IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-01-2025

CORAM:

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 690 of 2024

and

CMP.No. 22323 of 2024

Balakrishnan

Appellant(s)

Vs

The Branch Manager
REPCO Home Finance Limited
Office at the Ground Floor
Rasak Towers, Cutcherry Road
Mayiladuthurai Town
Mayiladuthurai District.
...Respondent(s)

Prayer : Second Appeal is filed under Section 100 of the Code of Civil Procedure, praying to set aside the judgment and decree passed in A.S.No. 28 of 2022 dated 29.11.2023 on the file of Additional Subordinate Judge, Mayiladuthurai, in confirming the judgment and decree passed in O.S.No. 47 of 2021 dated 18.07.2022 on the file of Principal District Munsif, Mayiladuthurai.

For Appellant : Mr.A.Muthukumar
For Respondent : Mr.A. Ilangovan

JUDGMENT

This Second Appeal has been filed praying to set aside the Judgment and Decree passed in A.S.No. 28 of 2022, dated 29.11.2023 on the file of Additional Subordinate Judge, Mayiladuthurai, in confirming the Judgment and Decree passed in O.S.No. 47 of 2021, dated 18.07.2022 on the file of Principal District Munsif, Mayiladuthurai.

2. The appellant herein is the plaintiff and the respondent/Bank herein is the defendant in the Original Suit in O.S.No. 47 of 2021 before the Trial Court as well as the First Appellate Court in A.S.No. 28 of 2022.

3. The appellant had borrowed Loan Account No.1641820000832 for a sum of Rs.50,00,000/- by mortgaging his house property on 23.05.2017 from REPCO Home Finance, No.7, Old No. 15, Ground Floor, RAZACK Tower, Cutchery Road, Mayiladuthurai-609 001 and Equated Monthly Instalments (87) for a sum of Rs.76,137/-. Subsequently, the appellant had paid lump sum amount of Rs.60,12,582/- to the respondent/Bank within three years. Thereafter, the appellant had defaulted on his obligation to pay back REPCO and REPCO initiated proceedings under SARFAESI Act, by issuing notice under Section 13 of the Act. Apart from this, the appellant had borrowed other two individual personal loan from a financial institution. Therefore, the appellant has filed a Original Suit in O.S.No.47 of 2021 before the Principal District Munsif Court, Mayiladuthurai, for declaration declaring that the notice dated 03.02.2021 issued by the respondent/Bank as null and void. After perusing the records, the trial Court dismissed the suit by Judgment and Decree dated 18.07.2022. Against which, the appellant had preferred an Appeal Suit in A.S.No. 28 of 2022 before the learned Additional Subordinate Judge, Mayiladuthurai, and the same was dismissed by Judgment and Decree dated 29.11.2023. Aggrieved by the same, the appellant has come forward with the present Second Appeal.

4. As per the contention of the learned Counsel for the appellant that the appellant had paid nearly about 62,00,000/- within three years in respect of mortgage loan amount borrowed from REPCO Home Finance on 23.05.2017 in order to discharge the entire mortgaged loan amount. Even thereafter, the respondent/Bank demanding a sum of Rs.11,00,000/-

without considering the instalments amount had already paid by him properly. Therefore, the said proceedings would not come under the SARFAESI Act.

5. The learned Counsel for the respondent/Bank has relied upon the decision of the Hon'ble Apex Court in ***Jagdish Singh*** v. ***Heeralal & Others,*** reported in ***[2014 (1) CTC 652],*** wherein, it has been held that the relevant Paragraph No. 23 which reads thus:-

> "23.We are of the view that the Civil Court jurisdiction is completely barred, so far as the "measure" taken by a Secured Creditor under sub-section (4) of Section 13 of the Securitization Act, against which an aggrieved person has a right of Appeal before the DRT or the Appellate Tribunal, to determine as to whether there has been any illegality in the "measures" taken. The Bank, in the instant case, has proceeded only against Secured Assets of the borrowers on which no rights of Respondent Nos.6 to 8 have been crystalised, before creating security interest in respect of the Secured Assets. In such circumstances, we are of the view that the High Court was in error in holding that only Civil Court

has jurisdiction to examine as to whether the "measures" taken by the Secured Creditor under sub-section (4) of Section 13 of the Securitisation Act were legal or not. In such circumstances, the Appeal is allowed and the Judgment of the High Court is set aside. There shall be no order as to costs."

