BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS. JUSTICE S.SRIMATHY

Rev.Aplw.(MD).No.5/2024 & WMP.(MD).Nos.261 & 262/2024

The Authorised Officer
Aptus Value Housing Finance Ltd
No.8B, Doshi Towers, Poonamallee
High Road, Chennai 600 010. .. Petitioner

Vs.

1.Bennet
2.The Chief Judicial Magistrate
Nagercoil, Kanyakumari District. ... Respondents

Prayer : Review Application filed under Order 47 Rules 1 and 2 read with section 114 of CPC to review the order passed in WP(MD).No.21007/2022 dated 02.09.2022.

For Petitioner	: Mr.V.Sukumar
For R1	: Mr.P.M.Vishnuvarthanan
For R2	: No appearance

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

(1)The present Review Application is filed by the review applicant, 2nd respondent in the writ petition, as against the order passed in WP.(MD).No.21007/2022 dated 02.09.2022.

(2)The 1st respondent herein filed writ petition in WP.(MD).No.21007/2022 for issuance of a writ of certiorarified mandamus to quash the orders passed by the learned Chief Judicial Magistrate, Kanyakumari District, dated 21.07.2022 and 26.08.2022 in Crl.MP.No.4258/2022 along with the possession notice issued by the review applicant herein and to direct the review applicant herein to consider the representations of the writ petitioner dated 30.11.2020, 23.12.2020 to reconstitute the loan account.

(3)This Court while disposing of the writ petition, recorded the presence of Mr.P.M.Vishnuvarthanan, learned counsel for the petitioner and Mr.Sunil Rakesh, learned Standing counsel for the Bank.

(4)By recording the consent of both sides, this Court passed the following order on 02.09.2022:-

> *"4. Considering the facts and circumstances of the case and by consent of both the parties, this Court*

is inclined to dispose of the Writ Petition with the following directions:

(i) The second respondent bank shall defer taking possession as per the impugned possession notice, dated 12.11.2020, on condition that the petitioner pays a sum of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand only) on or before 30.09.2022; a further sum of Rs. 1,25,000/- (Rupees One Lakh Twenty Five Thousand only) on or before 31.10.2022; a further sum of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand only) on or before 30.11.2022 and a further sum of Rs. 1,00,000/- (Rupees One Lakh only) on or before 31.12.2022;

(ii) In case, the petitioner fails to pay any one of the installments, in the manner as directed above, it is open to the respondent bank to proceed further in accordance with law ignoring this order;

(iii) In case, the petitioner deposits the amount as directed above, the petitioner is permitted to submit a representation to the respondent Bank either for waiver of penal interest or for One Time Settlement or for restructuring the loan and other concessions, as may be permissible under the guidelines of the Reserve Bank of India or the norms applicable to the

respondent Bank and the respondent Bank shall pass appropriate orders in accordance with law; and

(iv) Till such order is passed on the representation of the petitioner and the same is communicated to the petitioner, the respondent Bank shall not initiate any coercive action against the petitioner or the properties of the petitioner.

5.The Writ Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed."

(5)The present review petition is filed by the 2nd respondent in the writ petition on the ground that the writ petition was disposed of without service of notice on the respondents. Pointing out that one Advocate appeared before this Court and made his submission on behalf of the Bank, the learned counsel for the review applicant would submit that no counsel was engaged by the Bank earlier as indicated in the order dated 02.09.2022 and that a counsel had appeared before this Court as if he has no objection for passing the order in the writ petition. It is further submitted that possession had already been taken through the Advocate Commissioner.

(6)Having regard to the stand taken by the learned counsel appearing for the review applicant / Bank, this Court finds that the order dated 02.09.2022 impugned, suffers from an error apparent on the face of the record particularly, when this Court has issued directions on the understanding that possession had not been taken by the applicant/Bank.

(7)Learned counsel appearing for the applicant also produced before this Court, the order of the learned Chief Judicial Magistrate, Kanyakumari dated 21.07.2022 and the report dated 26.08.2022 filed by the Advocate Commissioner in Crl.MP.No.4258/2022 before the learned Magistrate, stating that the Advocate Commissioner had taken physical possession of the secured assets and handed over the key and physical possession to the Authorised Officer of the applicant/Bank. It is further stated by the Commissioner that with the cooperation of the Authorised Officer, the Commissioner's work was completed. From the Advocate Commissioner's report, it is seen that the warrant had been executed successfully. Therefore, based on the records, this Court presumes that possession was handed over to the Bank. Since the writ petitioner had obtained an order on misrepresentations, it is necessary for this Court to restore status quo *ante.*

(8)The learned counsel appearing for the applicant / Bank also submitted that pursuant to the order of this Court, the writ petitioner/1st respondent herein, has forcefully taken possession even though possession had already been taken and handed over to the applicant/Bank.

(9)Considering the fact that the order in the writ petition has been passed on a wrong representation of a counsel and the writ petitioner cannot be taken advantage of by an order which was passed on an erroneous representation of a third party, the order dated 02.09.2022 is inappropriate and hence, this Court has no hesitation to set aside the order. It is only by virtue of the order, the learned counsel appearing for the applicant/Bank states that the writ petitioner could gain entry unlawfully.

(10)In the facts and circumstances of the case, this Court finds that the order dated 02.09.2022 in WP.(MD).No.21007/2022 is liable to be reviewed as the same suffers from error apparent on the face of the record and on the admitted facts as borne out from records.

(11)In the result, the review application stands **allowed and the order passed in WP.(MD).No.21007/2022 dated 02.09.2022 is set aside and modified, recording the fact that the order of the learned Chief**

Judicial Magistrate, Kanyakumari, had already been implemented. The writ petitioner/1st respondent herein is directed to hand over the physical possession of the secured assets to the review applicant/Bank forth with. Para 4(iv) is modified by permitting the Bank to sell the property in case of default in payment as directed. No costs. Consequently, connected miscellaneous petitions are closed.

(12)Post on **11.11.2024 for reporting compliance.**

[S.S.S.R., J.] [S.S.Y., J.]
28.10.2024

AP
Internet : Yes
Neutral Citation : Yes / No
To
1.The Authorised Officer
Aptus Value Housing Finance Ltd
No.8B, Doshi Towers, Poonamallee
High Road, Chennai 600 010.
2.The Chief Judicial Magistrate
Nagercoil, Kanyakumari District.

S.S. SUNDAR, J.,
and
S.SRIMATHY, J.,

AP

Rev.Aplw.(MD).No.5/2024

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