BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2024

CORAM

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

W.P(MD)No.10396 of 2024
and
W.M.P.(MD)No.9369 of 2024

1.S.Subha Mary
2.P.Chandra
3.B.Sugamari
4.P.Muthupandi
5.K.Christyraja
6.P.Karuppiah
7.M.Rani
8.M.Ramalakshmi
9.S.Sheik Abdullah
10.V.Punitha Devi
11.G.Ummal Sidhika
12.B.Wilson Kirubakaran ... Petitioners

vs

1.The District Collector,
Madurai District,
Madurai.

2.The Tahsildar,
Madurai North Taluk,
Madurai.

3.The Branch Manager,
UCO Bank,
K.K.Nagar Branch,
Madurai-20.

4.The Commissioner of Police,
Madurai City,
Madurai.

5.The Inspector of Police,
Thallakulam, Madurai City,
Madurai.

6.A.Ramamoorthy
7.M.Jeyamurugan ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to forbear the respondents dispossessing the petitioners from the residential houses situated at Old No.7A, New No.13/6, TS No.1680, Plot No.9, Bharathiyar Street, B.B.Kulam, Madurai.

For Petitioners	: Mr.P.Rajendra Babu
For R1 and R2	: Mr.N.Satheeshkumar, Additional Government Pleader
For R3	: Mr.C.Deepak
For R4 & R5	: Mr.S.S.Madhavan, Government Advocate(Crl.side)
For R7	: Mr.V.Gubanthiran

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ORDER

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

The writ petition is filed to forbear the respondents from dispossessing the petitioners from the residential house situated at Old No. 7A, New No.13/6, Plot No.9, Bharathiyar Street.

2.It is the case of the petitioners that they are lessees under the sixth respondent, who had been in possession of the property for the past nearly 20 years in the 12 residential houses. According to the petitioners, they have entered into separate lease deeds by paying lease amounts to the owner of the property/sixth respondent. In September 2021, the official of the third respondent informed that the sixth respondent had not completed the repayment of the loan and therefore, they are going to take possession of the property. But, all of a sudden on 07.02.2024, the third respondent along with the respondents 2, 4 and 5 informed the petitioners to vacate the property, failing which, they will be forcibly vacated on 15.02.2024. In this regard, the petitioners had filed the petition before the Inspector of Police, Thallakulam Police Station, Madurai, and the Tahsildar and thereafter had also sent complaints to the District Collector, Madurai and the Commissioner of Police Madurai City, on 21.03.2024. As the threat of eviction continues, the petitioners had preferred the above writ petition.

3.Heard Mr.P.Rajendra Babu, learned counsel appearing for the petitioners, Mr.N.Satheeshkumar, learned Additional Government Pleader appearing for the first and second respondents, Mr.S.S.Madhavan, learned Government Advocate(Crl.side) appearing for the respondents 4 and 5, Mr.V.Gubanthiran, learned counsel appearing for the seventh respondent and Mr.C.Deepak, learned counsel appearing for the third respondent.

4.Mr.P.Rajendra Babu, learned counsel for the petitioners submitted that the petitioners since being the lease holders having entered into separately lease agreements and paid huge amounts to the sixth respondent land owner are entitled to protect their possession and when the sixth respondent had cheated the petitioners and they have also given necessary complaints before the District Collector and the Commissioner of Police, if the petitioners are evicted, they will lose their hard earned money and as such sought for to protect their possession in respect of the property.

5.Mr.C.Deepak, learned counsel appearing for the third respondent, on instructions, submitted that the sixth respondent had availed loan from the third respondent bank and since the same was not repaid, the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") was initiated and auction notice was issued for the property on 02.04.2020, in which, sale was completed and the sale certificate was issued on 05.06.2020 in favour of the auction purchaser and further the bank/secured creditor had filed an application under Section 14 of the SARFAESI Act, before the first respondent and by order dated 04.06.2020, the first respondent has passed orders granting physical possession of the property to the bank. The learned counsel further submitted that as against the sale completed, the sixth respondent borrower had filed S.A.No.171 of 2022 before the Debts Recovery Tribunal, Madurai and also further had challenged the order passed under Section 14 of the SARFAESI Act in S.A(SR).No.290 of 2023. The learned counsel also submitted that the sixth respondent borrower on every stage had filed several writ petitions and since he was unsuccessful and the writ petitions came to be dismissed, he had set-up the petitioners on the guise of lessees and even then the writ petition filed is not maintainable, he contended.

6.Mr.N.Satheeshkumar, learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that they have already passed orders in the application filed under Section 14 of the SARFAESI Act and therefore, they are not necessary parties to the writ petition.

7.Heard the learned counsels and perused the materials available on record.

8.It could be seen that admittedly the sixth respondent, who is a borrower/guarantor had not repaid the loan amount of the third respondent Bank, based on which, proceedings under SARFAESI Act has been initiated. It could also be seen that from the year 2016, the sixth respondent had almost challenged every step or orders initiated or passed by the bank or the first respondent under Section 14 of the SARFAESI Act and nearly 9 writ petitions have been filed which all came to be dismissed.

9.It is also seen that already sale notice has been issued in respect of the property and the property was sold in auction on 02.04.2020 and the sale deed in favour of the successful bidder had also been executed on 05.06.2020. Further, on the application filed by the third respondent bank/secured creditor, the first respondent, District Collector had already passed orders on 04.06.2020 under Section 14 of the SARFAESI Act granting physical possession of the property to the bank. In fact, the sixth respondent/borrower had challenged the sale conducted before the Debt Recovery Tribunal, Madurai in S.A.No.171 of 2022 and further had also challenged the order passed under Section 14 of the SARFAESI Act before the Debt Recovery Tribunal in S.A.SR.No.290 of 2023.

10. The nine writ petitions filed by the borrower/sixth respondent having been dismissed, in the last writ petition the Division Bench by order dated 09.02.2024 in W.P(MD)No.2767 of 2024, was pleased to pass the following order:

> *"5.In light of the submissions made by both sides, we are of the view that the petitioner has approached this Court for every action taken by the respondent Bank, which clearly shows that it is nothing but an abuse of process of law. Though the SARFAESI*

appeal is pending before the jurisdictional Debts Recovery Tribunal, he has not obtained any interim order in the pending appeal. In view of the above, we feel that the petitioner has not made out any prima facie case to entertain this writ petition, accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

11.Now, since the sixth respondent has lost in all the proceedings, the petitioners who claimed to be the lease holders, remained silent all along, had come up with the above writ petition. Even assuming that the petitioners are the lease holders and if at all they are having any right still they can approach the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, as they would also be personally interested. When the petitioners have an alternative and effective remedy available under Section 17 of the SARFAESI Act, before the Debt Recovery Tribunal, the present writ petition filed by the petitioners as lessees is not maintainable.

12.It is useful to refer the judgment of the Hon'ble Supreme Court in the case of ***Union Bank of India -vs- Satyawadi Tondon and others***, reported in ***(2010) 8 SCC 110,*** 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.*
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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."*

13.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.***

14. In view of the above, the writ petition filed by the petitioners is not maintainable and accordingly, the same stands dismissed. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
29.04.2024

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