

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2016

CORAM:

THE HON'BLE Mr. JUSTICE SATISH K.AGNIHOTRI
and
THE HON'BLE Mr. JUSTICE V. BHARATHIDASAN

W.P. No.14503 of 2016
and

W.M.P. No.12676 of 2016

M/s.Hindusthan Educational and Charitable Trust
represented by its Managing Trustee
T.S.R. Khannaiyann
67, Avarampalayam Road
K.R. Puram
Coimbatore

.... Petitioner

Vs.

1. The District Magistrate and Collector
Coimbatore District
2. The Corporation Bank
represented by its Branch Manager
Mettupalayam 641 301
Coimbatore District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the second respondent to remove the movable properties from the premises bearing Site No.8 (part), VIP Nagar, Karamadai Main Road, Mettupalayam, comprised in S.F. No.723-1A, Karamadai Village, Mettupalayam Taluk, Coimbatore District, within a stipulated period and also direct the second respondent to pay interest and damages from 13.11.2013 till the date of removing the movables.

For petitioner : Mr. Ar.L. Sundaresan, Sr. Counsel
for Mr. K.P.S. Palanivel Rajan

ORDER

(delivered by SATISH K.AGNIHOTRI, J.)

This writ petition is filed seeking a writ of mandamus directing the second respondent to remove the movable properties from the premises bearing Site No.8 (part), VIP Nagar,

Karamadai Main Road, Mettupalayam, comprised in S.F. No.723-1A, Karamadai Village, Mettupalayam Taluk, Coimbatore District, within a stipulated period and also direct the second respondent to pay interest and damages from 13 November 2013, till the date of removing the movables.

2. The admitted facts, in brief, are that the second respondent bank granted loan to a company by name N.M.S. Hospital (P) Ltd., Mettupalayam, Coimbatore District. Due to failure on the part of the said borrower in repayment of loan, the second respondent bank initiated measures under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act") and brought the mortgaged property for sale in e-auction which took place on 29 October 2013. The petitioner participated in the auction and being the highest bidder, sale was confirmed in his favour and even sale certificate was issued to the petitioner and the same was also registered in the office of the Sub-Registrar, Mettupalayam. In fact, pursuant to the order passed by the first respondent under Section 14 of the SARFAESI Act, the petitioner was put in physical possession of the property purchased in the auction. However, the petitioner is not in a position to make effective use of the property in question, inasmuch as certain movable properties, which were hypothecated by the borrower, still remain in the property in question, without being cleared by the second respondent bank. Despite several requests made by the petitioner to the second respondent bank to clear the movables, no action has been taken by the second respondent bank. Hence, the instant writ petition seeking the aforestated relief.

3. Incontrovertibly, the petitioner has obtained physical possession of the property in question on 04 March 2015 in pursuance of the auction conducted by the second respondent bank on 29 October 2013. According to the learned Senior Counsel appearing for the petitioner, some movables are still lying in the property because of which the petitioner is not in a position to move into the property and make use of the same to the fullest extent.

4. Be that as it may, after the sale has been perfected and physical possession of the property has been handed over to the petitioner, pursuant to the order passed by the first respondent under Section 14 of the SARFAESI Act, the dispute between the petitioner and the second respondent bank falls within the private domain. In such view of the matter, the invocation of extraordinary writ jurisdiction under Article 226 of the Constitution of India is not permissible and as such, this writ petition is not maintainable.

As a sequitur, this writ petition fails and is accordingly dismissed. Costs made easy. Connected W.M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cad

To

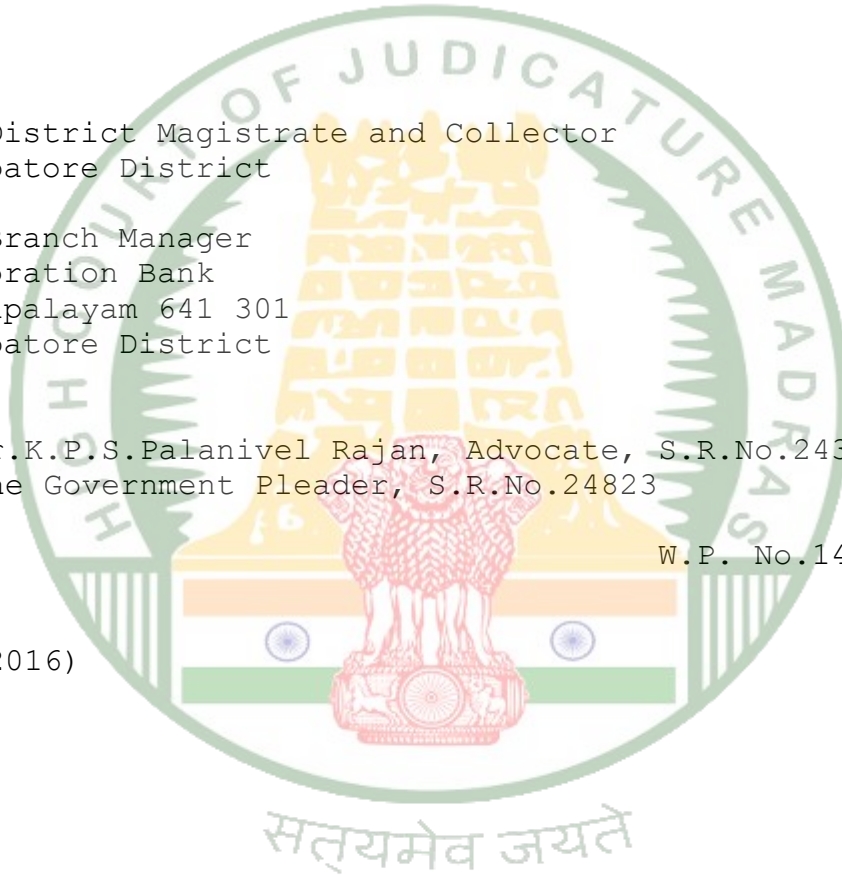
1. The District Magistrate and Collector
Coimbatore District
2. The Branch Manager
Corporation Bank
Mettupalayam 641 301
Coimbatore District

+1cc to Mr.K.P.S.Palanivel Rajan, Advocate, S.R.No.24340

+1cc to the Government Pleader, S.R.No.24823

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RSI (CO)
CA(27/04/2016)



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