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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 23.03.2015  
CORAM:

**THE HONOURABLE DR.JUSTICE S.TAMILVANAN**  
**and**  
**THE HONOURABLE MR.JUSTICE V.S.RAVI**

W.P(MD)No.4065 of 2015 and MP(MD)NOS.1 & 2 OF 2015

T.John Anbalagan

... Petitioner

Vs.

1.The Authorised Officer  
Senior Manager)  
Canara Bank, Sankarankovil Branch,  
Sankarankovil,  
Tirunelveli District.

2.The Deputy General Manager,  
Circle Office, Canara Bank,  
(near St., Mary Church)  
Madurai.

3.P.Jeyaretnam @ Siriya Pushpam

... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned publication made by the 1st respondent in Thina Thanthi daily dated 22.2.15 under Section 8(6) and 9 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002 against the property bearing in New D.No.115 comprised to Old D.NO.28 Sangupuram 1st Street Ward No.27 Natham Survey 149/6D of Sankarankoil Town with an extent of 5157.625 Sq.feet and quash the same and consequently direct the 1st and 2nd respondent not to evict the petitioner from the petition mentioned property without adhering due process of law.

For Petitioners 1 & 2 : Mr.K.P.Narayanakumar  
For Respondents 3 : Mr.Pala.Ramasamy

**ORDER**

(Order of the Court was made by S.TAMILVANAN,J)

This writ petition has been filed invoking Article 226 of the Constitution of India seeking an order in the nature of writ of certiorarified mandamus, to call for the records pertaining to the order dated 22.02.2015 passed by the first respondent herein under Sections 8 (6) and 9 of SARFAESI Act, 2002 against the property comprising in Door No.115, Old D.No.28, Sangupuram 1st Street, Ward No.27, Natham Survey 149/6D of Sankarankoil Town, with an extent of 5157.625, Sq. feet and quash the same and consequently direct the respondents 1 and 2 not to evict the petitioner from the aforesaid property without adhering due process of law.



2.Learned counsel appearing for the petitioner submitted that the petitioner is not a debtor with the Canara bank, Sankarankovil Branch and there is a lease deed between the petitioner and the owner of the property who is the land lord, the third respondent herein.

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3.According to the petitioner, the respondents 1 and 2 can proceed against the third respondent according to law. However, they have no right to interfere with the peaceful possession and enjoyment of the petitioner's property who is a lease holder by virtue of the lease deed. The petitioner has filed a copy of the lease deed which is an unregistered document. The petitioner has challenged the SARFAESI proceedings initiated against the third respondent stating that he has independent lease hold right, based on an unregistered lease agreement.

4.We cannot directly rely on the 11 months lease agreement dated 10.03.2006 as it is an unregistered document to hold that there is a prima facie case made out in favour of the petitioner and to decide the balance of convenience in favour of the petitioner. Had it been a registered document prior to the date of the SARFAESI proceedings initiated, it will not be a problem for the Court in accepting the plea of the petitioner and pass appropriate orders. Since the claim is based on an unregistered document, the petitioner has to establish his claim that he has lease hold right, pursuant to the agreement, he is in possession and enjoyment of the property and to decide that that he cannot be evicted under the SARFAESI Act by the respondents 1 and 2.

5.On the aforesaid circumstances, we are of the view that the petitioner's claim is based on a disputed question of fact which could be established only through the Civil Court by adducing evidence. We are of the view that the writ petition based on the disputed question of fact is not legally sustainable and accordingly, the same is liable to be dismissed. Accordingly, the writ petition is dismissed. However, we make it clear that it is open to the petitioner to approach the Civil Court and get appropriate remedy, according to law. No costs. Consequently, M.P(MD)Nos.1 and 2 of 2015 are closed.

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To

1.THE AUTHORISED OFFICER ( SENIOR MANAGER)

CANARA BANK, SANKARANKOVIL BRANCH, SANKARANKOVIL,  
TIRUNELVELI DISTRICT.

2.THE DEPUTY GENERAL MANAGER, CIRCLE OFFICE, CANARA BANK,  
(NEAR ST., MARY CHURCH) MADURAI.

+1cc to Mr.K.P.NARAYANAKUMAR, Advocate, in SR. No.14102

+1cc to Mr.PALA RAMASAMY, Advocate, in SR. No. 14396

W.P(MD)No.4065 of 2015 and MP(MD)NOS.1 & 2 OF 2015