IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE DR.JUSTICE P. DEVADASS

W.P. No.35217 of 2015 and M.P. Nos.1 & 2 of 2015

M/S.Asia Sales Agencies
represented by its Managing Partner
Manesh Sehgal
F1, Ground Floor
No.72/1, Kazura Garden
East Coast Road
Neelankarai
Chennai 600 041 ... Petitioner

vs.

1 The District Collector
Collectorate
Kancheepuram District
Kancheepuram - 631 501

2 The Tahsildar
Office of the Tahsildar
Sozhinganallur
Kancheepuram District

3 The Authorised Officer
United Bank of India
Souther Region
184/132
Ramakrishna Math Road
Mandaveli, Chennai 600 028

4 R.M. Ramanathan
5 R. Arumugasamy
Managing Director of
R.A. Samy Trading Pvt. Ltd.
No.72/2, Kazura Gardens
East Coast Road
Neelankarai, Chennai 600 041 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the proceedings No.Rc.M3/12180/2014 dated 24.09.2015 on the file of the first respondent and quash the same as illegal and to direct the third respondent to hand over possession of the shop No.F1, 72/2 in R.K. Building Kazura Gardens, East Coast Road, Neelankarai, Chennai 600 041 to the petitioner by removing the seal and lock put forth by the second respondent on 07.10.2015.

For petitioner Mr. S.R. Rajagopal

For RR 1 & 2 Mr. P.S. Sivashanmugasundaram
Special Government Pleader

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ORDER

(delivered by SATISH K. AGNIHOTRI, J.)

Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader, accepts notice for respondents 1 and 2.

2 Questioning the justifiability of the order dated 24 September 2015 passed by the first respondent, viz., the District Magistrate and District Collector, Kancheepuram, in exercise of his power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), at the instance of the respondent bank, the petitioner firm has preferred this writ petition. Consequentially, a direction to the third respondent, viz., the Authorised Officer of the respondent bank, to hand over possession of Shop No.F1, 72/2 in R.K. Building, Kazura Gardens, East Coast Road, Neelankarai, Chennai 600 041, to it, by removing the seal and lock affixed by the second respondent, viz., the Tahsildar, Sholinganallur, on 07 October 2015, is also sought.

3 The incontrovertible facts, as projected by the petitioner firm, are that on the strength of a lease deed dated 19 August 2015 entered into by it with the fifth respondent for a period of eleven months on a monthly rent of Rs.65,000/-, it occupied the premises in question as a tenant. In the meantime, without affording an opportunity of hearing to the petitioner firm, which is in lawful possession of the property in question, the second respondent had taken steps with police protection to seal the premises in question.

4 The learned counsel for the petitioner submits that the order passed by the first respondent is not in accord with the principles of law. According to the learned counsel, firstly, after the property has been disposed of by auction, the respondent bank cannot take recourse to Section 14 of the SARFAESI Act for securing possession of the secured asset and secondly, the petitioner was entitled to an opportunity of hearing before the impugned order came to be passed by the first respondent.

5 From a perusal of records, it is manifest that the fifth respondent-borrower, was served with a demand notice under Section 13(2) of the SARFAESI Act on 02 September 2013, calling upon it to make payment of Rs.20,65,92,565/- within a period of sixty days. Besides, publication of the said notice was also made in two dailies, viz., Makkal Kural and Trinity Mirror, on 14 September 2013. Followed by the said notice, symbolic possession was taken on 11 December 2013 under Section 13(4) of the SARFAESI Act. A publication of the same was also made on 11 December 2013 enforcing Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, whereunder, all the persons were informed not to deal with the property in question, as the same was the subject matter of the dispute. Thereafter, further steps were taken as required under the provisions of law. The respondent bank, finding it difficult to obtain possession of the property in question, which is incontrovertibly a secured asset, made an application in the Court of District Magistrate/District Collector, Kancheepuram, under Section 14 of the SARFAESI Act on 21 March 2014. On the date when the application under Section 14 was made by the respondent bank, the petitioner had not occupied the property in question as a tenant. Thus, it is crystal clear that after it was made public that symbolic possession of the property in question was taken over by the respondent bank, the petitioner had entered into the premises as a tenant under the aforestated lease deed dated 19 August 2015. In such view of the matter, the petitioner is not entitled to any protection.

6 The question as to whether an application under Section 14 of the SARFAESI Act for recovery of possession, after the property stands disposed of by way of auction, is maintainable, is left open to be decided in an appropriate case, as, in the case in hand, the possession of the petitioner is illegal and unauthorised, inasmuch as the same was made after even filing of the application under Section 14 of the SARFAESI Act by the secured creditor, i.e., the respondent bank.

7 The Supreme Court, while examining the rights of a lawful tenant/lessee in Harshad Govardhan Sondagar vs.

International Assets Reconstruction Company Ltd. and Others[1] held in no uncertain and unequivocal terms, as under:

> "21. x x x x x Sub-section (13) of Section 13 of the SARFAESI Act, however, provides that after receipt of notice referred to in sub-section (2) of Section 13 of the SARFAESI Act, no borrower shall lease any of his secured assets referred to in the notice, without the prior written consent of the secured creditor. This provision in sub-section (13) of Section 13 of the SARFAESI Act and the provisions of the Transfer of Property Act enabling the borrower or the mortgagor to make a lease are inconsistent with each other. Hence, sub-section (13) of Section 13 of the SARFAESI Act will override the provisions of Section 65-A of the Transfer of Property Act by virtue of Section 35 of the SARFAESI Act, and a lease of a secured asset made by the borrower after he receives the notice under sub-section (2) of Section 13 from the secured creditor intending to enforce that secured asset will not be a valid lease."

8 In the case on hand, as aforestated, the lease of the secured asset was made much after the fifth respondent-borrower received the notice under Section 13(2) of the SARFAESI Act from the secured creditor/respondent bank. Thus, the lease made in favour of the petitioner was not a valid lease.

9 However, if the property in question has been sealed without giving an opportunity to the petitioner to remove its chattels and movables, the respondent bank is directed to de-seal the property in the presence of the officers and permit the petitioner to remove his chattels and movables, after making a proper inventory in the presence of witnesses.

Resultantly, this writ petition being devoid of any merit, stands dismissed. No costs. Connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

1 (2014) 6 SCC 1

To

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+1 cc to S.R.Rajagopal Advocate sr.60457
+1 cc to Government Pleader sr.60289

W.P. No.35217 of 2015

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