



W.P.(MD)No.12291 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.06.2024

CORAM

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

**W.P(MD)No.12291 of 2024
and
W.M.P.(MD)No.10902 of 2024**

Rajkannan

... Petitioner

vs

**1.The Inspector of Police,
Mimisal Police Station,
Mimisal, Pudukottai District.**

**2.The Branch Manager,
Tamilnadu Mercantile Bank Limited,
D.No.2.6/1H3, Poonjoolai,
Chinnalapatti, Madurai Road,
Dindigul District.**

3.Mohamed Izathin

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to forbear the respondent No.2 from disturbing the peaceful possession and enjoyment of the property of the petitioner in S.No.21/3 of Mimisal village by directing the 2nd respondent herein to delink the property in connection with loan A/c.No.



W.P.(MD)No.12291 of 2024

283430250803140 as agreed by the respondents 2 and 3.

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For Petitioner : Mr.J.Anandkumar
For R1 : Mr.S.S.Madhavan
Government Advocate (Crl.side)
For R2 :Mr.N.Dilip Kumar

ORDER

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

The petitioner, who is a tenant, has approached this Court seeking to forbear the second respondent Bank from disturbing the peaceful possession and enjoyment of the property in respect of the loan account of the third respondent.

2.It is the case of the petitioner that he had entered into a rental agreement with the third respondent, who is, admittedly, the owner of the property and had mortgaged said property to the second respondent Bank. He has paid a sum of Rs.2,50,000/-, as advance and a monthly rent of Rs.1,500/- was fixed, which was later increased to Rs.4,000/-. The petitioner is running a textile shop even from the year 2004 and only recently, he came to know that the third respondent, who is the owner, had

2/7



W.P.(MD)No.12291 of 2024

availed a loan and had defaulted and for which, the second respondent Bank had initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”). Therefore, the petitioner decided to purchase the property and had entered into a sale agreement with third respondent and after deducting the advance amount, he had paid a sum of Rs.22,00,000/- in the loan account of the third respondent. As the Advocate Commissioner has issued a letter, dated 31.05.2024, stating that he is going to take physical possession of the property on 11.06.2024, the petitioner has preferred the above Writ Petition.

3.Heard Mr.J.Anandkumar, learned Counsel for the petitioner, Mr.S.S.Madhavan, learned Government Advocate (Crl.side) appearing for the first respondent and Mr.N.Dilip Kumar, learned Counsel for the second respondent and perused the materials available on record.

4.Admittedly, the third respondent, who is the owner of the property, has availed loan from the second respondent Bank and defaulted, is not before this Court and only the petitioner, who claims to be the tenant, has



W.P.(MD)No.12291 of 2024

come forward seeking a relief as against the second respondent Bank/secured creditor. It is not in dispute that the third respondent had committed default in repayment of the loan for which, proceedings under the SARFAESI Act has been initiated by the second respondent Bank and the secured creditor had filed a petition before the learned Chief Judicial Magistrate, Pudukottai, under Section 14 of the SARFAESI Act in CrI.M.P.No.402 of 2023. By order, dated 30.06.2023, the petition was allowed and an Advocate Commissioner was appointed to take physical possession of property and hand it over to the second respondent Bank.

5.In compliance of the order passed by the learned Chief Judicial Magistrate under Section 14 of SARFAESI Act, the Advocate Commissioner had addressed the first respondent Police to provide necessary protection for executing the warrant in securing the physical possession of the property on 11.06.2024. Triggered with the letter addressed by the Advocate Commissioner to the Police, the petitioner has rushed to this Court with the above prayer.



W.P.(MD)No.12291 of 2024

6.The learned Counsel for the second respondent Bank brought to the notice of this Court that already the Advocate Commissioner had acted upon the order passed by the learned Chief Judicial Magistrate and in fact, physical possession of the property had already been taken on 11.06.2024 and handed over to the Bank and therefore, the relief sought for by the petitioner has become infructuous. The learned Counsel further submitted that in fact, as against the order passed by the learned Chief Judicial Magistrate, the third respondent/land owner had preferred an appeal before the Debts Recovery Tribunal, which came to dismissed.

7.Be that as it may, when already, the Advocate Commissioner had acted upon the order of the learned Chief Judicial Magistrate, Pudukottai and physical possession of the property has already been secured and handed over to the respondent Bank, the petitioner, who is a third party and claimed to be a tenant, cannot maintain the above Writ Petition. Even if the petitioner is a tenant and he is aggrieved by any of the proceedings taken by the respondent Bank/secured creditor under the SARFAESI Act, it is always open to the petitioner to redress his grievances by filling necessary appeal before the Debts Recovery Tribunal. As already possession had been taken



W.P.(MD)No.12291 of 2024

and handed over to the respondent Bank, no further orders are required.

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8.In such circumstances, the Writ Petition fails and is accordingly, dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
12.06.2024

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

cmr

To

1.The Chief Judicial Magistrate, Pudukottai.

2.The Inspector of Police,
Mimisal Police Station,
Mimisal, Pudukottai District.



WEB COPY



W.P.(MD)No.12291 of 2024

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

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