BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.10955 of 2023
and
W.M.P.(MD)Nos.9595, 9597, 9598, 9602 and 11097 of 2023

1.Joseph Sahayamary @ Sahayamary
2.Joelene
3.Minor Liora ... Petitioners

[Minor, third petitioner is represented by her mother and natural guardian, the first petitioner]

-Vs-

1.The Insurance Regulatory and
Development Authority of India,
Survey No.115/1, Financial District,
Nanakramguda, Gachibowli,
Hyderabad-500 032.

2.M/s.PNB Housing Finance Limited,
Represented through its Branch Manager,
Nandhini Buildings, Third Floor, Door No.48,
Bypass Road, Second Street,
Ponment, Madurai-625016.

3.The Authorised Officer,
PNB Housing Finance Limited,
Nandhini Buildings,

Third Floor, Door No.48,
Bypass Road, Second Street,
Ponmeni, Madurai-625 016.

4.BharathiAXA Life Insurance Company Limited,
(Now merged with ICICI Lombard General Insuarnce Company Limited),
Represented through its Branch Manager,
G.V.Complex, Third Floor,
Door No.11/1B, Bypass Road,
Madurai. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring that the classification of the Loan Account No.NHL/MDU/0418/52083 of the deceased borrower, Mr.T.J.Charles Anthony Stephen as a Non Performing Asset on 30/04/2021 and to issue a writ of certioararified Mandamus to call for the records relating to the impugned notice dated 31/01/2023 in Reference No.PNBHFL/CBE/JAN/23 issued by the third respondent and quash the same and consequentially forbearing the respondents 2 and 3 from pursuing any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in respect of the subject property in Plot No.11, R.S.No.46/2A1A1, Park Town Second Street, Anaiyur Fist Bit Village, Madurai-625 017.

For Petitioner	: Mr.J.Barathan
For R1	: Mr.S.Anwar Sameem
For R2	: Mr.A.Anbalagan
For R4	: Mr.P.Pethu Rajesh
For R3	: No Appearance

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

Challenging the demand notice issued by the second and third respondents, the petitioners have filed the present writ petition.

2.The husband of the first petitioner availed loan from the second respondent Bank by mortgaging his properties as secured assets. There were defaults in repayment of the loan dues. Hence, the respondent bank initiated action under the SARFAESI Act and issued the demand notice, which is put to challenge in this writ petition.

3.The learned counsel for the petitioners submits that the husband of the first petitioner while availing loan facility from the second respondent, he has insured the said loan with the fourth respondent and paid the entire insurance premium amount directly to the fourth respondent. Suddenly, the husband of the first petitioner passed away. During his life time, he had been paying the monthly instalments without any default. Therefore, the first petitioner submitted necessary claim forms enabling the fourth respondent to discharge the loan amount. However, the fourth respondent did not act upon the same. The second respondent instead of claiming the loan amount from the fourth respondent, insisted the first petitioner to pay the entire loan amount and issued the demand notice. Challenging the same, the first petitioner has filed a complaint before the District Consumer Disputes Redressal Commission, Madurai against the respondents 2 to 4 and the said complaint was dismissed. Challenging the said order of dismissal, the petitioners have filed an appeal before the competent authority.

4.The learned counsel for the respondent bank submitted that the writ petition is premature since the respondent bank has just issued notice under Section 13(2) of the SARFAESI Act and not initiated any action against the petitioner under Section 13(4) of the SARFAESI Act.

5.Heard the submissions made on either side and perused the materials placed on record.

6.It is not in dispute that the husband of the first petitioner availed credit facilities against the security of immovable property. Due to the defaults committed in payment of principal as well as interest, the loan account was treated as Non Performing Asset and the respondent bank issued the impugned notice under Section 13(2) of the SARFAESI Act calling upon the petitioner to pay in full and discharge the liabilities to the bank, failing which, action would be taken under Section 13(4) of the said Act.

7.A Division Bench of this Court, following the judgment of the Apex Court in ***Digivision Electronics v. Indian Bank and Anr. [W.P.No.13056 of 2005 decided on 07.07.2005]*** held as follows:

"16. In a sense the notice under Section 13(2) of the Securitisation Act is really a show-cause notice, and ordinarily this Court does not interfere with show-cause notices, vide Special Director Vs. Mohd. Ghulam Ghouse, AIR 2004 SC 1467, Ulagappa Vs. Divisional Commissioner, Mysore, (2001) 10 SCC 639, Executive Engineer, Bihar State Housing Board Vs. Ramesh K.Singh & Others, JT 1995 (8) SC 331. The notice under Section 13(2) of the Securitisation Act really does not give any rise to a cause of action because by itself the notice does not affect any right or liability of the borrower. Hence, challenge to the notice under Section 13(2) of the Securitisation Act is premature, since it is possible that the secured creditor may be satisfied with the reply of the borrower to the aforesaid notice and may drop the proceedings. Hence, all the writ petitions challenging notice under Section 13(2) of the Securitisation Act are dismissed on the ground that the writ petitions are premature, and the petitioners have an alternative remedy of raising all the points which they are raising in these writ petitions in their reply to the notice under Section 13(2) of the Securitisation Act. As already stated above, the secured

creditor must decide the objection of the borrower to the notice under Section 13(2) of the Securitisation Act by a reasoned order, and if the objection is rejected the rejection order must be communicated to the borrower."

8.At this juncture, the learned counsel for the respondent bank submits that notice under Section 13(4) of the SARFAESI Act has also been issued.

9.In view of the judgment rendered by this Court and considering the submission made by the learned counsel for the respondent bank, this Court is not inclined to entertain the prayer sought for in the writ petition. It is for the petitioner to agitate all his rights before the appropriate forum by raising all the grounds that are raised in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.] & [R.V., J.]
26.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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D.KRISHNAKUMAR, J.

AND

R.VIJAYAKUMAR, J.

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