

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.No.30995 of 2014
and
M.P.Nos.1 and 2 of 2014

Murugappa Krishnan,
rep by his Power Agent S.Annamalai,
S/o.P.L.Sambandham
No.25/10-B, East Ellaiamman Koil Stret,
Dr.Radhakrishnan Nagar,
Tiruvotriyur,
Chennai-600 019.

...Petitioner

Vs.

1. The ICICI Bank Limited,
Kotturpuram Branch,
rep by its Manager,
Kotturpuram,
Chennai.
2. The Assets Reconstruction Company
(India) Limited,
(Arms Division),
rep by its Authorised Officer,
Mr.Mohammad Ibrahim,
having office at No.715,
7th Floor, Phase II,
Spenser Plaza,
Anna Salai, Chennai-600 002.
3. Syndicate Bank,
rep by its Branch Manager,
Teynampet Branch,
Teynampet
Chennai-600 018.

...Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus forbearing the respondents herein from in any way dealing with the property flat bearing Flat No.S2, 2nd floor (Rear side) Sivasakthi Vinayagar Apartments, bearing No.29-32 (New No.141-146) East Mada Street, Tiruvanmiyur, Chennai-41 of an extent of 1404 sq.ft during the pendency of the three comprehensive civil suits in C.S.No.150 of 2007 now converted as O.S.No.13513 of 2010, C.S.No.828 of 2007 and C.S.No.660 of 2007 before the Additional Judge, City Civil Court, Chennai and also before this Court.

For Petitioner : Mr.M.Balasubramanian

For Respondents : Mr.N.Narayanan for
Mr.T.Srinivasa Raghavan Associates for R-1
Mr.V.Jayachandran for R-2
No appearance for R-3

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

In the instant petition, the petitioner does not question any specific order, however, seeks direction against the second respondent to hand over possession of Flat No.S2, 2nd floor (Rear side) Sivasakthi Vinayagar Apartments and further direction to the respondents forbearing them from dealing with the property bearing Flat No.S2, 2nd floor (Rear side) Sivasakthi Vinayagar Apartments, bearing No.29-32 (New No.141-146) East Mada Street, Tiruvanmiyur, Chennai-41 of an extent of 1404 sq.ft in any manner during the pendency of civil suits.

2. It appears that the property in question was attached pursuant to the proceedings initiated against the borrower, who had mortgaged the property as secured asset with the bank.

3. The case of the petitioner is that he has not borrowed any money against the said property and also the said property is under his ownership. In respect of the said dispute, issues are pending consideration in different civil suits.

4. Mr. N. Narayanan, learned counsel appearing for the first respondent bank submits that the words "any person" employed in Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), includes not only the borrower, but also, the guarantor or any other person, who is likely to be affected by the action taken under Section 13(4) of the SARFAESI Act.

5. Be that as it may, the present petition arises from the order passed under the provisions of Section 13 of the SARFAESI Act. As per Section 17 of the SARFAESI Act, any person aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer, is competent to prefer an appeal to the Debts Recovery Tribunal, having jurisdiction in the matter, within 45 days from the date on which such measures have been taken.

6. The expression "any person" referred to in Section 17 of the SARFAESI Act has clearly been interpreted by the Supreme Court holding that the said expression does not mean the borrower alone, but also, the guarantor or any other person who may be affected by the action taken by the bank under Section 13(4) of the SARFAESI Act. (See *United Bank of India vs. Satyawati Tondon*¹ and *Jagdish Singh vs. Heeralal and Others*²).

7. During the course of the argument, the petitioner seeks permission to withdraw the writ petition with liberty to take recourse to the statutory appellate forum as provided under the SARFAESI Act. He has also made an endorsement which reads as under :

"The petitioner may be given liberty to agitate the matter before the Debt Recovery Tribunal to invoke section 17 to recover the property from illegal attachment & dispossession from a third party writ petitioner who being the owner of the property. The borrower already filed a suit against the petitioner for declaration & recovery of possession of the very same property in C.S.No.660 of 2009 before this Hon'ble Court. Hence the writ petition may be directed to withdraw as not pressed."

8. In view of the foregoing, we permit the petitioner to withdraw this petition with liberty to approach the Debts Recovery Tribunal under the provisions of the SARFAESI Act. We further direct that if such application is filed within a period of seven days from the date of receipt of copy of this order before the Debts Recovery Tribunal, the question of limitation may not be examined. The Tribunal may examine the case on its own merit and in accordance with law and decide the same.

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9. Accordingly, the writ petition is dismissed as withdrawn.
No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vvk

To

The Authorised Officer,
The Assets Reconstruction Company
(India) Limited,
(Arms Division),
having office at No.715,
7th Floor, Phase II,
Spenser Plaza,
Anna Salai, Chennai-600 002.

1 CC to Mr.M.Balasubramanian, Advocate SR.No. 320

1 CC to Mr.T.Srinivasa Raghavan Associates, Advocate SR.No. 804

W.P.No.30995 of 2014

BR (CO)
PSI (13.01.2015)

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