



W.P.(MD)No.27189 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.11.2024

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.P(MD)No.27189 of 2024
and
W.M.P.(MD)Nos.23042 and 23045 of 2024

R.Chinnathambi

... Petitioner

VS

The Authorized Officer,
Indian Overseas Bank,
No.661/1, South 4th Street,
Subramaniyapuram,
Karaikudi, Sivagangai District.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the order dated 24.10.2024 by the learned Chief Judicial Magistrate, Pudukottai and to to quash the same as arbitrary and illegal and consequence thereof, to direct the respondent to accept the one time settlement from the petitioner.

For Petitioner : Mr.P.Ganapathi Subramanian
For Respondent : Mr.N.Dilip Kumar



W.P.(MD)No.27189 of 2024

ORDER

(Order of this Court was made by **N.SENTHILKUMAR, J.**)

This Writ Petition is filed challenging the order passed by the learned Chief Judicial Magistrate, Pudukottai in Cr.M.P.No.1083 of 2024, dated 14.09.2024.

2.The petitioner has availed a loan from the respondent Bank, which according to him is an agricultural property, for a sum of Rs.10,50,000/- (Rupees Ten Laksh Fifty Thousand only) in the year 2017. As the petitioner has not repaid the loan amount, the respondent Bank had issued a demand notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”) demanding a sum of Rs. 16,85,568/- as on the date of notice. Challenging the said notice, the petitioner has filed a petition in S.A.No.311 of 2023 before the Debts Recovery Tribunal, Chennai, and obtained an order, which has become infructuous for non compliance of the conditional order.



W.P.(MD)No.27189 of 2024

3.Subsequently, an e-auction was conducted by the respondent bank on 23.02.2024 and the secured asset was sold on 26.03.2024. Thereafter, the petitioner has approached the respondent Bank for One Time Settlement (OTS) and agreed to pay a sum of Rs.10,60,000/-. However, the petitioner was able to pay only a sum of Rs.4,40,000/-. Hence, the respondent Bank had filed a petition under Section 14(1)(2) of the SARFAESI Act in Cr.M.P.No.1083 of 2024 before the Chief Judicial Magistrate Court, Pudukottai, for taking possession and appointed an Advocate Commissioner to take physical possession of the property.

4.The learned Chief Judicial Magistrate, Pudukottai, by impugned order, dated 24.09.2024 had allowed the said petition and had directed the Advocate Commissioner to take physical possession of the property in question on or before 04.10.2024. Aggrieved by the same, the present Writ Petition has been filed by the borrower/Writ Petitioner.

5.The learned Counsel for the respondent Bank contends that the petitioner has to approach the Debts Recovery Tribunal, as against the impugned order under Section 14(1)(2) of the SARFAESI Act and that



W.P.(MD)No.27189 of 2024

approaching this Court under Article 226 of Constitution of India is not maintainable. In this connection, the learned Counsel for the respondent Bank relies on the order passed by this Court in W.P.(MD)No.31243 of 2023, dated 22.12.2023 (between ***G.Nirmalan vs The Authorized Officer, Indian Overseas Bank***) in which one of us (JUSTICE RMT.TEEKAA RAMAN), was a party, wherein, this Court had observed as follows:

“2..... However, we are not in a position to appreciate the contention. As a matter has been settled by the Hon'ble Supreme Court of India in Authorised Officer, Indian Bank Vs. D.Visalakshi and another reported in (2019) 20 SCC 47, wherein, the Hon'ble Supreme Court held that in respect of Section 14 of SARFAESI Act, the learned Chief Judicial Magistrate of the concerned District is having power and hence, we do not find any merits in entertaining the case.

3.Mr.N.Dilipkumar, learned counsel takes notice on behalf of the Bank would state that the bank has taken possession of the property on the strength of the order passed by the learned Magistrate on 19.12.2023 and hence, the prayer in the writ petition has become infructuous.

4. We are not in expressing any opinion, however, leaving it open to the petitioner to agitate the matter in accordance with law before the Debts Recovery Tribunal at Ernakulam if he so advised. 5. In view of the same, this Writ Petition is dismissed as infructuous. No costs. Consequently, connected miscellaneous petitions are closed.”

6. Though the petitioner contends in his affidavit that the property which was mortgaged under the loan was an agricultural property, the



W.P.(MD)No.27189 of 2024

notification would reveal that the property in question is a building. The order passed by the learned Chief Judicial Magistrate under Section 14(1) and (2) of the SARFAESI Act, could be challenged only before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

7.In view of the above, the Writ Petition stands disposed of by giving liberty to the Writ Petitioner/borrower to approach the Debts Recovery Tribunal, if he is so advised. No costs. Consequently, connected miscellaneous petitions are closed.

[T.K.R., J.] [N.S., J.]
14.11.2024

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

The Chief Judicial Magistrate, Sivagangai.



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W.P.(MD)No.27189 of 2024

RMT.TEEKAA RAMAN, J.
and
N.SENTHILKUMAR, J.

cmr

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W.P(MD)No.27189 of 2024

14.11.2024