BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2024

CORAM

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

W.P(MD)No.12518 of 2024
and
W.M.P.(MD)No.11182 of 2024

M/s.Susee Automobiles (P) Limited,
represented by its Managing Director,
J.Rajiv Subramanian,
Madurai – 625 001. ... Petitioner

vs

1.The Authorized Officer,
Axis Bank Limited,
Southern Recovery Cell,
2nd Floor, Karumuthu Nilayam,
192, Anna Salai,
Chennai – 600 002.

2.The Branch Manager,
Axis Bank Limited,
No.37, Naicker New Street,
Madurai – 625 001.

3.The Registrar,
Debts Recovery Tribunal,
Madurai. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the the Debts Recovery Tribunal, Madurai, to conduct a joint enquiry of O.A.No.735 of 2018 and S.A.No.215 of 2024 and dispose of the same in accordance with law within a time frame, as may be fixed by this Court.

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel for Mr.Y.Prakash

*****

ORDER

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

The petitioner, who is a borrower, had filed this Writ Petition seeking to direct the Debts Recovery Tribunal, Madurai, to conduct a joint enquiry in O.A.No.735 of 2018 and S.A.No.215 of 2024 and to dispose of the same in a fixed time frame.

2.It is the case of the petitioner that they are a Private Limited Company registered under the Indian Companies Act, 1956 and part of Susee group and they were appointed as a dealer for leading automobile manufacturer of Mahindra & Mahindra in the Madurai region in the year

2005. Initially, they had credit facility with the HDFC Bank and in August 2013, based on the service promised to be extended by the respondent Bank, they had switched over to the respondent Bank and had availed credit facility for a sum of Rs.16.5 crores. Apart from this, further credit facility had also been extended to the group Companies and the over all credit sanctioned from the second respondent Bank was for a sum of Rs.26.50 crores.

3.In spite of several financial difficulties faced by the petitioner, due to business problems, they had been making significant payments to the Bank, but sill, the respondent Bank were adding numerous additional charges towards late payment fees, penal interest etc. Since there had been difficulties in the repayment, the petitioner's account was classified as non performing asset on 16.03.2017 and by initiating proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”), the respondent Bank had issued a demand notice, dated 07.07.2017 under Section 13(2) of the SARFAESI Act demanding a sum of Rs.9,21,84,681.20/-. Pursuant to which, possession notice, dated

26.10.2017, was also came to be issued under Section 13(4) of the SARFAESI Act.

4.As the respondent Bank had issued auction notice, the petitioner had filed a Writ Petition challenging the same and pursuant to the conditional order, they have also paid a sum of Rs.2.5 crores. However, the Writ Petitioner had withdrawn the Writ Petition for the purpose of entering into an One Time Settlement with the respondent Bank. However, the respondent Bank filed O.A.No.735 of 2018 before the Debts Recovery Tribunal, Madurai, for recovery of the outstanding amount and since the petitioner did not appear before the Tribunal and file counter statement, they have been set *ex parte*. They have subsequently filed an application to set aside the *ex parte* along with a detailed counter statement and the application in O.A.No.735 of 2018 is still pending.

5.While so, the respondent Bank/secured creditor had filed a petition under Section 14 of the SARFAESI Act, in Crl.M.P.No.590 of 2023 before the learned Chief Judicial Magistrate, Madurai, and by order, dated 30.08.2023, the learned Chief Judicial Magistrate, allowed the petition by appointing an Advocate Commissioner to assist the respondent Bank for securing physical possession of the property. The petitioner had challenged the order passed under Section 14 of the SARFAESI Act in S.A.No.215 of 2024 before the Debts Recovery Tribunal, and the same is pending.

6.When the account was classified as non performing asset in the year 2017, the outstanding was only Rs.9.21 crores, whereas, in the application filed under Section 14 of the SARFAESI Act by the secured creditor, the outstanding was shown as Rs.22 crores. Since both the Original Application filed by the Bank and the SARFAESI Appeal filed by the petitioner are still pending before the Debts Recovery Tribunal, Madurai, the petitioner had come up with the above Writ Petition seeking for a joint enquiry in both these proceedings.

7.Heard the learned Counsel for the petitioner and perused the materials available on record.

