

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.6.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.18401 of 2016

S.Thinakara Pandian .. Petitioner

Vs.

1. The Hon'ble Chief Metropolitan Magistrate
Allikulam
Chennai 600 003.
2. State Bank of Travancore
rep. by its Authorised Officer/Chief Manager
Chennai Main Branch
United India Building, Esplanade
Chennai 600 108.
3. Srihari Balachandar
Proprietor,
M/s.Lakshmi Narayann Enterprises. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent in Crl.M.P.No.853 of 2016 dated 24.02.2016 and Crl.M.P.No.5004 of 2016 dated 05.5.2016 and quash the same and simultaneously directing the second respondent to reinstate the physical possession of the scheduled property located at A3, KGR Mahadev Apartments, No.19/3, Vembuliamman Koil Street, Virugambakkam, Chennai 600 092, to the petitioner until the expiry of the lease agreement, i.e. till 19th November 2016, in accordance with law.

For Petitioner : Mr.P.H.Arvind Pandian, S.C.
For Mr.V.Pravin Rathinam

For Respondent-2 : Mr.P.N.Radhakrishnan

O R D E R

(Made by Huluvadi G.Ramesh,J)

The petitioner has come up with this writ petition seeking to quash the order of the first respondent dated 24.02.2016 made in Crl.M.P.No.853 of 2016 and the order dated 05.5.2016 made in Crl.M.P.No.5004 of 2016 and to direct the second respondent to reinstate the physical possession of the scheduled property till the expiry of lease.

2. According to the petitioner, he is a tenant of the third respondent in respect of the property in Flat No.A3, KGR Mahadev Apartment, Vembuli Amman Kovil Street, Virugambakkam, since 28th November 2012. The lease agreement was renewed every 11 months and has rights over the property under lease up to 19th November 2016. The third respondent had availed loan from the second respondent by mortgaging his property in question. Since the third respondent defaulted in payment of dues, the second respondent declared the assets of the third respondent as Non Performing Asset and issued notice under Section 13(2) and thereafter, under Section 13(4). On 16.3.2016, the Advocate Commissioner appointed by the Chief Metropolitan Magistrate, by order dated 24.02.2016 made in Crl.M.P.No.853 of 2016, affixed the possession notice in the premises and that he was unlawfully evicted from the premises on 30.3.2016, by locking and sealing the same when no members were available at the premises. The second respondent also obtained an order 05.5.2016 in Crl.M.P.No.5004 of 2016 to break open the seal and handover the things inside the scheduled premises. Hence, the petitioner moved Debts Recovery Tribunal II and the same was withdrawn to approach the appropriate forum. Thereafter, he filed a memo before the Chief Metropolitan Magistrate on 10.5.2016 and the same was not entertained. Hence, the petitioner has come up with this writ petition.

3. When the writ petition came up for admission, notice was ordered and status quo was granted till 16.6.2016. Since the interim order expired, the petitioner sought extension of the same. The learned counsel for the second respondent Bank objected to the same on the ground that the petitioner broke open the premises which was locked and sealed and therefore, a complaint was given by the second respondent Bank, pursuant to which he was arrested and that the second respondent Bank proposed to conduct auction on 22.6.2016. Therefore, the writ petition itself was taken up for hearing.

4. The learned senior counsel appearing for the petitioner contends that the petitioner is a lawful tenant of the third

respondent and is residing in the premises in question since 2012 and that the lease period expires only on 19th November 2016 and therefore, locking and sealing of the premises when he and his family members were not available, without giving any notice to him, is illegal. The learned senior counsel further contends that the the right of the petitioner to enjoy the property until the expiry of the lease period cannot be taken away by the second respondent and that the petitioner should be put in physical possession of the premises in question, in compliance with the principles of natural justice.

5. On the contrary, the learned counsel for the second respondent Bank contends that the petitioner is not a lawful tenant of the third respondent and that he has not proved his possession in the premises in question, though he produced lease agreements from the year 2012. In order to substantiate his contention, the learned counsel for the second respondent Bank has filed documents to show that the communications sent to the third respondent to the premises in question were received only by the third respondent and his family members and therefore, he contends that it is only the third respondent who is residing in the premises in question and not the petitioner. He further contends that the petitioner has been set up by the third respondent in order to recover possession of the property from the second respondent. He submits that physical possession of the premises has already been taken by the second respondent on 21.5.2016, through the Advocate Commissioner appointed by the first respondent and that the premises was under the lock and key of the second respondent.

6. We have carefully considered the contentions of Mr.P.H.Arvind Pandian, learned senior counsel appearing for the petitioner and Mr.P.N.Radhakrishnan, learned counsel for the second respondent Bank.

