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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08-10-2026

CORAM

THE HON'BLE MR JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MRS.JUSTICE M.D.SUMATHI

WP(MD) No. 29066 of 2026

CNR:{HCMD011438592026}

1. Adaikalam S/o.Arumugam,
   No. A/40, Palayakalani Street
   Annavasal, Illupur Taluk
   Pudukkottai.

2. Ananthi W/o.Adaikalam,
   No. A/40, Palayakalani Street,
   Annavasal, IllupurTaluk,
   Pudukkottai.

..Petitioners

Vs

Grihum Housing Finance Limited
(Formerly Poonawala Housing Finance Ltd)
Rep., by its Authorised Officer,
VenkateshPerumal,
No. 39, Zion Towers, 3rd floor,
Kalavasal Byepass road,
Madurai- 625016.

..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Mandamus directing the respondent to keep in abeyance all further physical possession proceedings pursuant to the notice dated 25.09.2026 in Crl.M.P. No. 866 of 2026 relating to Loan Account No. LAP0597200000005003151 over the Schedule A property and granting a period of 4 weeks to the Petitioners to approach the Debts Recovery Tribunal (DRT), Madurai, under Section 17 of the SARFAESI Act, 2002, to seek appropriate statutory remedies, subject to such reasonable terms as to deposit as this Court.

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For Petitioners: Mr.C.Nagamuthu

For Respondent: Mr.M.Shakulhameed

ORDER

(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The writ petitioners had availed loan from the respondent. The loan account appears to have turned into a Non-Performing Asset. Action under the SARFAESI Act was taken. The respondent filed petition under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate, Pudukkottai and obtained an order on 18.09.2026. Advocate-Commissioner has been appointed. Possession is proposed to be taken tomorrow (09.10.2026).

3.Section 17 of the Act states that any person including borrower, aggrieved by any of the measures referred to in sub-section 4 of Section 13 taken by the secured creditor or his authorised officer may make an application to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which such measures had been taken. The DRT is obliged to consider whether any of the measures referred to in Section 13(4) of the Act taken by the secured creditor for enforcement of security or in

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accordance with the provisions of the Act and the Rules made thereunder. The DRT has the power to order restitution in the event of upholding the challenge by the borrower or the aggrieved person.

4.Section 13(4) of the Act enables the secured creditor to take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset. An order under Section 14 of the Act passed by the Chief Judicial Magistrate or the District Magistrate to assist the secured creditor in taking possession of the secured asset is only an amplification of what is set out in Section 13(4). It is well settled that an order passed under Section 14 of the Act can be questioned by filing an application under Section 17 of the Act before the jurisdictional DRT. The moot point that calls for consideration is whether before the expiry of the time-limit of 45 days, the order passed under Section 14 can be enforced. While considering an application under Section 17 of the Act, the Tribunal has the jurisdiction to grant interim relief also. If the order for taking possession is enforced even before the expiry of 45 days, the borrower or for that matter, a third party having right in the subject matter, can be put to exceptional hardship. The fact that restitution can be ordered eventually may be no consolation. It might even turn out to be illusory.

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5.It is well settled that an order passed under Section 14 of the Act is ministerial in nature. No adjudication takes place. The borrower is not even heard. An adjudication takes place only when the application filed under Section 17 is taken up. The DRT will check if the secured creditor followed the statutory procedures. Right to judicial remedy is certainly a human right. Article 8 of UDHR provides that everyone has the right to an effective remedy by the competent National Tribunals for acts violating the fundamental rights granted to him by law. This right to approach the Court or Tribunal cannot preempted by an immediate enforcement. We can draw inspiration from Order 21 Rule 26 of CPC. The judgment debtor who has suffered a decree can apply for stay before the executing court by pleading that he intends to file an appeal against the decree. The right to move the Tribunal under Section 17 of the Act is not an appellate remedy. It is more in the nature of an original proceeding. Therefore, such a right has a greater sanctity. We are therefore of the view that an order passed under Section 14 of the SARFAESI Act will have to be kept in abeyance for a period of 45 days when it is brought to the notice of the secured creditor that steps are being taken to challenge the same before the jurisdictional DRT under Section 17 of the Act. Fairness is the underlying theme of any legal system. When the Constitution speaks eloquently of the rights of the accused and detenues, a borrower need not be placed on a lesser pedestal. His statutory rights must be respected. The order under Section 14 is not going to be kept in cold storage for eternity. It will spring back to life once the 45 days period expires. It is for the borrower to emergently move the DRT and get some interim relief. He cannot wait till

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the limitation period almost expires. He has to show vigilance from day one onwards. We say so because the object of the SARFAESI Act cannot be lost sight of.

6.The learned counsel for the petitioners states that an application under Section 17 of the Act has been filed in full shape before the Debts Recovery Tribunal, Madurai. We direct the Registry of the Tribunal to number the same immediately, provided the papers are in order. The respondent has already entered appearance before us through counsel. The Tribunal shall take a call on the interim application on or before 30.10.2026. The impugned order shall be kept on hold till then. It is for the petitioners herein to persuade the Tribunal and obtain an order. The impugned order will abide by the order to be passed by the Tribunal.

7.This writ petition is disposed of accordingly. No costs.

(G.R.S.,J.) (M.D.S.,J.)
08-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
IAS/skm

Issue order copy on 08.10.2026

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Copy to:

The Debit Recovery Tribunal, Madurai.

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G.R.SWAMINATHAN, J.
AND
M.D.SUMATHI, J.

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