IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2015

CORAM:

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

W.P. No.12159 of 2015
and
M.P.No.1 of 2015

Nantu Maity ...Petitioner

vs.

1. M/s.Allahabad Bank,
Mugappair Branch,
No.1C, 1st Bazaar Street,
Mugappair East,
Chennai - 600 037
rep.by its Authorised Officer/Chief Manager,
Zonal Office, Chennai,

2. The Chief Metropolitan Magistrate Court,
Egmore, Chennai,

3. R.Girija,

4. R.Ravindran ...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the impugned order of the 2nd respondent passed in Crl.M.P.No.101 of 2015 dated 09.02.2015 and quash the same and consequently forbear the first respondent, their men, agents from interfering with the physical possession of the petitioner and from in any manner evicting the petitioner from the shop property situated at old Door No.93, New Door No.211, V.O.C.Salai, (wall Tax Road), Park Town, Chennai - 600 008 comprised in Resurvey No.8609/2, C.C.No.2892, Block No.73, George Town Division, within the limits of Corporation of Chennai except following due process of law.

For petitioner	:	Mr.R.Sagadevan
For 1st respondent	:	Mr.D.Simon
For R2 to R4	:	No Appearance

ORDER

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

The petitioner, claiming to be the tenant/lessee under the 3rd respondent in respect of the schedule property situated at Old Door No.93, New Door No.211, V.O.C.Salai, (wall Tax Road), Park Town, Chennai – 600 008 comprised in Resurvey No.8609/2, C.C.No.2892, Block No.73, George Town Division, within the limits of Corporation of Chennai, seeks to question the legality and validity of the order dated 9.2.2015 passed by the Chief Metropolitan Magistrate, Egmore, Chennai (for short "the CMM") in Crl.M.P. No.101 of 2015.

2. The brief facts relevant for the disposal of this writ petition are that according to the petitioner, he is in possession and occupation of the aforestated property by virtue of lease agreement dated 8.8.2005 executed by the third respondent in favour of the petitioner on payment of a lease deposit of Rs.8,00,000/- for a period of three years. Subsequently, on account of the new lease agreement executed between the parties on 22.8.2011, the lease period was further extended for a period of three years from 08.08.2011 by paying lease amount of Rs.10,00,000/- to the 3rd respondent. Later, the lease agreement has been renewed by the petitioner on 21.8.2014 for a period of 3 years by paying lease deposit of Rs.10,00,000/- to the 3rd respondent. The property in question is a secured asset as it appears that the 3rd respondent obtained loan to the tune of Rs.9,25,000/- from the 1st respondent Bank and the 4th respondent guaranteed the said credit facility. The 3rd respondent created equitable mortgage of immovable property. On default of the 3rd respondent in repayment, the account of the 3rd respondent was classified as Non Performing asset on 30.11.2010. A demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") was issued by the 1st respondent on 17.05.2011. Thereafter, a notice under Section 13(4) of the SARFAESI Act was also issued on 30.08.2011 and symbolic possession of the schedule premises was taken affixing notice on the secured asset and published in the newspapers also on 04.09.2011. The first respondent Bank thereafter preferred an application under

Section 14 of the SARFAESI Act, seeking assistance for taking over possession of the said secured asset. The CMM vide the impugned order dated 09.02.2015, held that the first respondent Bank was entitled to take possession of the scheduled asset and also provided assistance thereon.

3. Sri. R. Sagadevan, learned counsel for the petitioner, relying on the ratio laid down by the Supreme Court in Harshan Govardhan Sondagar vs. International Assets Reconstruction Company Ltd. And Others[1], would submit that the petitioner, being a lessee, has a right to enjoy the lease property in accordance with the terms and conditions of the lease, irrespective of whether the subsequent mortgagee has knowledge of the said lease or not. It is further contended that the impugned order cannot be passed as the lease was executed before the grant of loan, without determining the lease, after affording an opportunity of hearing to the petitioner.

4. Mr.D.Simon, learned counsel for the first respondent Bank would submit that if the lease has been created by unregistered lease agreement, the petitioner has no right to continue in the said property and as such, the petitioner is liable to establish that the lease executed was properly registered in accordance with the provisions of law.

