BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 28.07.2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.P(MD) No.18487 of 2024
&
W.M.P.(MD)No.15711 of 2024

M.Subbiah (died)

2.S.Padmavathi
(P2 is the legal heirs of the deceased 1st petitioner impleaded vide Court order dated 14.07.2026 in W.M.P.(MD)No.14401 of 2026 in W.P.(MD)No.18487 of 2024 by GRSJ & KKRKJ) ... Petitioner

Vs.

1.The Secretary / Sub Judge (FAC)
Mediation and Conciliation Center,
Madurai District,
Madurai-625 020.

2.Edelweiss Asset Reconstruction Company Limited,
Represented by its Authorized Officer,
Edelweiss House, Off CST Road,
Kalina, Mumbai-400 098.

3.The Manager,
HDB Financial Services Limited,

No.50/1, Palanganatham,
Bye Pass Road, VMR Complex,
Vasanthanagar, Madurai 625 003.

(R3 is impleaded vide Court order dated 19.09.2024 in W.M.P.(MD)No.16284 of 2024 in W.P.(MD)No. 18487 of 2024 by RSMJ & LVGJ)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the entire records connected with the impugned demand notice in EdelARC / Retail 1567/2024-2025, dated 26.05.2024 issued by the second respondent and quash the same.

For Petitioner : Mr.K.K.Kannan

For Respondents : Mr.N.Adithyavijayalayan for R1
: Mr.R.Rajesh Kumar for R2
: No appearance for R3

ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.)**

The writ petitioner M.Subbiah, had filed this writ petition challenging the notice issued under Section 13(2) of the SARFAESI Act,

2002. He is no more. His wife has come on record to pursue the writ proceedings. Thiru.Subbiah borrowed a sum of rupees one crore from HDB Financial Services Limited on 21.03.2014 vide Loan No.613192. It is stated that Subbiah was regularly paying the interest initially. Subsequently, the cheque bearing No.007456, dated 17.09.2018 drawn on IDBI Branch, Pudukkottai Branch was dishonored on presentation. Hence, S.T.C.No.96 of 2019 on the file of the Fast Track Court No.I, Madurai was instituted. The matter was referred to the Mediation and Conciliation Centre annexed to the Madurai District Court. Pursuant to mediation, settlement agreement dated 19.12.2019 was entered into between HDB Financial Services Limited and Thiru.M.Subbiah. The terms of the settlement agreement provided that Subbaiah was to pay a sum of Rs.23,00,000/- towards full and final settlement towards the aforesaid loan account. The settlement agreement was signed not only by the parties and their respective counsel but also by Vedachalam, Mediator. As per the terms of the agreement, Subbiah produced the demand draft for the aforesaid sum before the Court on 10.01.2020. In fact, the original instrument was handed over to the Court. Subsequently, the instrument was taken back since HDB

Financial Services Limited did not appear before the Court to receive the instrument. It is stated that STC is still pending. Subsequently, HDB Financial Services Limited assigned the aforesaid debt in favour of Edelweiss Asset Reconstruction Company Limited/ R2 herein. Based on the said assignment dated 17.11.2022, the impugned notice under Section 13(2) of the SARFAESI Act was issued. Challenging the same, this writ petition came to be filed.

2. The learned counsel appearing for the assignee / R2 herein submitted that the writ petition itself is not maintainable. He drew our attention to the decision of the Hon'ble Supreme Court rendered in ***2003 AIR (SC) 4325 (Federal Bank Ltd., Vs. Sagar Thomas),*** in which, it was held that the writ petition is not maintainable against a Scheduled Bank. He also relied on the decision rendered in ***2022 AIR (SC) 1045 (Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir)*** in which it was held that the writ petition filed against the proposed action under Section 13(4) is not maintainable and it should not be entertained by the High Courts.

3. The propositions canvassed by the learned counsel appearing for the assignee / second respondent are beyond cavil. However, the facts of the case will have to be necessarily taken into account. Section 73 of the Arbitration and Conciliation Act, 1996 provided as follows:-

> "**73. Settlement agreement.**—(1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
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> (2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.
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> (3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.
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> (4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties."

4. In the case on hand, the lender / R3 had initiated criminal prosecution under Section 138 of the Negotiable Instrument Act against Thiru.Subbiah. The matter was referred to the conciliation centre. The settlement agreement was in fact entered into and duly signed by all the

parties. Thiru.Subbiah had discharged his part of the obligations under settlement agreement by producing demand draft for the agreed sum towards the full and final settlement of the loan account before the concerned Court. Therefore, the lender cannot falter in his part of the obligation and take advantage of his own wrong by not appearing before the Court concerned. Section 73(3) of the Arbitration and Conciliation, Act, 1996 states that the settlement agreement shall be final and binding not only on the parties concerned but also on the persons claiming under them respectively. The assignee / R2 herein is claiming under the original lender namely R3 herein. Therefore, the conciliation agreement entered into between Subbiah and R3 will bind R2 also because R2 is claiming under R3. It is too obvious that the third respondent herein had suppressed the settlement agreement which was entered into with Subbiah. When they made assignment in favour of R2 herein, R2 appears to have paid a sum of Rs.50,00,000/- to R3.

5. The provisions of SARFAESI Act can be invoked only if there is a secured asset and the loan account has become a non performing asset. In the case on hand, the conditions precedent are absent.

Therefore, the impugned notice is one without jurisdiction. It is for this reason we hold that the writ petition is very much maintainable.

6. At the same time, the equities obtaining in this case cannot be lose sight of. As per the settlement agreement, Subbiah should have paid a sum of Rs.23,00,000/- as on 19.12.2019. Admittedly, the demand draft produced by him was taken back. It was never encashed. We are now in July 2026. Therefore, interest obviously will have to be reckoned from 2019 onwards. The writ petitioner is directed to pay a sum of Rs.23,00,000/- with interest at the rate of 9% per annum from 19.12.2019 This shall be paid by the petitioner within a period of eight weeks from the date of receipt of a copy of this order. Upon payment thereof, there shall be a direction to the second respondent. The impugned notice shall stand quashed. Failure on the part of the petitioner to do so would automatically lead to dismissal without further reference to this Court. The second respondent is given liberty to prosecute against the third respondent for damages. On such payment, the original document pertaining to the property in question will be returned to the writ petitioner. The learned counsel for the second respondent is directed to

furnish the account details of the second respondent to the petitioner's counsel.

7. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) **(K.K.R.K., J.)**
28.07.2026

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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G.R.SWAMINATHAN, J.
AND
K.K.RAMAKRISHNAN, J.

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