WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.01.2024

PRONOUNCED ON : 08.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD).No.21684 of 2023
and WMP(MD).Nos.18078 & 22876 of 2023

K.Latha Kannan ...Petitioner

Vs

1.The Authorized Officer
Aditya Birla Housing Finance Limited
Registered Office
Indian Rayon Compound
Veraval, Gujarat 362 266

2.Aditya Birla Housing Finance Limited
Rep.by its Branch Manager
No.48-A, 3rd Floor
New Millennium Complex
Bye-Pass Road, Kalavasal
Madurai 625 016

3.Aditya Birla Sun Life Insurance Company Ltd.,
Rep.by its Authorized Signatory
G-Corp Tech Park, 5th & 6th Floor
Kasar Wadavali, Ghodbunder Road
Thane (W) 400 601 ..... Respondents

WEB COPY

Prayer : Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Certiorari, calling for the records relating to the impugned order dated 19.06.2023 made in Cr.M.P.No.401 of 2023 passed by the learned Chief Judicial Magistrate, Madurai and quash the same.

For Petitioner : Mr.V.Veerapandian
For M/s.Vastlaw Associates

For R1 & R2 : Mr.M.Arunachalam

O R D E R

(Made by **R.VIJAYAKUMAR,J.**)

The present writ petition has been filed challenging the order passed by the Chief Judicial Magistrate, Madurai under Section 14 of the SARFAESI Act in Cr.M.P.No.401 of 2023 dated 19.06.2023.

(A)Facts leading to the filing of the present writ petition are as follows:

2.According to the petitioner, she and her husband Kannan have availed a housing loan from the second respondent Housing Finance Company to a tune of Rs.40,70,000/- by mortgaging their property on 24.03.2021. At the instance of the Housing Finance Company, they had agreed for taking a life insurance policy with the third respondent. The third

https://www.mhc.tn.gov.in/judis

WEB COPY

respondent had issued a life insurance policy on 30.03.2021 based upon the proposal submitted by the petitioner's husband.

3.The petitioner's husband had passed away on 22.05.2022 leaving behind the petitioner and his three minor daughters. The petitioner raised a claim on 14.07.2022 with the Life Insurance Company namely the third respondent herein requesting them to pay the claim amount to the Housing Finance Company so that the loan amount could be adjusted.

4.The Life Insurance Company had repudiated the claim of the writ petitioner by a communication dated 16.09.2022 on the ground that the deceased member had passed away due to lung cancer. At the time of submitting the proposal, the deceased suffered right side Bell's Palsy. However, the same was not disclosed by the deceased member in the past medical history. Therefore, due to the material non-disclosure on the part of the deceased member, they are constrained to repudiate the claim.

5.The petitioner herein had sent a legal notice to the Life Insurance Company on 22.11.2022 instructing them to disburse the benefit of the deceased member and in case of failure, they would approach the Consumer Court. The Insurance Company had addressed a reply on 09.12.2022 again

https://www.mhc.tn.gov.in/judis

WEB COPY

reiterating their reply dated 16.09.2022. Aggrieved over the said repudiation, the writ petitioner had filed C.C.No.93 of 2023 before the District Consumer Disputes Redressal Commission at Madurai with a prayer to direct the Life Insurance Company to pay a sum of Rs.43,59,346/- being the outstanding amount of the Housing Finance Company to the complainant. The petitioner had further prayed for a sum of Rs.10.00 lakhs from the Housing Finance Company towards physical stress and mental agony. In the said consumer complaint, the writ petitioner had further prayed for a direction as against the Housing Finance Company from not proceeding further with any recovery proceedings against the property.

6.While the above said proceedings were pending, the Housing Finance Company had issued a demand notice on 18.10.2022 for default in payment of the monthly installment towards housing loan. A possession notice under Section 13(4) of the SARFAESI Act was issued on 17.02.2023. Challenging the said possession notice, the writ petitioner had filed S.A.No.102 of 2023 before the Debt Recovery Tribunal, Madurai and the same is pending. Thereafter, the Housing Finance Company had approached the Chief Judicial Magistrate Court, Madurai under Section 14 of the SARFAESI Act for taking physical possession of the property.

WEB COPY

7.The Chief Judicial Magistrate by his order dated 19.06.2023 in Cr.M.P.No.401 of 2023 had appointed an Advocate Commissioner to take possession of the property and report the same before 19.07.2023. Challenging the said order of the Chief Judicial Magistrate, Madurai, the present writ petition has been filed.

