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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2015

CORAM:

THE HONOURABLE Mr. JUSTICE S.MANIKUMAR

and

THE HONOURABLE Mr. JUSTICE G.CHOCKALINGAM

W.P. (MD) No. 9607 of 2015

and

M.P. (MD) Nos. 1 and 2 of 2015

V. Visalakshi

... Petitioner

Vs.

1. The District Collector,
Sivagangai, Sivagangai District.

2. The Authorized Officer,
The Indian Bank,
Sivagangai Branch,
Sivagangai District.

3. Rahini Ammal

... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Roc.H2/9713/2014, dated 19.11.2014 and quash the same and consequently forbearing the respondents from any way of dispossessing the petitioner's house property in S.No.157/35, situate at No.5-6-174, B-4, Bharathi Nagar, Singampunari Town, Thiruppathur Taluk, Sivagangai District.

For Petitioner : Mr.K.Prabhu

O R D E R

(Order of this Court was made by S.MANIKUMAR, J.)

Material on record discloses that when action was taken by the respondent / Bank, for taking possession, the learned Chief Judicial Magistrate, Sivagangai, has passed an order in CrI.M.P.No.532 of 2012 dated 17.04.2012. A Writ petition in W.P.(MD)No.7155 of 2012 has been filed to quash the said order and vide order dated 21.11.2013, the Hon'ble Division Bench of this Court, taking note of the decision in K.Arookiyaraj Vs. The Chief Judicial Magistrate, Srivilliputhur reported in 2013(8) CTC 225, set aside the impugned order passed by the learned Chief Judicial Magistrate, Sivagangai and allowed the Writ petition. Being aggrieved by the same, the Authorized Officer, Indian Bank seemed to have filed S.L.P.(Civil) No.3311 of 2014 before the Hon'ble Supreme Court, in which, notice is stated to have been ordered.

2. Material on record further discloses that when the District Collector, Sivagangai District, issued an enquiry notice in Na.Ka.No.9713/2014, dated 18.06.2014, directing the petitioner to produce necessary documents, the said notice has been challenged by filing another Writ petition in W.P.(MD)No.13318 of 2014 contending inter alia that a suit in O.S.No.6 of 2011 is pending before the District and Sessions Court, Sivagangai, against the 3rd respondent herein and that



vide order dated 18.09.2013 in I.A.Nos.86 and 87 of 2012, necessary parties have been impleaded. In the said Writ petition, contentions have been raised that the Bank has suppressed the pendency of the suit, and thus the impugned notice dated 18.06.2014 has been issued by the District Collector, Sivagangai District.

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3. Material on record also discloses that when the above said Writ petition came up for hearing, the learned counsel appearing for the Bank has submitted that before taking possession of the property in question, they would follow the dictum laid down in K.Arookiaraj Vs. Chief Judicial Magistrate Court reported in 2013(5) CTC 225 and Harshad Govardhan Sandagar Vs. International Assets Co.Ltd., reported in 2014(6) SCC 1. Recording the said submission, the Writ petition has been closed, vide order dated 24.09.2014.

4. Not satisfying with the same, the petitioner has filed a Review Application in Rev.Aplc.(MD)No.54 of 2014. In the Review Application, the petitioner has once again reiterated the averments made in the Writ petition in W.P.(MD)No.13318 of 2014. Grounds Nos.5, 6 and 7 in the said Review Application read as follows:

"5. The Hon'ble Judge ought to have seen that the 1st respondent has not considered that the petitioner filed a civil suit for specific performance in O.S.No.6 of 2011 on the file of the District and Sessions Court, Sivagangai as against the 3rd respondent and subsequently filed a reply statement and impleading petition for necessary parties i.e., the 2nd respondent in I.A.No.86 of 2012 and I.A.No.87 of 2012 in O.S.No.6 of 2011 respectively.

6. The Hon'ble Judge ought to have seen that once the 2nd respondent issued a certificate of sale deed dated 09.05.2008 to the 3rd respondent then he has no right over the property and he has also no right to requisition the 1st respondent for handed over the possession in respect of the petitioner's property.

7. The Hon'ble Judge ought to have considered that Section 14 of the SARFAESI Act, is not similar to the Writ petition in W.P.(MD)No.13318 of 2014. The entire facts of the case are different from the other Writ petition. In that Writ petition the impugned notice passed by the 1st respondent is illegal one and it is liable to be quashed."

5. Now, the District Collector, Sivagangai has passed an order in Roc.H2/9713/2014, dated 19.11.2014 on the application filed under Section 14 of the Securitization and Reconstruction of Financial Assets and Reconstruction of Financial Assets and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, filed to take possession of the secured assets. Once again, raising the very same grounds already raised in the Review Petition, the present Writ petition has been filed challenging the order passed under Section 14 of the Act, by which directions have been given to the Tahsildar, Tiruppathur to take possession of the properties mentioned is put to challenge. Having filed the Review Application in Rev.Aplc.(MD)No.54 of 2014, it is not open to the petitioner to once again raise the same issue by filing a fresh Writ petition.



6. For the reasons stated above, we are not inclined to entertain the present Writ petition. Accordingly, the Writ petition is dismissed. No costs. Consequently, connected M.Ps. are closed.

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/True copy/

Sd/-

The Assistant Registrar(writs)

Sub-Assistant Registrar

To

1. The District Collector,
Sivagangai, Sivagangai District.

2. The Authorized Officer,
The Indian Bank,
Sivagangai Branch,
Sivagangai District.

+1cc to the special Government Pleader, SR.NO.31194

+1cc to Mr.K.Prabhu, Advocate SR.No.30756

nbj

sm:07.07.2015:3P/5C

W.P. (MD) No.9607 of 2015
15.06.2015