

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-03-2015

CORAM

THE HONOURABLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

WRIT PETITION No.32381 of 2014
and
M.P.No.1 of 2014

1.K.Srinivasan
2.S.Lalitha

... Petitioners

vs

The Authorised Officer
ICICI Bank Limited
Second Floor, West Wing,
Plot No.24, South Phase,
Industrial Estate
Ambattur, Chennai 600 058.

... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the respondent pertaining to the petitioner's home loan account No.LBCHE00000358393, in the order dated 23.9.2014, obtained by the respondent in Crl.M.P.No.6572 of 2014, on the file of the Court of Chief Metropolitan Magistrate, Egmore, Chennai under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as amended and quashing the same and consequently, directing the respondent to refrain from dispossessing the petitioners from the schedule mentioned property.

For Petitioners : Mr.M.Manivannan
For Respondent : Mr.T.Srinivasaraghavan

ORDER

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

The petitioners claiming to be the borrowers, are questioning the legality of the order dated 23.9.2014, passed by the Chief Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.6572/2014, filed by the secured creditor i.e., ICICI Bank Limited.

2.The prime contention of the petitioners is that notices have been issued in respect of the unsecured asset and thus, the Chief Metropolitan Magistrate has wrongly passed the order appointing an Advocate Commissioner to take possession of the property in question and hand over the same to the respondent-Bank. The question as to whether the property in question is a secured asset or not is to be decided by the competent authority. The proper demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short "the Act") was served on 5.9.2011. Thereafter, a symbolic possession notice was served on 22.10.2011, under Section 13(4) of the Act. Despite that, the petitioners have not taken any steps before the application under Section 14 of the Act was filed by the secured creditor in 2014. The petitioners are now raising a ground as aforesaid, that the property in question, which was the subject matter of the notices under Section 13(2) and also under Section 13 (4) of the Act, was not a secured asset at all.

3.The Supreme Court, while examining the maintainability of the writ petition against the order passed under Section 14 of the Act, in KANAIYALAL LALCHAND SACHDEV AND OTHERS V. STATE OF MAHARASHTRA AND OTHERS [(2011) 2 SCC 782], held that if the petitioner is aggrieved upon an order passed under Section 14 of the Act, the proper remedy will be approaching the Tribunal under the provisions of Section 17 of the Act.

4.Accordingly, we are not inclined to maintain this petition in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. However, liberty is reserved to the petitioners to take recourse to the competent appellate forum, if so advised, under the provisions of law.

5.The writ petition stands, accordingly, dismissed with afore-stated liberty. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsv

To:

The Authorised Officer
ICICI Bank Limited
Second Floor, West Wing,
Plot No.24, South Phase,
Industrial Estate
Ambattur, Chennai 600 058.

+2cc's to Mr.M.Manivannan, Advocate, S.R.No.13779
+1cc to Mr.T.Srinivasaraghavan, Advocate, S.R.No.14414

W.P.No.32381 of 2014

GGK(CO)
CA(20/03/2015)



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