5. We have heard the learned counsel for the parties and also examined the pleadings and documents appended thereto.

6. The Supreme Court, in Harshan Govardhan Sondagar1 (supra), while considering the lessee's right of the secured property/asset, observed as under:

> "28. A reading of sub-rules (1) and (2) of Rule 8 of the Security Interest (Enforcement) Rules, 2002 would show that the possession notice will have to be affixed on the outer door or at the conspicuous place of the property and also published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer. At this stage, the lessee of an immovable property will have notice of the secured creditor making efforts to take possession of the secured assets of the borrower. When, therefore, a lessee becomes aware of the possession being taken by the secured creditor, in respect of the secured asset in respect of which he is the lessee, from the possession

1 (2014) 6 SCC

notice which is delivered, affixed or published in sub-rule (1) and subrule (2) of Rule 8 of the Security Interest (Enforcement) Rules, 2002, he may either surrender possession or resist the attempt of the secured creditor to take the possession of the secured asset by producing before the authorised officer proof that he was inducted as a lessee prior to the creation of the mortgage or that he was a lessee under the mortgagor in accordance with the provisions of Section 65-A of the Transfer of Property Act and that the lease does not stand determined in accordance with Section 111 of the Transfer of Property Act. If the lessee surrenders possession, the lease, even if valid, gets determined in accordance with clause (f) of Section 111 of the Transfer of Property Act, but if he resists the attempt of the secured creditor to take possession, the authorised officer cannot evict the lessee by force but has to file an application before the Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the SARFAESI Act and state in the affidavit accompanying the application, the name and address of the person claiming to be the lessee. When such an application is filed, the Chief Metropolitan Magistrate or the District Magistrate will have to give a notice and give an opportunity of hearing 1 (2014) 6 SCC to the person claiming to be the lessee as well as to the secured creditor, consistent with the principles of natural justice, and then take a decision. If the Chief Metropolitan Magistrate or the District Magistrate is satisfied that there is a valid lease created before the mortgage or there is a valid lease created after the mortgage in accordance with the requirements of Section 65-A of the Transfer of Property Act and that the lease has not been determined in accordance with the provisions of Section 111 of the Transfer of Property Act, he cannot pass an order for delivering possession of the secured asset to the secured creditor. But in case he comes to the conclusion that there is in fact no valid lease made either before creation of the mortgage or after creation of the mortgage satisfying the requirements of Section 65-A of the Transfer of Property Act or that even though there was a valid lease, the lease stands determined in accordance with Section 111 of the Transfer of Property Act, he can pass an order for delivering possession of the secured asset to the secured creditor."

7. The conspectus of the facts, as aforestated, reveals that the petitioner came into possession and occupation of the property in question on account of the lease agreement between him and the borrower before the property was mortgaged with the first respondent Bank in lieu of the loan obtained by the borrower from the said financial institution.

8. In that view of the matter, without going into the factual disputes and also merits of the case, we are of the considered opinion that since the petitioner was not a party to the proceedings under Section 14 of the SARFAESI Act before the CMM, the impugned order deserves to be set aside. Accordingly, the impugned order dated 9.2.2015 is set aside and the matter is remitted back to the CMM to pass orders in accordance with the law laid down by the Supreme Court in Harshan Govardhan Sondagar1 and also any other law relevant in the case, after giving an opportunity of hearing to all the parties concerned. The CMM is further directed to consider the matter and pass final orders under Section 14 of the SARFAESI Act within a period of two months from the date of filing of a certified copy of this order, by either party.

9. The writ petition stands allowed to the above extent. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Authorised Officer/
Chief Manager, Zonal Office,
Mugappair Branch,
No.1C, 1st Bazaar Street,
Mugappair East,
Chennai - 600 037

2. The Chief Metropolitan Magistrate Court,
Egmore, Chennai,

1 CC to Mr.D.Simon, Advocate SR.No. 31929

1 CC to Mr.G.Mohammed Asif, Advocate SR.No. 31958

W.P.No.12159 of 2015
and M.P.No. 1 of 2015

GP (CO)
PSI (08.07.2015)