BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2024

CORAM

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

W.P(MD)No.9894 of 2024
and
W.M.P.(MD)No.8970 of 2024

Kalpana ... Petitioner

vs

1.The Authorised Officer,
Punjab National Bank,
WGC Road, Bata Show-room upstairs,
Tuticorin.

2.The Authorised Officer,
PNB MetLife India Insurance Co.,
Hr.Tower 1st Floor, 80ft Road, Anna Nagar,
South Indian Bank upstairs,
Madurai-625 020. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiotari calling for the records connected to the impugned possession notice, dated 25.03.2024 issued under Section 13(4) of SARFAESI Act, by the first respondent bank and to quash the as illegal and arbitrary.

For Petitioner : Mr.M.Benazir Begum
For Respondents : Mr.V.Balasubramanian
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ORDER

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

The Writ Petition is filed challenging the impugned possession notice, dated 25.03.2024 issued under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") by the first respondent Bank.

2.The case of the petitioner is that her husband had availed a home loan for the purpose of constructing a house for a sum of Rs.25,00,000/- on 18.02.2022. Even though the loan amount was sanctioned for Rs.25,00,000/-, he has actually availed only a sum of Rs.19,00,000/-. The second respondent Bank had issued a group insurance policy to the petitioner's husband vide certificate No.24201972 having coverage from 19.02.2022 to 19.02.2031. While the policy was in force, the petitioner's husband died due to heart attack on 21.06.2022. The petitioner has made an intimation to the second respondent for insurance claim, which was acknowledged on 15.08.2022. A Surveyor was appointed to conduct an enquiry, but however, the second respondent by letter, dated 30.09.2022 had stated that since policy was taken by fraudulently and deliberately misrepresenting the prior illness, the policy was not taken in good faith and thereby, returned the premium paid. The petitioner had sent a letter, dated 29.10.2022 to the Chairman, Claims Committee of the second respondent for re-examination of the matter. Since nothing materialised, she had filed a complaint before the District Consumer Disputes Redressal Commission, Tuticorin, which was taken on file in C.C.No.68 of 2023 and the same is pending. While so, the respondent Bank had initiated proceedings under the SARFAESI Act, and had issued notice under Section 13(2) of SARFAESI Act on 25.09.2023 and thereupon, the present impugned possession notice under Section 13(4) of the SARFAESI Act, dated 25.03.2024 had been issued, challenging which, the present Writ Petition has been filed.

3.The learned Counsel appearing for the petitioner reiterating the averments made in the affidavit contended that since the claim made by the petitioner is pending enquiry before the District Consumer Forum, the proceedings initiated by the respondent Bank cannot be sustained and further, since the petitioner had to pay Court fee, she has preferred the above Writ Petition to address her grievance.

4.Admittedly, the petitioner's husband had availed home loan and since there was a default in repayment of the loan, the account was classified as non-performing asset and a demand notice under Section 13(2) of the SARFAESI Act was issued on 25.09.2023 calling upon the petitioner to pay a sum of Rs.20,31,016.15/- within a period of sixty days. As repayment was not done, the respondent Bank had issued the impugned possession notice under Section 13(4) of the Act on 25.03.2024.

5.When the possession notice under Section 13(4) has been issued by the secured creditor, the petitioner being aggrieved person, is having an alternative and efficacious remedy by filing an appeal before the Debts Recovery Tribunal under Section 17 of SARFAESI Act. While so, the present Writ Petition filed challenging the impugned possession notice without exhausting the alternative remedy provided under the statute, is not maintainable.

6.It has been settled in catena of judgments of Hon'ble Supreme Court that Writ Petition filed challenging the notice under Section 13(2) or 13(4) or 14 of SARFAESI Act is not maintainable and the aggrieved person can only file an appeal before the Debts Recovery Tribunal under Section 17 of SARFAESI Act. In fact, the Hon'ble Supreme Court had also time and again deprecated the High Court for entertaining Writ Petition, when there is an efficacious alternative remedy available under the statute.

7.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 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.*
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> ***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."*

8.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.***

9.In view of the above settled position of law, the present Writ Petition is not maintainable and the same is accordingly dismissed. It is always open to the petitioner to challenge the impugned possession notice before the Debts Recovery Tribunal and canvas all the points urged in this Writ Petition. However, there shall be no order to as costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.K., J] & [G.A.M., J]
23.04.2024

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

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.9894 of 2024

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