted fact, the alleged deficiency of service in processing the insurance policy cannot be a legal impediment for proceeding under SARFAESI Act. In case, if the petitioner ultimately succeeds before the Consumer Redressal Forum, they will be entitled to get refund of the amount paid by them along with reasonable interest.

18.We place on record our appreciation for the assistance rendered by Mr.S.Srinivasa Raghavan, Advocate as *Amicus Curiae* by placing the factual and legal aspects before this Court including the judgments of the Hon'ble Supreme Court. Those judgments arise out of the Consumer Protection Act and hence, we are not considering those judgments for the purpose of deciding the validity of proceedings under SARFAESI Act.

19.With the above said observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J.,) **(R.V.J.,)**
08.04.2024

Index :yes
Internet :yes

NCC : yes/no
msa

D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR,J.

msa

Pre-delivery Order made in
W.P(MD).No.7858 of 2023
and WMP(MD).Nos.7281 & 11682 of 2023

08.04.2024