

W.P.(MD)No.4202 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.4202 of 2025
and
W.M.P.(MD)Nos.3021 and 3022 of 2025

1. Savithri
2. Shantha

... Petitioners

Vs.

M/s. Indian Bank,
Karaikudi Branch,
Sivagangai District,
Represented by its Chief Manager /
Authorized Officer,
V.Ashok Kumar,
No.21, Koviloor Road,
Karaikudi, Sivagangai-630 001.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Cr.M.P.No.5060 of 2024, dated 17.12.2024, on the file of the Learned Chief Judicial Magistrate, Sivagangai, read with impugned notice of sale, dated 01.02.2025, under Rule 6(2) and 8(6) of the Security Interest (Enforcement Rules), 2002 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 of the



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For Petitioners :Mr.A.N.Ramanathan
for Mr.M.Suresh
For Respondent :Mr.S.Suresh
for M/s.Aiyar & Dolia

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This writ petition is filed by the petitioners inter alia praying for Writ of Certiorari, to quash the impugned order, dated 17.12.2024, passed in Cr.M.P.No.5060 of 2024 on the file of the Learned Chief Judicial Magistrate, Sivagangai.

2. The writ petitioners' father, M.Murugan, was the Proprietor of Sri Kondaiya Modern Rice Mill at Pallathur, Karaikudi. He availed open cash credit facility with the respondent bank herein in the year 2016 for a sum of Rupees 7.50 crores to run the Rice Mill business. The writ petitioners' brother Muthukumar and mother Boomathi stood as guarantors along with one Tharani and Gajendran for the aforesaid loan. The respondent included nine scheduled



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properties that were mortgaged and one scheduled property without a mortgage.
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3. On 19.08.2018, the bank declared the account as Non-Performing Asset due to default in repayment and initiated SARFAESI proceedings by issuing notice dated 23.08.2018 under section 13(2), issued Possession Notice was issued under section 13(4) on 20.12.2018. The outstanding dues was Rs. 7.68 crores. During the pendency of proceedings, the petitioners father died on 27.05.2022. However, without impleading the legal heirs the CJM, Sivagangai had passed the order dated 09.12.2022 in CrI.M.P.No.8740 of 2022. Infact the order is passed against the dead person, hence the same was challenged in W.P. (MD)No.3012 of 2023 and the Court had set aside the order with certain directions. As per the directions of this Court, the brother Muthukumar has deposited Rs.1,50,00,000/-. In the meantime, three scheduled properties were auctioned and the respondent bank had realized Rs.4,00,00,000/- in the year 2024-2025. As the properties were auctioned, the present impugned order reflects only four items of properties and there was demand of R.8,28,92,826/- as on 31.08.2025. In the meanwhile, the respondents again have filed a Cr.M.P.No.5060 of 2024 on the file of Ld. CJM, Sivagangai seeking to take possession of other secured assets. And the same is challenged in the present



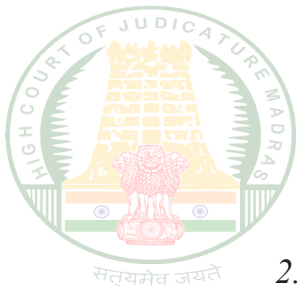
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writ petition. The contention of the petitioners is that the respondents have shown the petitioners as guarantors, but the petitioners are only legal heirs of the deceased father Murugan, who is the borrower. The petitioners have stepped into the shoes of their father, hence a respondent bank ought to have issued fresh notice under Sections 13(2) and 13(4) after the demise of their father on 27.05.2022. Further despite realizing Rs.4 crores and receiving Rs.1.5 crores from the petitioners' brother towards the loan, the bank proceeded with the sale of the petitioners' property without granting them an opportunity for redemption or serving notices at their current residential address. Further the bank directly impleaded the petitioners in the Section 14 petition and obtained possession orders without issuing prior notices or filing an affidavit narrating all facts before Magistrate Court. Hence, the present writ petition.

4. Pending writ petition, the case was referred to Mediation and the report is submitted before this Court, whereby the parties have settled the issue. The settlement agreement shall form part and parcel of this order. The terms of settlement are extracted hereunder:

“1. The 2nd petitioner along with mother Tmt.Poomathy and brother Mr.M.Muthukumar were present and participated in the negotiation.



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2. That the parties hereby agree that the Bank shall proceed with the auction in respect of properties mentioned as items No.2 to 4 in the sale notice dated 01.02.2025.

3. They have agreed to hand over vacant possession of the properties mentioned as Item No.3 & 4 in the sale notice on or before 28.02.2025.

4. As far as Item No.2 (i to iii) is concerned they are ready to hand over vacant possession of the property on or before 31.05.2025.

5. They also agree that they have no objection for proceeding with E-auction sale of the properties mentioned as Item No.2 to 4 in auction sale notice dated 01.02.2025.

6. They further assure that they along with other legal heirs of Late.Mr.Murugan will file an undertaking affidavit before the Court.”

5. Further the parties have filed an undertaking affidavit wherein it is agreed by the parties that they would vacate and hand over the possession of the property as per the agreed terms of settlement.



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6. Recording the same, the writ petition is disposed of as per the terms of Mediation report and undertaking submitted by the petitioners. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B., J.] [S.S.Y., J.]
20.03.2025

Index : Yes / No

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