BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2024

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

W.P(MD)No.17987 of 2024
and
W.M.P.(MD)No.15411 of 2024

Mohamed Mustafa ... Petitioner

vs

1.The District Collector,
District Collectorate Office,
Madruai.

2.HDFC Credila Financial Services Limited,
represented by its Authorized Officer,
B-301, City Point, Andheri Kurla Link Road,
Andheri (E), Mumbai – 400 059.

3.The Manager/The Authorized Officer,
HDFC Credila Financial Services Limited,
6th Floor, Old No.23 & 24 and New No.47 & 49,
Bazhullah Road, T.Nagar, Chennai -17.

4.Baby Munirathinam ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 2 and 3 to de-seal the petitioner rental building situated at 174/2, North Veli Street, Madurai, and grant six month time to vacate the premises by invoking the provision under Section 17(4-A) of the SARFAESI Amended Act 2016 (44 of 2016).

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| For Petitioner | : Mr.D.S.Haroon Rasheed |
| For R1 | : Mr.S.Shaji Bino<br>Special Government Pleader |

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**ORDER**

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

Heard Mr.D.S.Haroon Rasheed, learned Counsel appearing for the petitioner and Mr.S.Shaji Bino, learned Special Government Pleader appearing for the first respondent. In view of the order that we propose to pass, notice to the respondents 2 to 4 is dispensed with.

*2.*This Writ Petition has been filed seeking for a direction to the second and third respondents to de-seal the building and to grant six months to vacate the premises.

3.It is the case of the petitioner that he is running a business by having a sticker shop at No.174/2, North Veli Street, Madurai, by entering into a rental agreement with the fourth respondent on 25.05.2024. As per the lease agreement, he had paid a sum of Rs.3,00,000/-, as advance and an agreement has been executed fixing the monthly rent of Rs.6,050/- for a period of two years till 24.05.2026. While so, all of a sudden, on 05.07.2024, the respondent Bank officials along with the Advocate Commissioner appointed by the Court had handed over a copy of the order passed by the learned Chief Judicial Magistrate, Madurai, in Crl.M.P.No. 1238 of 2024, dated 28.05.2024 and directed him to vacate the premises.

4.In spite of requesting the respondent Bank and handing over the tenancy agreement, the same was refused and the shop has been locked and sealed by the bank officials along with the goods inside the shop and he was not even permitted to take the same at the time of taking physical possession. As such, the petitioner has preferred the above Writ Petition praying to de-seal the premises and grant time to vacate the shop.

5.The learned Counsel appearing for the petitioner submitted that the petitioner is a *bona fide* tenant, as he having been inducted in the premises through a lease agreement executed by the owner of the premises/fourth respondent by receiving a huge sum of Rs.3,00,000/- as advance. It is his further contention that all of a sudden, the Bank officials along with the Advocate Commissioner had come to the premises and locked and sealed the shop without even putting the petitioner on notice and afford him an opportunity. It is his further contention that as the physical possession of the premises has been taken by locking the shop, his livelihood is affected and therefore, it infringes the right guaranteed under Article 19(1)(g) and 21 of Constitution of India.

6.The fourth respondent, who is admittedly, the owner of the premises, had availed the loan for a sum of Rs.45,00,000/- and had executed a memorandum of title deeds as early as on 27.07.2015. As there was default in repayments of the dues, the loan account was classified as non performing asset on 11.01.2022 and the respondent Bank initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as

"SARFAESI Act"), A demand notice, dated 06.09.2023 was issued under Section 13(2) of the SARFAESI Act and since the payment was not made, possession notice under Section 13(4) of the SARFAESI Act was also came to be issued and a total sum of Rs.74,49,935/- as on 02.09.2023 was due and payable by the fourth respondent to the second and third respondents.

7.The Bank after having taken symbolic possession of the property by issuing possession notice under Section 13(4) of the SARFAESI Act, had filed a petition under Section 14 of the Act before the learned Chief Judicial Magistrate, Madurai, in Crl.M.P.No.1238 of 2024. By order, dated 28.05.2024, the petition filed by the secured creditor was allowed by the learned Chief Judicial Magistrate and an Advocate Commissioner was appointed for assisting the secured creditor for taking physical possession of the property. Pursuant to which, they had visited the premises on 05.07.2024 and the physical possession of the property was taken by locking and sealing the property.

8.When the fourth respondent had availed loan as early as in the year 2015 and had defaulted in the repayment of dues and pursuant to which, the proceedings under the SARFAESI Act has been initiated and also possession of the property has been secured by the Bank, the claim of the petitioner that he had entered into a rental agreement with the fourth respondent on 25.05.2024 by paying a sum of Rs.3,00,000/- as advance and therefore, six months time as sought for by him has to be given to enable to the petitioner to vacate the premises cannot be sustained. It is always open to the petitioner to take appropriate proceedings as against the fourth respondent, if at all he has not disclosed about the pendency of the proceedings initiated by the bank due to the default in re-payment of the loan account.

9.Further, the petitioner being a tenant, is also an aggrieved party and if he has any grievance in respect of the proceedings taken by the Bank under the SARFAESI Act, it is always open to him to challenge the same by filing appropriate appeal under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal. When there is an alternative and efficacious remedy available for the petitioner under the Statute to redress his grievance, the present Writ Petition filed by the petitioner cannot be entertained.

10.If at all the petitioner wants only to remove his material from the locked premises, even then it is only open to him to approach the respondent Bank with such a request, but the present claim of the petitioner that he must be granted a time of six months to vacate the premises is not sustainable.

11.In view of the above discussions, this Writ Petition cannot be entertained 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]**
**01.08.2024**

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

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To

The District Collector,
District Collectorate Office,
Madruai.

**R.SURESH KUMAR, J.**

**AND**

**G.ARUL MURUGAN, J.**

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Order made in
W.P(MD)No.17987 of 2024

01.08.2024