IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2015

CORAM

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

W.P. No.906 of 2015 and M.P. No.1 of 2015

A. Dawood ... Petitioner

vs.

1 L & T Housing Finance Limited
(Inter alia Branch)
VI Floor, KGN Towers
No.62, Ethiraj Salai
(Commander in Chief Road)
Egmore
Chennai 600 008
represented by its Authorised Officer
P. Srinivasan

2 The Chief Metropolitan Magistrate Court
Egmore
Chennai

3 R. Zainudeen

4 Shoba Chetty

5 K.N. Loganathan ... 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 impugned order of the second respondent passed in Crl.M.P. No.6448 of 2014 dated 11.12.2014 and quash the same and consequently, forbear the first respondent their men, agents from interfering with the physical possession of the petitioner and from in any manner evicting the petitioner from the property situated at Old Door No.28, New Door No.24, (First Floor), Vellala Street, Villivakkam, Chennai 600 049 comprised in Survey No.348/1, T.S. No.172, Block No.57 of No.71, Konnur Village, Purasawalkkam - Perambur Taluk, within the limits of Corporationof Chennai, except following due process of law.

For petitioner	Mr. R. Sagadevan
For R1	Mr. M.L. Ganesh
For RR 3 to 5	Mr. M. Rajendran

JUDGMENT

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

The petitioner, claiming to be the tenant/lessee of the schedule- property situated at Old Door No.28, New Door No.24, (First Floor), Vellala Street, Villivakkam, Chennai 600 049 comprised in Survey No.348/1, T.S. No.172, Block No.57 of No.71, Konnur Village, Purasawalkkam – Perambur Taluk, seeks to question the legality and validity of the order dated 11.12.2014 passed by the Chief Metropolitan Magistrate, Egmore, Chennai (for short "the CMM") in Crl.M.P. No.6448 of 2014.

2 The brief facts relevant for the disposal of this writ petition are that according to the petitioner, he is in possession and occupation of the aforestated property from 01.12.2012 by virtue of lease agreement dated 01.12.2012 executed by the third respondent in favour of the petitioner on payment of a lease deposit of Rs.5 lakhs for the period from 01.12.2012 to 01.12.2015. Subsequently, on account of the new lease agreement executed between the parties, the lease period was further extended for a period of five years from 08.01.2014 to 08.01.2018 and the lease amount has also been paid by the petitioner. The property in question is a secured asset as it appears that the respondents 3 and 4 obtained loan to the tune of Rs.1,25,11,045/- vide sanction letter dated 08.07.2013 and another loan amounting to Rs.48,88,955/- vide sanction letter of even date. A demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") was issued on 11.04.2014. Thereafter, a notice under Section 13(4) of the SARFAESI Act was also issued on 26.06.2014, which was published in newspapers also on 27.06.2014. The first respondent/financial institution thereafter preferred an application under Section 14 of the SARFAESI Act, seeking assistance for taking over possession of the said secured asset. The CMM vide the impugned order dated 11.12.2014, held that the first respondent/financial institution was entitled to take possession of the scheduled asset and also provided assistance thereon.

3 Sri. R. Sagadevan, learned counsel for the petitioner, relying on the ratio laid down by the Supreme Court in Harshan Govardhan Sondagar vs. International Assets Reconstruction Company Ltd. And Others[1], would submit that the petitioner, being a lessee, has a right to enjoy the lease property in accordance with the terms

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and conditions of the lease, irrespective of whether the subsequent mortgagee has knowledge of the said lease or not. It is further contended that the impugned order cannot be passed as the lease was executed before the grant of loan in July 2013, without determining the lease, after affording an opportunity of hearing to the petitioner.

4 Mr. M.L. Ganesh, learned counsel for the first respondent/financial institution would submit that if the lease has been created by unregistered lease agreement, the petitioner has no right to continue in the said property and as such, the petitioner is liable to establish that the lease executed was properly registered in accordance with the provisions of law.

5 We have heard the learned counsel for the parties and also examined the pleadings and documents appended thereto.

6 The Supreme Court, in Harshan Govardhan Sondagar[1] (supra), while considering the lessee's right of the secured property/asset, observed as under:

> "28. A reading of sub-rules (1) and (2) of Rule 8 of the Security Interest (Enforcement) Rules, 2002 would show that the possession notice will have to be affixed on the outer door or at the conspicuous place of the property and also published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer. At this stage, the lessee of an immovable property will have notice of the secured creditor making efforts to take possession of the secured assets of the borrower. When, therefore, a lessee becomes aware of the possession being taken by the secured creditor, in respect of the secured asset in respect of which he is the lessee, from the possession notice which is delivered, affixed or published in sub-rule (1) and sub-rule (2) of Rule 8 of the Security Interest (Enforcement) Rules, 2002, he may either surrender possession or resist the attempt of the secured creditor to take the possession of the secured asset by producing before the authorised officer proof that he was inducted as a lessee prior to the creation of the mortgage or that he was a lessee under the mortgagor in accordance with the provisions of Section 65-A of the Transfer of Property Act and that the lease does not stand determined in accordance with Section 111 of the Transfer of Property Act. If the lessee surrenders possession, the lease, even if valid, gets determined in accordance with

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clause (f) of Section 111 of the Transfer of Property Act, but if he resists the attempt of the secured creditor to take possession, the authorised officer cannot evict the lessee by force but has to file an application before the Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the SARFAESI Act and state in the affidavit accompanying the application, the name and address of the person claiming to be the lessee. When such an application is filed, the Chief Metropolitan Magistrate or the District Magistrate will have to give a notice and give an opportunity of hearing to the person claiming to be the lessee as well as to the secured creditor, consistent with the principles of natural justice, and then take a decision. If the Chief Metropolitan Magistrate or the District Magistrate is satisfied that there is a valid lease created before the mortgage or there is a valid lease created after the mortgage in accordance with the requirements of Section 65-A of the Transfer of Property Act and that the lease has not been determined in accordance with the provisions of Section 111 of the Transfer of Property Act, he cannot pass an order for delivering possession of the secured asset to the secured creditor. But in case he comes to the conclusion that there is in fact no valid lease made either before creation of the mortgage or after creation of the mortgage satisfying the requirements of Section 65-A of the Transfer of Property Act or that even though there was a valid lease, the lease stands determined in accordance with Section 111 of the Transfer of Property Act, he can pass an order for delivering possession of the secured asset to the secured creditor."

7 The conspectus of the facts, as aforestated, reveals that the petitioner came into possession and occupation of the property in question on account of the lease agreement between himself and the borrower before the property was mortgaged with the first respondent/financial institution in lieu of the loan obtained by the borrower from the said financial institution.

8 In that view of the matter, without going into the factual disputes and also merits of the case, we are of the considered opinion that since the petitioner was not a party to the proceedings under Section 14 of the SARFAESI Act before the CMM, the impugned order deserves to be set aside. Accordingly, the impugned order dated 11.12.2014 is set aside and the matter is remitted back to the CMM to pass orders in accordance with the law laid down by the Supreme Court in Harshan Govardhan Sondagar[1] and also any other law relevant in the case, after giving an opportunity of hearing to all the parties concerned. The CMM is further directed to consider the

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matter and pass final orders under Section 14 of the SARFAESI Act within a period of two months from the date of filing of a certified copy of this order, by either party.

9 The writ petition stands allowed to the above extent. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

The Chief Metropolitan Magistrate Court
Egmore
Chennai.

1 cc to Mr.R.Sagadevan ,Advocate, SR.No.5420
1 cc to Mr.M.L.Ganesh ,Advocate, SR.No.5499

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rk(co)
pmk.18.2.2015