6. Further, the learned Counsel for the respondent/Bank has relied upon the decision of this Court in ***T.Vellaiyan*** v. ***The Chief Judicial Magistrate, Salem & Others,*** reported in ***[CDJ 2021 MHC 1735],*** wherein, it has been held that the relevant Paragraph Nos.4 and 5 which reads as follows:-

"4. Section 2(I)(m) of the Act of 2002 defines a financial institution. Sub-clause (iv) under such provision permits any other institution or non-banking financial company as defined in Section 45-I (f) of the Reserve Bnk of India Act, 1934 to be notified by the Central Government as a financial institution for the purpose of the Act of 2002. Such notification has been published and has remained unchallenged from 2003.

5. The petitioner seeks to contend that though REPCO Home Finance Limited has indicated in counter affidavit that it is registered with the National Housing

> Bank and has been notified by the Central Government to be a financial institution, REPCO Home Finance Limited may not be a company to be qualified to be notified under the relevant provision."

As stated *supra*, this Court is of the view that the respondent/Bank is entitled to proceed under the SARFAESI Act.

7. On considering the plaint averments, the appellant/plaintiff challenged the notice dated 03.02.2021 issued by the respondent/Bank since the appellant/plaintiff has already been paid the entire mortgaged loan amount. At the time of arguments, the learned Counsel for the respondent/Bank has also produced the statement of accounts which clearly shows that the balance amount of Rs.11,00,000/- along with penal charges which comes around for a sum of Rs.25,62,722/- and the statement of accounts which reads as follows:-

As on 27.01.2025	**MYL-0781**	**MYL-0782**	**MYL-0832**	**Total**
Principal	1340403	456317	1144179	2940899
Interest	143878	42679	645975	832532
Penalty	72777	17155	755065	844997
Cersai Charge	178	178	178	534
Other Charge	19821	15596	17325	52742
Total	**1577057**	**531925**	**2562722**	**4671704**

8. The learned Counsel for the appellant has requested before this Court to waive penal charges and other charges imposed by the respondent/Bank. Though Bank raised objection, but after deliberation the respondent/Bank has agreed to waive the penal charges and a portion of the interest also as a special case.

9. On considering both side suggestions, the appellant/plaintiff is directed to pay a sum of Rs.14,00,000/- [Rupees Fourteen Lakh Only] in order to discharge the entire mortgaged loan amount as One Time Settlement in respect of house property loan. However, the appellant/plaintiff has agreed the same and he is ready to abide any condition may be imposed by this Court to settle the issue amicably.

10. Considering the submissions made by the learned Counsel on either side, this Court is inclined to direct the appellant/plaintiff to pay a sum of Rs.14,00,000/- [Rupees Fourteen Lakh Only] to the respondent/Bank vide Loan Account No. 1641820000832 as One Time Settlement within 3 months, if possible on or before 31.03.2025. The affidavit of the appellant/plaintiff dated 29.01.2025 shall form part of this Judgment. Insofar as the other two personal loans had availed by the appellant/plaintiff is concerned, he has agreed to discharge the said two loans, is not a subject matter of this Court.

11. With the above observations, the Second Appeal is disposed of. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

29.01.2025

MSM

To

1. The Branch Manager
   REPCO Home Finance Limited
   Office at the Ground Floor, Rasak
   Towers, Cutcherry Rod, Mayiladuthurai Town
   Mayiladuthurai District.
2. The Additional Subordinate Judge, Mayiladuthurai.
3. The Principal District Munsif, Mayiladuthurai.

T.V.THAMILSELVI, J

MSM

S.A.No. 690 of 2024

29.01.2025