

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

CORAM:

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

W.P. No.13733 of 2015 and M.P. Nos.1 & 2 of 2015

J. Musthaq Ali

Petitioner

Vs.

1 The Chief Metropolitan Magistrate
Egmore
Chennai 600 008

2 International Asset
Reconstruction Company Pvt. Ltd.
No.2-B, K.G. Retreat
Old No.119, New No.26,
G.N. Chetty Road
T. Nagar
Chennai 600 017

3 Paris Dakner Microsphreules Pvt. Ltd.
No.5, Golden Enclave IV Floor
275, Poonamallee High Road
Kilpauk, Chennai 600 010

4 S. Mohanasundaram

5 Umarani

6 Kunasekaran

7 M. Madhumathi

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records in Crl.M.P. No.433 of 2015 and Crl.M.P. No.102 of 2015 dated 21.04.2015 on the file of the first respondent herein and quash the same and direct the second respondent to accept the payment and tender of a sum of Rs.67 lakhs for and on behalf of the 5th respondent guarantor/borrower pursuant to the demand made by the 2nd respondent under letter dated 25.09.2014 and release the property viz., house,

ground and premises bearing Old No.2/1, New No.11, New Colony, V.O.C. Nagar, Anna Nagar East, Chennai 600 102, viz., an extent of 1,950 sq. ft. of house site with a building thereon from the equitable mortgage liability.

For petitioner Mr. S. Sadasharam

For R2

Mr. B. Harikrishnan

ORDER

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

Mr. B. Harikrishnan, learned counsel, takes notice for the second respondent.

2 This writ petition is filed questioning the legality and validity of the order dated 21.04.2015 passed by the first respondent-Chief Metropolitan Magistrate, Egmore, (for short "the CMM") in Crl.M.P. No.433 of 2015 and Crl.M.P. No.102 of 2015 and also for a direction to the second respondent to accept the payment and tender of a sum of Rs.67 lakhs, for and on behalf of the 5th respondent guarantor/borrower, pursuant to the demand made by the 2nd respondent under letter dated 25.09.2014 and release the property, i.e., house, ground and premises bearing Old No.2/1, New No.11, New Colony, V.O.C. Nagar, Anna Nagar East, Chennai 600 102, viz., an extent of 1,950 sq. ft. of house site with a building thereon from the equitable mortgage liability.

3 We have heard the learned counsel for the petitioner and the second respondent. We have also perused the pleadings and documents appended thereto.

4 We are of the considered view that the CMM has examined the entire facts of the case and has rightly come to the conclusion that the lease created after the notice issued under Section 13(2) of the Securitisation and Reconstruction Financial Assets and Enforcement of Security Interest Act, 2002, (for short "the SARFAESI Act") is not a valid lease and that the said lease is not even a registered one. It is pertinent to note that the said conclusion arrived at by the learned Chief Metropolitan Magistrate, Egmore, to the effect that the lease created aftermath the receipt of notice under Section 13(2) of the SARFAESI Act is not valid in the eye of law, is based on and fortified by the judgment of the Supreme Court in Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Ltd. And Others¹.

1 (2014) 6 SCC 1

5 Thus, the order impugned rendered by the CMM, which is sought to be impugned in this writ petition, is legal, just and proper warranting no interference whatsoever.

6 As a sequel, the writ petition fails and it is accordingly dismissed. Costs made easy. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad
To

The Chief Metropolitan Magistrate
Egmore, Chennai 600 008.

+ 1 cc to Mr.S. Sadasharam, Advocate SR.24098

+ 1 cc to Mr.B. Harikrishnan, Advocate SR.24140

KJI(CO)
EU 19.05.2015

W.P. No.13733 of 20152015

सत्यमेव जयते

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