

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-03-2015

CORAM

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

WRIT PETITION No.18365 of 2014
and
M.P.Nos.1 and 2 of 2014

M/s.G.K.K. Exports Pvt. Ltd.,
Represented by M.S. Gunasekaran
83/2, Poonamallee Bye Pass Road
Poonamallee, Chennai 600 056. ...Petitioner

vs

Phoenix ARC Private Limited
Represented by its Authorized Officer
7th Floor, Dani Corporate Park
No.18, CST Road, Kalina
Santacruz (E), Mumbai 400 098 ... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the Chief Metropolitan Magistrate in CrI.M.P.No.1546 of 2014 dated 2.5.2014 and quashing the same.

For Petitioner : Mr.V.Lakshminarayanan
For Respondent : Mr.E.Omprakash for
M/s.Ramalingam & Associates

ORDER

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

Challenge in this petition is to the order dated 2.5.2014, passed by the learned Chief Metropolitan Magistrate (CMM), Egmore, Chennai, appointing an Advocate Commissioner to take possession of the property in question and hand over the same to the secured creditor/respondent herein. Originally, an appeal was filed against the said order before the Debts Recovery Tribunal-II (DRT), Madras, in S.A.SR No.1600/2014 and the same was rejected by order dated 8.7.2014, holding that since the possession was not taken over by the secured creditor/respondent, the challenge to the warrant dated 2.5.2014, issued by the CMM, was not maintainable.

2.The learned Counsel appearing for the petitioner, submits that indisputably, the impugned warrant dated 2.5.2014, was issued consequent upon the order dated 21.4.2014, passed by the CMM, Egmore, in a petition filed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act"), by the financial institution/respondent. The petitioner could not question the legality and validity of the said order as the same was not served on him. The petitioner came to know about the order only when the warrant was issued for taking over possession. Accordingly, the warrant was challenged before the DRT. Thus, the petitioner be granted liberty to question the legality and validity of the order dated 21.4.2014, passed by the CMM under Section 14 of the SARFAESI Act.

3.The learned Counsel appearing on behalf of the respondent/financial institution, would submit that the DRT-II had declined to entertain the application on the ground that the challenge was not to the order passed under Section 14 of the SARFAESI Act, but to the warrant, which was a consequential action pursuant to the said order.

4.We have examined the case carefully and also considered rival submissions of the learned Counsel for the parties.

5.The Tribunal has rejected the application holding that the same is not maintainable as the possession was not taken by the secured creditor/respondent, but without considering the issue properly. The Tribunal has picked up one part from a decision of the Supreme Court in STANDARD CHARTERED BANK V. V.NOBLE KUMAR AND OTHERS (2013 (6) CTC 683) and held so without examining as to in what context the Supreme Court has made observation in para 28 of the said judgment. There are several other decisions of the Supreme Court, wherein it has been held that an appeal against an order passed under Section 14 of the SARFAESI Act, by the borrower is maintainable before the DRT under the provisions of Section 17 of the SARFAESI Act [KANAIYALAL LALCHAND SACHDEV AND OTHERS V. STATE OF MAHARASHTRA AND OTHERS- (2011) 2 SCC 782].

6.In view of the foregoing, we set aside the order passed by the Tribunal in S.A.SR No.1600/2014 dated 8.7.2014, leaving the question of law open to be decided in appropriate case. In the facts circumstances of the case, we permit the petitioner to take recourse to the DRT under the provisions of Section 17 of the SARFAESI Act, challenging the main order dated 21.4.2014, passed by the CMM, Egmore, in Crl.M.P.No.1546 of 2014, exercising powers under Section 14 of the SARFAESI Act, within a period of two weeks from today. For the said period of two weeks, the status-quo as obtained today, shall be maintained by the parties.

7.The writ petition accordingly, stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)
Dt:13/3/2015

True Copy

Sub-Assistant Registrar

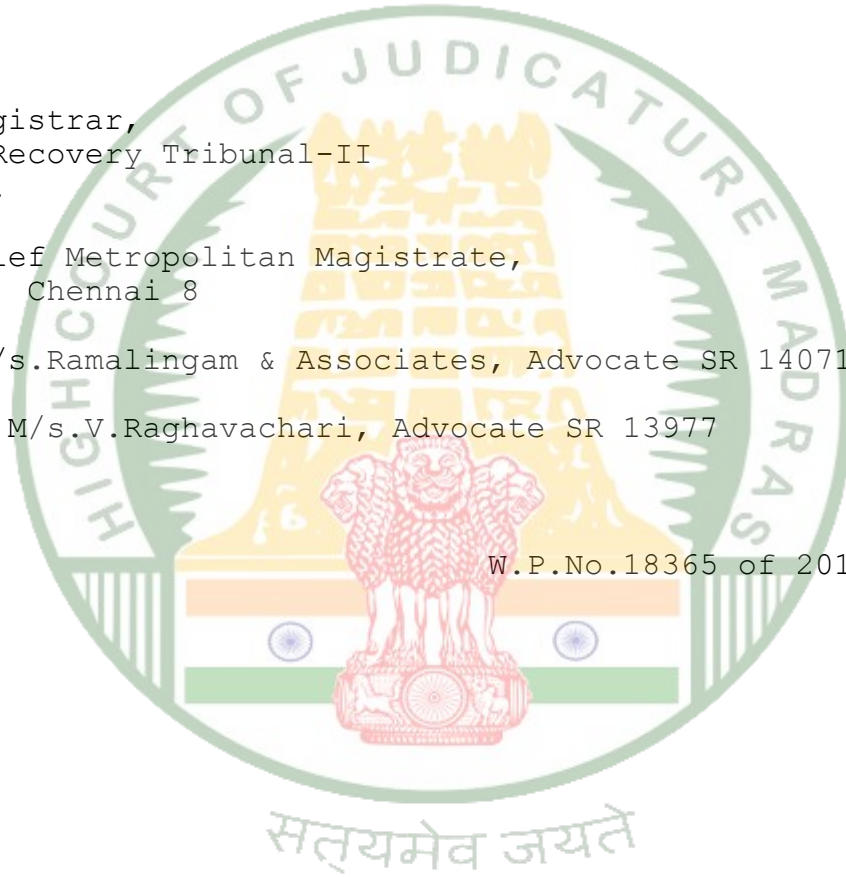
nsv

To:

1. The Registrar,
Debts Recovery Tribunal-II
Madras.
 2. The Chief Metropolitan Magistrate,
Egmore, Chennai 8
- + 2 ccs M/s.Ramalingam & Associates, Advocate SR 14071
+ 1 cc to M/s.V.Raghavachari, Advocate SR 13977

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W.P.No.18365 of 2014



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