

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2015

CORAM

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

W.P.No.1934 of 2015
and
M.P.No.1 of 2015

C.Umapathy

...Petitioner

Vs.

1. The Bank of India,
Cathedral Road Branch,
Chennai-600 086.
- 2.M/s.Dinakaran Medical Agencies,
No.41 & 42, Madhavaram High Road,
North Perambur (Sembium),
Chennai-600 011.
3. C.Dinakaran, Partner
M/s.Dinakaran Medical Agencies,
No.41 & 42, Madhavaram High Road,
North Perambur (Sembium),
Chennai-600 011.
4. D.Mallika, Partner,
M/s.Dinakaran Medical Agencies,
No.41 & 42, Madhavaram High Road,
North Perambur (Sembium),
Chennai-600 011.
5. T.Chinnadurai Nadar

...Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus directing the first respondent not to evict the petitioner from the

tenanted premises at No.44/1, Madhavaram High Road (North) Perambur, Chennai-600 011 without due process of law and give sufficient time to evict in pursuant to the proceedings before the Chief Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.1090 of 2013.

For Petitioner : Mr.A.D.Janarthanan

ORDER

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

By this petition, the petitioner seeks a direction to the first respondent Bank not to evict the petitioner from the tenanted premises at No.44/1, Madhavaram High Road, North Perambur, Chennai-600 011 without due process of law and give sufficient time to evict in pursuant to the proceedings before the Chief Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.1090 of 2013.

2. The case of the petitioner is that the petitioner was inducted into the premises, which has been declared as secured asset, by the landlord as a tenant much before the property in question was mortgaged with the Bank for obtaining loan and as such, the application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (For short "SARFAESI Act"), is not maintainable. Relying on a decision of the Supreme Court in Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others¹, it is contended that no order to take over possession of the property in question can be passed before the tenancy is determined in accordance with law. In that view of the matter, the petitioner seeks the aforesaid direction, forbearing the Bank from evicting the petitioner.

3. We are not inclined to go into the factual disputes at this stage, as it is stated by the petitioner that the bank has preferred an application under Section 14 of the SARFAESI Act to secure the possession of the secured assets, which is pending disposal. The petitioner is competent to make an application in the pending proceedings to put forward his case. In that view of the matter, we reserve liberty to the petitioner to make an application in the pending proceedings before the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act. In the event an application is made by the petitioner, the authorities are directed to consider the same in accordance with law, on its own merit before passing the final order.

¹ (2014) 6 SCC 1.

4. Resultantly, we dispose of the writ petition with the aforesaid liberty and direction. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

vvk

To

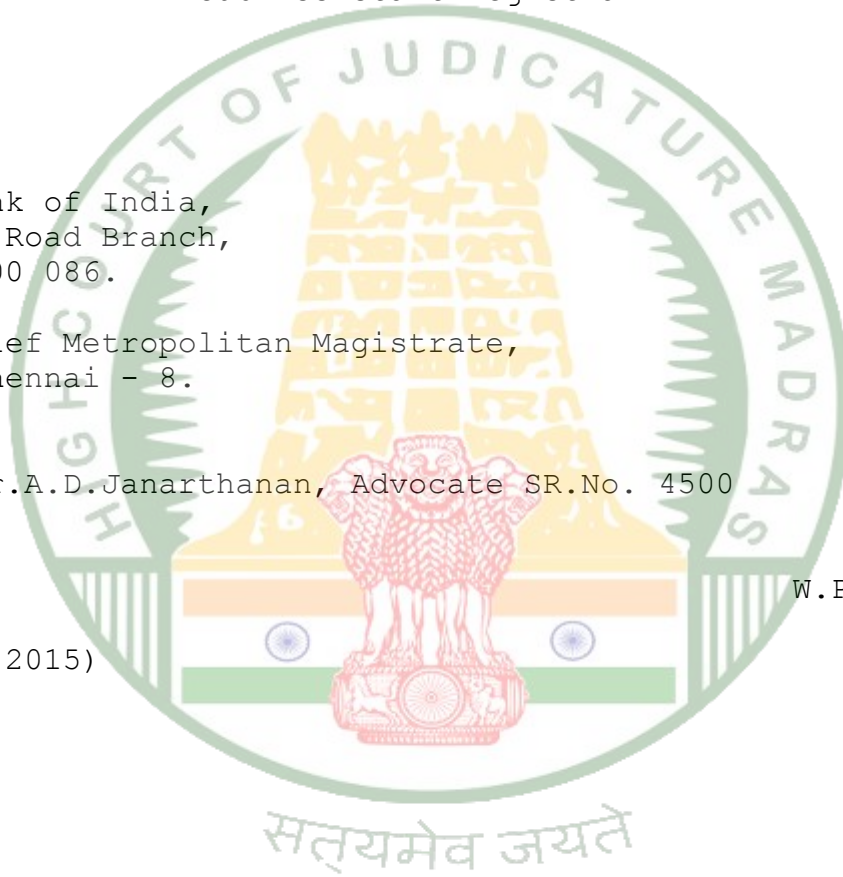
1. The Bank of India,
Cathedral Road Branch,
Chennai-600 086.

2. The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.

1 CC to Mr.A.D.Janarthanan, Advocate SR.No. 4500

GP (CO)
PSI(13.02.2015)

W.P.No.1934 of 2015



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