

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.06.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

W.P. NO. 15785 OF 2016
AND
W.M.P. NO. 13709 OF 2016

M/s.Pothys Pvt. Ltd.
Rep. By its Managing Director Mr. S.Ramesh
No.15, Nageswara Road
T. Nagar, Chennai - 17. ... Petitioner

- Vs -

1. Canara Bank
Teppakulam Branch
rep. By its Authorised Officer & Chief Manager
No.26, Nandhikoil Street
Teppakulam, Trichy 620 002.
2. M/s.Ratna Stores Pvt. Ltd.
Rep. By its Director
'Siva Complex', No.79, Usman Road
T.Nagar, Chennai - 17.
3. S.Ravishankar
4. The Hon'ble Chief
Metropolitan Magistrate
Allikulam Complex
Park Town, Chennai 600 003. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records of the impugned order dated 25.01.2016 passed in CrI. M.P. No.45 of 2016 on the file of the 4th respondent, quash the same being in derogation of the provisions of law, illegal, arbitrary and untenable in law and on facts and permit the petitioner company to use and occupy the vacant land at Door No.19, Madly Road, T.Nagar, measuring an extent of 5114 sq.ft. And Door No.8, New No.19, Tukkaram 3rd Street, T.Nagar, Chennai, measuring an extent of 2356 sq.ft., for the purpose of parking the vehicles of the customers of the petitioner company till the said properties are sold in auction sale by the first respondent under the SARFAESI Act.

For Petitioner : M/s. Ramalingam & Associates

For Respondents : Mr. S.Pandurangan for R-1

ORDER

(DELIVERED BY HULUVADI G.RAMESH, J.)

The present petition has been filed by the petitioner for a direction to the respondent Bank to permit the petitioner to continue to use the open space as parking area till the properties are sold in auction sale by the first respondent.

2. It is the case of the petitioner that he entered into a lease agreement in his individual capacity with the third respondent for using the land for parking the vehicles by paying a huge sum as lease amount, which land was mortgaged by the 3rd respondent with the 1st respondent. However, due to the default committed by the 3rd respondent in repaying the Bank, proceedings were initiated by the Bank for taking over the property. It is further stated by the petitioner that steps are also taken by the 1st respondent Bank for taking physical vacant possession of the properties. It is further averred that criminal petition has also been filed arraying the petitioner as the 5th respondent before the Chief Metropolitan Magistrate. Hence, left with no other alternative, the petitioner has approached this Court for the relief stated supra.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 1st respondent Bank and perused the materials available on record.

4. It is evident from the pleading as made by the petitioner that the petitioner wants to continue to use the vacant land for the purpose of parking of the vehicles till the properties are sold in the auction by the 1st respondent Bank under the provisions of the SARFAESI Act. Further, the petitioner has also filed an additional affidavit undertaking to vacate the land on the properties being auction sold, which is clear from para-7, which is quoted hereinbelow for better clarity :-

"7. I respectfully state that the petitioner company unconditionally undertakes to deliver vacant physical possession of the subject property on being permitted to use the land for parking of vehicles till the same is sold in the auction by the first respondent. The petitioner company having parted with a huge sum of Rs.2 Crores will be put to serious hardship and prejudice if the relief is not granted by this Hon'ble Court as prayed in the writ petition."

5. Therefore, it is clear from the above affidavit that there would be no impediment for the bank authorities to permit the petitioner to occupy the land for the purpose of parking facility till the properties are auction sold by the bank as per the provisions of the SARFAESI Act.

6. Accordingly, this writ petition is disposed of recording the undertaking given by the petitioner. However, it is made clear that on the conclusion of the auction sale, it is for the petitioner to voluntarily vacate the land and hand over vacant possession of the same to whomsoever the respondent bank directs. On the question of rent for the occupation of the land by the petitioner, as pleaded by the learned counsel for the respondent bank, the petitioner is directed to approach the respondent bank in respect of fixation of rent for the area leased by the third respondent to the petitioner, which is seized and is in possession of the bank. The petitioner is at liberty to negotiate the matter with the respondent bank with regard to the rent to be paid for the said land.

7. With the above observation and direction, this writ petition is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Canara Bank
Teppakulam Branch
rep. By its Authorised Officer & Chief Manager
No.26, Nandhikoil Street
Teppakulam, Trichy 620 002.
2. The Hon'ble Chief Metropolitan Magistrate,
Allikulam Complex,
Park Town, Chennai-600 003.

+2cc to Mr.Ramalingam & Associates, Advocates Sr.30677
+1cc to Mr.S.Pandurangan, Advocate sr.30682

W.P. NOS.15785 OF 2016

sns[co]
srg 15/06/2016