7. It is not in dispute that the third respondent had availed loan from the second respondent and also defaulted in making payment. Therefore, the second respondent initiated action under the SARFAESI Act. From a perusal of the documents filed by the second respondent, it is evident that the notice sent to the third respondent by the second respondent were received by the third respondent and his father and the applications filed by the third respondent before the Debts Recovery Tribunal contains the address of the premises in question as the place of his residence and therefore, it is clear that only the third respondent is residing in the premises in question and not the petitioner. Moreover, the petitioner has not proved his possession by way of any document except the lease agreements.

8. Though the learned senior counsel for the petitioner relies upon the decisions of the Supreme Court in support of his contention that a tenant cannot be evicted except by due process of law, we are of the considered view that said decisions will not apply to the case on hand, since the petitioner has not proved his possession in the premises in question.

9. For the foregoing reasons, this writ petition is dismissed. However, at this juncture, the learned senior counsel for the petitioner requested this Court to quash the FIR. On this plea, the learned counsel for the second respondent Bank submitted that in the event of quashing the FIR, they may be given liberty to proceed against the person concerned, if any article is found to be missing on inventory. In the preceding paragraphs, we have already made it clear that we are not interfering with the auction proceedings scheduled to be held on 22.6.2016. Nevertheless, in the light of pleadings now made by both sides and in order to put a quietus to the dispute, this Court, without going into the merits of the accusations made in the FIR, is inclined to quash the same with liberty to the second respondent to proceed against the person concerned if anything is found missing on inventory, in accordance with law. The second respondent is permitted to remove the articles from the premises in the presence of the Advocate Commissioner appointed by the first respondent. There shall be no order as to costs. Consequently, WMP No.16100 of 2016 is also dismissed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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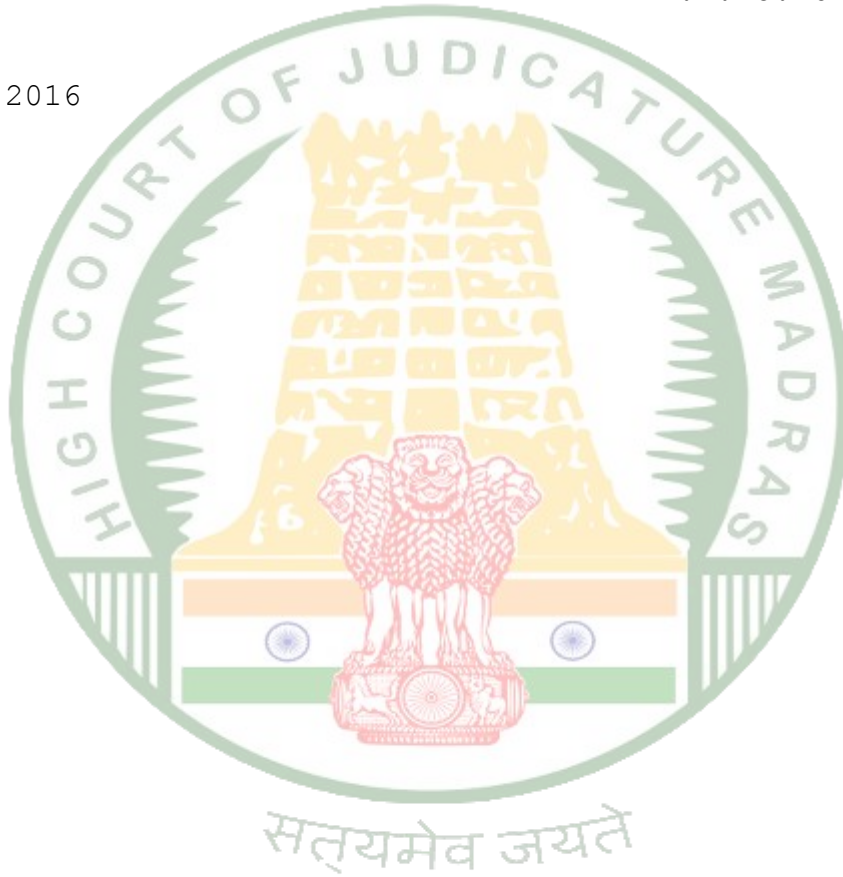
1. The Chief Metropolitan Magistrate
Allikulam
Chennai 600 003.
2. The Authorised Officer/Chief Manager
State Bank of Travancore, Chennai Main Branch
United India Building, Esplanade
Chennai 600 108.

3.Mr.K.Varatharasan,
Advocate,
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2 ccs to Mr.S.V.Pravinrathinam, Advocate, sr.34317
1 cc to Mr.P.N.Radhakrishnan, Advocate, sr.34423

W.P.No.18401 of 2016.

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