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.9078 of 2023
and WMP(MD).No.8225 of 2023

P.Sheela ...Petitioner

Vs

1.The Authorized Officer
Housing Development Finance Corporation Ltd.,
Door No.406, Sakthi Sivam Plaza
9th Cross Street
KK Nagar (east)
Madurai

2.The Branch Manager
Housing Development Finance Corporation Ltd.,
Door No.406, Skathi Sivam Plaza
Pumping Station Road
9th Cross Street
KK Nagar (east)
Madurai

3.The Branch Manager
HDFC Life Insurance Company Limited
D.No.96, 3rd Floor
Alagarkoil Road
Opposite to American College
Tallakulam
Madurai .....Respondents

**Prayer :** Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed in Crl.M.P.No.135 of 2023 dated 20.02.2023 passed by the Chief Judicial Magistrate – Madurai quash the same as illegal and consequently direct the respondents to adjust the loan outstanding with insurance claim amount.

For Petitioner : Mr.A.Joseph Jerry

For R3 : Mr.P.C.Muthu Saravanan

**ORDER**

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

The writ petition has been filed challenging the order passed by the Chief Judicial Magistrate, Madurai in Cr.M.P.No.135 of 2023 dated 20.02.2023 invoking Section 14 of the SARFAESI Act.

**(A)Factual Background:**

2.According to the petitioner, her husband who was working as Grade-II Police Constable had availed a Housing Loan to a tune of about Rs.12.00 lakhs from the first and second respondents on 07.01.2015. The petitioner's husband has also taken a master policy which is a life insurance policy from the third respondent and the premium towards the said policy was deducted by the Housing Finance Corporation.

3.The petitioner had further contended that while her husband was in service, he died due to snake bite on 19.07.2021. Thereafter, she had made several efforts to receive the claim amount from the Insurance Company so that it could be adjusted for the Housing loan account. However, there was no response from the Insurance Company. In the meanwhile, the Housing Finance Company had issued a demand notice for default in payment of monthly installment on 04.01.2022. A possession notice was issued on 07.07.2022 demanding a sum of Rs.12,56,330/-. Challenging the possession notice, the petitioner had filed W.P(MD).No.18320 of 2022.

4.The Division Bench had further observed that the challenge made with regard to the possession notice is not maintainable and the petitioner has to approach only the Debt Recovery Tribunal. In the meantime, while the writ petition was pending, the Housing Finance Company had approached the Chief Judicial Magistrate, Madurai to take physical possession, invoking Section 14 of the SARFAESI Act. The Chief Judicial Magistrate, Madurai had passed an order on 20.02.2023 in Cr.M.P.No.135 of 2023 appointing an Advocate Commissioner to take possession of the property. Challenging the said order of the Chief Judicial Magistrate, Madurai, the present writ petition has been filed.

**(B)Discussion:**

5.The primary contention of the learned counsel for the petitioner is that when W.P(MD).No.18320 of 2022 was entertained by this Court, this Court has made an observation on 12.08.2022 that the petitioner is expecting amount from the Insurance Company which is payable to him pursuant to the death of her husband. Therefore, according to the learned counsel appearing for the petitioner, when the Insurance Company which is a sister concern of Housing Finance Company is duty bound to release the insurance amount, the Housing Finance Company cannot threaten the petitioner by coercive steps. Hence, he prayed for allowing the writ petition.

6.The facts narrated above will clearly show that the present writ petition has been filed solely based upon the observations made by this Court on 12.08.2022 while entertaining W.P(MD).No.18320 of 2022. However, the said writ petition came to be dismissed on 18.12.2023 wherein a Coordinate Bench of this Court had recorded the submissions of the learned counsel for the petitioner that he is ready to settle the issue by coordinating with the Life Insurance Company and directed the writ petitioner to approach the Debt Recovery Tribunal to workout her remedy. Now, this writ petition has been filed challenging the consequential order namely proceedings under Section

14 of SARFAESI Act. Therefore, we do not find any reason to deviate or take a different view from that of the order of the Coordinate Bench in WP(MD).No.18320 of 2022 dated 18.12.2023.

7.It is for the petitioner to approach the Insurance Company to release the claim amount and in case, if there is any delay or any repudiation of the claim, it is for the petitioner to approach the appropriate forum to ventilate her grievances. Merely because the deceased borrower had taken a Life Insurance Policy and the policy amount is yet to be disbursed, the proceedings under SARFAESI Act cannot be kept in abeyance.

8.In view of the above said deliberations, we do not find any merits in the writ petition. The writ petition stands dismissed with liberty to the petitioner to approach the appropriate forum for ventilating her grievances for disbursal of the insurance claim from the third respondent herein.

9.With the above said observation, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is 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.9078 of 2023
and WMP(MD).No.8225 of 2023

**08.04.2024**