(B)Contentions of the learned counsel appearing for the writ petitioner are as follows:

8.The learned counsel for the writ petitioner had contended that only after medical examination, the premium amount was accepted and therefore, the contention of the Insurance Company that there was non disclosure of the previous medical history before the date of proposal is not factually correct. The petitioner's husband had no previous medical history and he had never undergone any investigation including the radiological test. In fact, the petitioner's husband had passed away 15 months after taking the insurance policy.

9.The petitioner had further submitted that the deceased had been paying the monthly installment till his death and after his death, his family members was not able to pay the monthly installment. The family members

WEB COPY

should not be made to suffer when they have lost their bread-winner. When the consumer complaint is pending as against the life Insurance Company, the Housing Finance Company cannot be permitted to proceed under the SARFAESI Act. In fact, the Housing Finance Company is a sister concern of the Insurance Company and therefore, the Housing Finance Company cannot contend that the Insurance Company has repudiated the claim and they are entitled to proceed under SARFAESI Act. Hence, he prayed for allowing the writ petition.

(C)Contentions of the learned counsel appearing for the respondents 1 & 2:

10.Per contra, the learned counsel appearing for the respondents 1 and 2 reiterated his averments in the vacate stay petition and contended that once the policy has been repudiated by the Life Insurance Company and the claimants have approached the Consumer Court, it is for them to workout their remedy there. The writ petitioner is a co-borrower and therefore, in case of any default in payment of the monthly installment, the Housing Finance is legally entitled to proceed in accordance with SARFAESI Act. The Housing Finance Company has already issued a demand notice and possession notice. The possession notice is under challenge before the Debt Recovery Tribunal, Madurai. The order passed by the Chief Judicial Magistrate, Madurai is a

WEB COPY

only a consequential proceedings for taking physical possession and therefore, as on today, there is no legal impediment for the Housing Finance to take possession of the property and to bring the property for auction for default in payment of the monthly installment. Hence, he prayed for dismissal of the writ petition.

11.We have considered the submissions made on either side and perused the material records.

(D) Discussion:

12.The petitioner and her husband have availed a Housing loan facility from the respondents 1 and 2. They have also availed a Life Insurance Police from the third respondent Insurance Company. A policy document has been issued to the petitioner's husband on 30.03.2021. The policy holder had passed away on 22.05.2022. Thereafter, when a claim was made by the co-borrower /wife of the deceased, the same was repudiated by the third respondent Insurance Company by their proceedings dated 16.09.2022 contending that the deceased had passed away due to lung cancer. The Insurance Company had further contended that the deceased member was suffering from right side Bell's Palsy even on the date of submission of proposal. This material medical history has been suppressed and therefore, they are constrained to repudiate the claim. Challenging the said repudiation,

https://www.mhc.tn.gov.in/judis

WEB COPY

the writ petitioner had already filed C.C.No.93 of 2023 before the District Consumer Redressal Commission, Madurai as against the Insurance Company and the Housing Finance Company. The said complaint is still pending. These facts are not in dispute.

13.The primary contention of the learned counsel for the writ petitioner is that if the life insurance claim amount is settled by the third respondent company, the same could be adjusted towards the claim made by the Housing Finance Company. When a consumer complaint is pending, challenging the repudiation of the life insurance claim, the Housing Finance Company cannot proceed under SARFAESI Act. A perusal of the consumer complaint reveals that the petitioners have also prayed for a direction as against the Housing Finance Company not to proceed further with any recovery proceedings against the property. Therefore, it is clear that unless the Consumer Court arrives at a finding that the repudiation is bad and is in violation of contract of insurance, the Life Insurance Company cannot be directed to pay the amount to the writ petitioner so that it could be adjusted towards the housing loan dues. The Housing Finance Company has proceeded under the SARFAESI Act due to the default committed in payment of the equated monthly installments. The pendency of the consumer complaint as against the Life Insurance Company cannot be a legal impediment for the Housing Finance Company to proceed in accordance with law.

https://www.mhc.tn.gov.in/judis

WEB COPY

14.Therefore, this Court does not find any reason to interfere in the order of the Chief Judicial Magistrate, Madurai passed under Section 14 of the SARFAESI Act in Cr.M.P.No.401 of 2023. The petitioner having already approached the Consumer Court, it is for her to work out her remedy before the said Forum.

15.In view of the above said deliberations, there are no merits in the writ petition. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J.,) (R.V.J.,)

08.04.2024

Index :yes
Internet :yes
NCC : yes/no
msa

https://www.mhc.tn.gov.in/judis

WEB COPY

D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR,J.

msa

Pre-delivery Order made in
W.P(MD).No.21684 of 2023
and WMP(MD).Nos.18078 & 22876 of 2023

08.04.2024