IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2015

CORAM

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

W.P. No.907 of 2015 and M.P. No.1 of 2015

J. Babu ... Petitioner

Vs.

1 L & T Housing Finance Ltd.
(Inter alia Branch)
VI Floor
KGN Towers
No.62, Ethiraj Salai
(Commercial-in-Chief Road)
Egmore
Chennai 600 085
represented by its Authorised Officer
Mr. P. Srinivasan

2 The Chief Metropolitan Magistrate Court
Egmore
Chennai

3 R. Zainudeen

4 Mrs. 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 71, Konnur Village, Purasawakkam - Perambur Taluk, within the limits of Corporation of Chennai, except following the due process of law.

For petitioner Mr. R. Sagadevan

ORDER

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

The writ petitioner questions the legality and validity of the order dated 11.12.2014 passed by the second respondent, i.e., the Chief Metropolitan Magistrate, Egmore, Chennai – 8 (for short "the CMM").

2 The brief facts, in nutshell, are that admittedly, the land and building in question in Old No.28, New Door No.24, situated at Vellala Street, Villivakkam, Chennai, comprised in Survey No.348/1, Town Survey No.172, Block No.57 of 71, Konnur Vilalge, Purasawalkam – Perambur Taluk, was mortgaged with the first respondent-financial institution by the respondents 3 and 4 herein, for obtaining loan to the tune of Rs.1,25,11,045/-, which was sanctioned by letter dated 08.07.2013. The borrowers defaulted in repayment. Thus, 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, calling upon the borrowers to repay the dues within 60 days. The same was also published in two newspapers on 17.04.2014. Thereafter, a consequential proceedings under the SARFAESI Act were initiated. The first respondent-financial institution moved the CMM under the provisions of Section 14 of the SARFAESI Act, to secure assistance for taking over possession of the secured asset. The writ petitioner was not a party in the said proceedings. The impugned order was passed accordingly on 11.12.2014, holding that the first respondent-financial institution was entitled to take possession of the secured asset with the assistance provided therein.

3 The case of the petitioner before this Court is that he came into possession and occupation of the property in question by virtue of the lease agreement dated 18.04.2014 and as such, no order for taking over possession of the property in question can be passed by the CMM, without affording an opportunity of hearing to him.

4 We have examined the rival contentions and also perused the pleadings and documents appended thereto.

5 The incontrovertible facts are that after issuance of demand notice under Section 13(2) of the SARFAESI Act on 11.04.2014 and also publication of the same in two newspapers on 17.04.2014, the lease in question was created on 18.04.2014 and possession thereof was handed over to the petitioner.

6 An identical issue came up into consideration before the Supreme Court in Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Limited and Others[1], wherein, the Supreme Court held that the right created by way of lease or otherwise, in favour

1 (2014) 6 SCC 1

of a third party, after issuance of Section 13(2) notice, is not valid, as, sub-section 13 of Section 13 of the SARFAESI Act provides that after receipt of notice referred to under 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.

7 It is not the case of the petitioner that the property in question which was the secured asset, was leased out to him, after proper and valid written consent of the secured creditor, i.e., the first respondent-financial institution. Thus, indisputably, the lease was invalid. On that basis, the petitioner has not acquired any right to claim hearing in the proceedings before the CMM.

8 Thus, we do not find any merit in the writ petition and the same is, accordingly, dismissed. 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.4886
+ 1 cc to Mr.M.Ganesh, Advocate Sr.5229

W.P. No.907 of 2015

GGK(CO)
Eu 19.02.15