8.Admittedly, the petitioner is a borrower, who has availed financial facility in the form of several credit facilities amounting a sum of Rs.16.5

crores and also had availed further over all credit sanctioned for the group Company, which in all amounts to Rs.26.50 crores. In view of the fact that the petitioner having defaulted in repayment of the loan amount, the second respondent Bank had classified the petitioner's account as non performing asset as early as on 16.03.2017 and by initiating proceedings under the SARFAESI Act, the respondent Bank had issued a demand notice under Section 13(2) of the SARFAESI Act calling upon the petitioner to pay a sum of Rs.9,21,84,681.20/- within a period of sixty days and since payments were not made, possession notice under Section 13(4) of the SARFAESI Act was also came to be issued on 26.10.2017. The petitioner had averred in the affidavit that when the sale proceedings were undertaken, they have challenged the same by filing a Writ Petition. However, as they proposed to enter into an one time settlement with the respondent Bank, they had withdrawn the Writ Petition.

9.The respondents 1 and 2/Bank had filed O.A.No.735 of 2018 on the file of the Debts Recovery Tribunal, Madurai, as against the petitioner, its Directors and also the group Company, for recovery of the outstanding amount. It could be seen that the notice was ordered to the petitioner and the other defendants in that application and since in spite of the service of summons, all the defendants including the petitioner did not appear and the Tribunal by order, dated 27.02.2020 by recording the fact that in spite of several adjournments, written statement of D1 to D5 was not filed, the defendants were set *ex parte* and neither the petitioner nor the other defendants had taken any steps for nearly two years and it seems that only in the year 2022, they had filed a petition to set aside the *ex parte* order and the said petition is still pending. As such, as on date, the *ex parte* order passed against the petitioner and the other defendants has not yet been set aside. But, however, O.A.No.735 of 2018 is still pending.

10.In respect of the properties mortgaged, the respondent Bank/secured creditor, for acquiring physical possession of the property, had filed a petition before the learned Chief Judicial Magistrate, Madurai, in Crl.M.P.No.590 of 2023 under Section 14 of the SARFAESI Act and the learned Chief Judicial Magistrate had allowed the petition and had appointed an Advocate Commissioner to assist the secured creditor for securing the physical possession of the secured asset. The petitioner had challenged the order passed by the learned Chief Judicial Magistrate, Madurai, under Section 14 of the Act, in S.A.No.215 of 2024 before the Debts Recovery Tribunal, on 19.03.2024. It is submitted that notice has been ordered to the respondent Bank and this SARFAESI Appeal is also still pending.

11.As far as the Original Application filed by the respondent Bank in O.A.No.735 of 2018 is concerned, it is in respect of recovery of the dues as against the petitioner, its Directors and also its group Companies. As referred earlier, even after several opportunities, the petitioner and other defendants have not taken any steps to set aside *ex parte* order passed as early as in 2020 and thereafter, only in the year 2022, the petitioner had taken steps to file a petition to set aside the *ex parte* order and which is yet to be decided.

12.In far as S.A.No.215 of 2024 is concerned, it is completely an independent proceeding. The Bank/secured creditor for the purpose of securing physical possession of the property, by exercising their right, had filed a petition under Section 14 of the SARFAESI Act before the learned Chief Judicial Magistrate, Madurai, in which, orders were passed by appointing Advocate Commissioner for securing physical possession. The power exercised by the learned Chief Judicial Magistrate, Madurai, is only a summery proceeding, as the secured creditor can either file an application under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate or before District Magistrate. All that is contemplated is that the authority has to be satisfied that the proceedings under the SARFAESI Act has been duly complied with and if so, the secured creditor will be entitled for an order for securing physical possession of the property.

13.When such is the position, we are not in a position to appreciate the submission made by the learned Counsel for the petitioner that these two proceedings has to be clubbed together for a joint hearing. However, if so advised, it is for the petitioner to make necessary application before the Debts Recovery Tribunal, Madurai, which can be considered by the Tribunal in accordance to law taking into consideration the nature of two proceedings.

14.In such circumstances, without expressing any opinion on merits, we are inclined to dispose of this Writ Petition by allowing the petitioner to make necessary application for such request and it is for the Debts Recovery Tribunal, Madurai, to decide the same on merits and in accordance with law, of-course, after giving notice to the parties concerned. It is made clear that this order will not stand in the way of secured creditor or any of the parties from enforcing their rights in view of the order passed under Section 14 of the SARFAESI Act, subject to any interim orders passed by the Tribunal.

15.With the observations, the Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
10.07.2024

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

cmr

To

1.The Chief Judicial Magistrate, Madruai,

2.The Registrar,
Debts Recovery Tribunal,
Madurai.

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.12518 of 2024

10.07.2024