



W.P.(MD)Nos.23351 and 23352 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD)Nos.23351 and 23352 of 2024
and
W.M.P.(MD)Nos.19766 and 19767 of 2024**

G.Vanaja ... Petitioner in W.P.(MD)No.23351 of 2024
S.Balamurugan ... Petitioner in W.P.(MD)No.23352 of 2024

-VS-

The Authorised Officer,
Reliance Asset Reconstruction Company Limited,
11th Floor North Side, R-Tech Park,
Western Express Highway,
Goregaon, Mumbai – 400 063. ... Respondent in both the W.Ps.

Prayer in both the Writ Petitions.: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned Possession notice dated 12.09.2024, issued by the respondent under Section 13(4) of SARFAESI Act, 2002 and quash the same.

For Petitioner in both the W.Ps. : Mr.G.Vairava Subramanian



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COMMON ORDER

[Order of the Court was made by R.SUBRAMANIAN, J.]

Challenge in these Writ Petitions is to the possession notice issued by the Asset Re-construction Company. The said notice is dated 12.09.2024.

2. The only contention of the learned counsel for the petitioners is that the claim is barred by limitation. A novel argument is put forth by the learned counsel for the petitioners to the effect that since the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 [hereinafter referred to as "the SARFAESI Act"] contemplates securitisation application, the limitation prescribed under Article 137 of the Limitation Act, 1963, would apply.

3. We are unable to accept the argument of the learned counsel appearing for the petitioners for the reason that Section 36 of the SARFAESI Act provides for limitation for action under the SARFAESI Act. The said provision reads as follows:-

"36. Limitation.-

No secured creditor shall be entitled to take all or any of the



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measures under sub-section (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 (36 of 1963)."

4. A proper reading of Section 36 of the SARFAESI Act would only mean that limitation available to a secured creditor to take any action under the SARFAESI Act, is the period of limitation prescribed under the Limitation Act, 1963, in respect of the financial asset.

5. The fact that a mortgage has been created by the petitioners in favour of the Reconstruction Company is admitted. Article 62 of the Limitation Act, 1963, provides for a period of 12 years for the Mortgagee to enforce payments secured by a mortgage. It is therefore clear to our mind that for any action under the SARFAESI Act, the Mortgagee will have the same period, namely, 12 years prescribed under Article 62 of the Limitation Act, 1963.

6. The fact that the secured creditor is enabled to take proceedings by filing an application before the Magistrate to take possession of the property, the same will not fall under Article 137 of the Limitation Act, 1963, which deals with



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completely different situation namely, filing of an application before a Court of law. That provision is a residuary provision and same would apply only in the absence therebeing no other provision governing the situation in the schedule to the Limitation Act, 1963. Article 62 of the Limitation Act, 1963, governs the situation in the case on hand. Therefore, the residuary provision cannot be invoked. Hence, we see no merit in the Writ Petitions. The Writ Petitions fail and they are accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : No
Index : No
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[R.S.M., J.] [L.V.G., J.]
01.10.2024



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and
L.VICTORIA GOWRI, J.

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Common order in
W.P.(MD)Nos.23351 and 23352 of 2024
and
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