

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 10.8.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.18216 of 2015

Mr.P.L.Singaram

...

petitioner

Vs

- 1 The Chief Manager
Indian Bank Zonal Office (Chennai South)
Ethiraj Salai Chennai-8
- 2 M/s.Srivari Enterprises
rep. by its Partners No.28 Pedariar Koil
Street Broadway Chennai-1
- 3 Mr.R.Srinivasan
No.46 Chetti Street Aynavaram Chennai-46
- 4 Ms.S.Sharadha
W/o.Mr.Sekar No.30 (Old No.174) Plot No.60
87th Street 13th Sector
K.K.Nagar Chennai-78

...

respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus forbearing the 1st respondent men or agent or any one claiming through him from evicting the petitioner from the lease premises bearing New No.30 (Old No.174) 3rd Floor 87th Street 13th Sector Sivalingapuram K.K.Nagar Chennai-600 078 except in accordance with law and law laid down by the Honourable Supreme Court reported in 2014 (6) SCC 1.

For petitioner : Mr.V.Srinivasa Babu

For Respondents : Mr.Rajendra Raghavan, for R-1
No appearance for respondents 3 and 4

O R D E R
(made by K.K.SASIDHARAN, J.)

The petitioner claiming himself to be a tenant under the 3rd respondent, seeks a Writ of Mandamus to restrain the first respondent from evicting him except in accordance with due process of law.

The facts in brief :-

2. According to the petitioner, he is in possession of 3rd floor of the building bearing D.No.30 (Old No.174), 87th Street, 13th Sector, Sivalingapuram, K.K.Nagar, Chennai 78, on the basis of a lease agreement executed by the third respondent. The first respondent initiated proceedings against respondents 2 and 3 invoking the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, [hereinafter referred to as 'SARFAESI Act']. The petitioner apprehends that he would be evicted by the first respondent without taking proceedings under Section 14 of the SARFAESI Act. The petitioner is therefore before this Court.

3. The first respondent has filed a counter affidavit contesting the claim made by the petitioner. According to the first respondent, possession notice was served on the petitioner also and even then, action was not taken by him to compel the borrower to repay the amount.

Submissions :-

4. The learned counsel for the petitioner contended that the petitioner has been in possession and enjoyment of the property in question on the basis of a valid lease deed. According to the learned counsel, the first respondent is taking steps to evict the petitioner unceremoniously notwithstanding the judgment of the Supreme Court in Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Ltd. and others, [2014(6) SCC 1].

5. The learned counsel for the first respondent on the other hand contended that the petitioner would be evicted only by initiating proceedings under SARFAESI Act. According to the learned counsel, application would be moved before the concerned authority under Section 14 of the SARFAESI Act and as such, the apprehension raised by the petitioner has no basis.

Analysis :-

6. The petitioner is claiming to be a tenant under the third respondent. The petitioner has produced documents in support of his contention that he is a statutory tenant entitled to the protection.

7. The first respondent has already initiated SARFAESI proceedings against the borrowers. The learned counsel appearing on behalf of the first respondent has made it very clear that appropriate application would be made under Section 14 of the SARFAESI act and only in accordance with the order to be passed by the concerned authority, further action would be taken to evict the petitioner.

8. The Supreme Court in Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Ltd. and others, [2014(6)

SCC 1], observed that in case possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of SARFAESI Act, it is open to such creditor to approach the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction the secured asset is situated.

9. Similar question came up for consideration before this Court in M.Alphonse Packiaraj vs. L& T Housing Finance Ltd., and others [2015 WLR 133]. The Division Bench held that whether the lease got terminated in the meantime and whether possession and occupation of the petitioner is valid or not, are all issues to be decided by the Chief Metropolitan Magistrate or the District Magistrate, in an application under Section 14 of the Act.

10. The Bank made it very clear that appropriate proceedings would be initiated under Section 14 of the SARFAESI Act and the petitioner would also be made a party to such proceeding. In case the Bank files an application under Section 14 of the Act, the concerned Chief Metropolitan Magistrate or District Magistrate shall implead the petitioner and all other tenants and an order on merits should be passed. In short, the claim made by the petitioner with regard to tenancy should be decided by the Chief Metropolitan Magistrate/District Magistrate, under Section 14 of the Act before granting permission to the secured creditor to take possession of the property.

11. The Writ Petition is disposed of with the above direction. No costs. Consequently, M.P.No.1/2015 is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1 The Chief Manager
Indian Bank Zonal Office (Chennai South)
Ethiraj Salai Chennai-8

2. The Chief Metropolitan Magistrate/District Magistrate.

+1 cc to M/s.V.Srinivasa Babu, Advocate, sr.41279.

rsk(co), kra(20/08)

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