BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2024

CORAM

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

W.P(MD)No.16053 of 2024
and
W.M.P.(MD)Nos.13957 and 13958 of 2024

Madasamy ... Petitioner

vs

The Authorized Officer/Chief Manager,
Canara Bank,
Sangarankovil Branch, Tenkasi District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the impugned order passed by the learned Chief Judicial Magistrate, Tenkasi in Cr.M.P.No.45 of 2024, dated 24.04.2024, and to set aside the same.

For Petitioner : Mr.V.Angusamy

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ORDER

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

This Writ Petition is filed by the borrower challenging the order passed by the learned Chief Judicial Magistrate, Tenkasi, in Cr.M.P.No.45 of 2024, dated 24.04.2024 under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act").

2.The petitioner had availed housing loan on 30.07.2014 to the tune of Rs.24,00,000/- and since there were defaults in repayment of the dues, the loan account was classified as non-performing asset and the respondent Bank had initiated proceedings under the SARFAESI Act. The respondent Bank had also filed an application in O.A.No.348 of 2020 before the Debts Recovery Tribunal, Madurai, for recovery of the dues, which is still pending. Subsequently, sale proceedings was also initiated by the respondent Bank under the SARFAESI Act by issuing sale notice, dated 21.01.2021. But, the same did not materialise, as there was no buyers. While so, the respondent Bank/secured creditor had filed an application under Section 14(1) of the SARFAESI Act before the learned Chief Judicial Magistrate, Tenkasi for securing physical possession of the property. The learned Chief Judicial Magistrate, by order, dated 24.04.2024, allowed the petition in Cr.M.P.No.45 of 2024 by appointing an Advocate Commissioner for taking physical possession of the property and hand over to the secured creditor. Challenging the impugned order, the petitioner has preferred the above Writ Petition.

3.Mr.V.Angusamy, learned Counsel appearing for the petitioner reiterating the averments made in the affidavit submitted that the O.A.348 of 2020 filed by the respondent Bank before the Debts Recovery Tribunal, Madurai, is still pending and further, the petitioner is also taking steps to settle the dues of the Bank and while so, the respondent Bank had resorted to the proceedings to secure physical possession. The learned Counsel further submitted that the respondent Bank is taking steps to sell the property by not properly valuing the same and in fact, though the petitioner wants to make the repayment of the dues in a proportionate manner through one time settlement, however, the respondent Bank is insisting on the full payment of the entire dues and sought for interference of this Court.

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

5.The petitioner had availed a housing loan on 30.07.2014 for a sum of Rs.24,00,000/- and since admittedly the dues were not repaid, the loan account was classified as non-performing asset and the respondent Bank had initiated proceedings under the SARFAESI Act. A demand notice, dated 08.12.2023, was issued under Section 13(2) of the SARFAESI Act calling upon the petitioner to make the payment of the outstanding dues and as the same was not complied with, possession notice, dated 06.02.2024 was issued under Section 13(4) of the SARFAESI Act by taking symbolic possession of the secured asset and the same was also published in the newspapers on 07.02.2024.

6.Pursuant to which, the respondent Bank/secured creditor had filed a petition in Cr.M.P.No.45 of 2024 before the learned Chief Judicial Magistrate, Tenkasi under Section 14(1) of the SARFAESI Act for securing physical possession of the property. The learned Chief Judicial Magistrate, Tenkasi, by order, dated 24.04.2024, had passed orders by appointing an

Advocate Commissioner to take physical possession of the secured asset and hand over to the secured creditor.

7.As against the order passed under Section 14(1) of the SARFAESI Act, the petitioner is having an effective and alternative remedy under Section 17 of the SARFAESI Act by filing an appeal before the Debts Recovery Tribunal. In the decision reported in ***(2010) 8 SCC 110*** in the case of ***Union Bank of India -vs- Satyawadi Tondon and others***, 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."*

8.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.***

9.As such, the Writ Petition is not maintainable. Hence, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K., J] & [G.A.M., J]
18.07.2024

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

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To
1.The Chief Judicial Magistrate, Tenkasi.

2.The Registrar, The Debts Recovery Tribunal, Madurai.

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

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Order made in
W.P(MD)No.16053 of 2024

18.07.2024