

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2016

C O R A M

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE K.K.SASIDHARAN

W.P. Nos.2617 and 2618 of 2016
and
W.M.P. No.2197 of 2016

- 1.M/s.Brilliant Tutorials Private Limited,
rep by its Director, Mrs.Vasanti Neelakantan
No.12, Masilamani Street,
T.Nagar, Chennai-600 017.
- 2.Mrs.Vasanti Neelakantan ... Petitioners in
both petitions
Vs
- 1.Central Bank of India,
rep by its Chairman and Managing Director,
Chander Mukhi, Nariman Point,
Mumbai-400 021.
- 2.The Manager,
Central Bank of India,
Mid-Corporate Branch,
No.48/49, Montieth Road,
Egmore,
Chennai-600 008. ... Respondents 1 and 2
in both petitions
- 3.The Inspector of Police,
T.Nagar Police Station,
Chennai-600 017.
- 4.Shyam Nagarajan
- 5.Radha Neelakantan .. Respondents 3 to 5
in W.P.No.2617 of 2016

W.P.No.2617 of 2016 is filed under Article 226 of the Constitution of India seeking for the issuance of a writ of certiorarified mandamus calling for the order and records of the Chief Metropolitan Magistrate, Park Town, Chennai in proceedings in Crl.M.P.No.6316 of 2015 dated 2.11.2015 and quash the same and to direct the respondents herein to restore the petitioners herein the physical possession of the immovable properties morefully described in the Schedule A,B and C to the petition, taken illegally and in violation of the law from the petitioners.

W.P.No.2618 of 2016 is filed under Article 226 of the Constitution of India seeking for the issuance of a writ of mandamus directing the respondents to inform the petitioner the outcome and status of the e-auction conducted by the respondents on 30.10.2015 for the petitioners three properties situated at (i)Door No.12, present door No.18, Masilamani Street, Thyagaraya Nagar, Chennai-600 017, (ii)plot No.16, Block No.11, O.S.No.112/3, R.S.No.6326 and having corporation New No.17 (Old Door No.11, previous old No.12), Masilamani Street, T.Nagar, Chennai-600 017 and old No.15, subsequent Door No.9, present door No.26, Jagadheeswaran Street, Thyagaraya Nagar, Chennai-600 017.

For petitioners : Mr.A.Rajendrakumar in both W.Ps.

COMMON ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

In W.P.No.2617 of 2016, the petitioners claiming to be the borrowers, are questioning the legality of the order dated 2nd November, 2015 passed by the Chief Metropolitan Magistrate, Allikulam, Chennai, in Crl.M.P.No.6316 of 2015, filed by the second respondent bank. In W.P.No.2618 of 2016, the petitioners are seeking direction to the respondents to inform the petitioners the outcome and status of the e-auction conducted by the respondent Bank on 30th October, 2015.

2 The contention of the petitioners is that the petitioners were granted financial facilities by the second respondent Central Bank of India. The petitioners were regular in making payment till January, 2014 and thereafter, they could not make regular payments. The loan account of the petitioners was wrongly declared as non performing asset. The Bank, thereafter, has issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act"). Even though, the petitioners have sent letter of objection, no reply was made within the reasonable time. Thereafter, the Bank has sent a reply to the said objection.

3 The second respondent has filed this instant criminal miscellaneous petition under Section 14 of the SARFAESI Act to take possession of the secured assets, stating that the loan account has been classified as non performing asset and proper demand notice under Section 13(2) of the SARFAESI Act has been issued and symbolic possession of the secured asset has been taken. Despite that, the petitioners have not taken any steps to settle the dues. The Chief Metropolitan Magistrate, by order

dated 2nd November, 2015, allowed the petition. In the meantime, the bank has issued auction sale notice dated 21st September, 2015, bringing the properties for sale on 30th October, 2015. Though the petitioners have submitted a representation, dated 27th November, 2015 to the Bank, seeking the status of the auction notice, no reply has been made.

4 Heard the learned counsel for the petitioner and perused the pleadings and documents appended thereto.

5 The issue as to whether a writ is maintainable against the order passed under Section 14 of the SARFAESI Act by the petitioners / borrowers is no longer res integra. The Supreme Court has clearly laid down that except in case of lessee or tenant, who is in lawful possession, the appeal under Section 17 of the SARFAESI Act is maintainable before the Debt Recovery Tribunal against the order passed under Section 14 of the SARFAESI Act. [See : United Bank of India Vs. Satyawati Tondon and others¹, Kanaiyalal Lalchand Sachdev and others Vs. State of Maharashtra and others², and Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others³].

6. A Division Bench of this court in Deccan Chronical Holdings Limited Vs. Canara Bank [W.P.No.13451 of 2015 dated 12th June, 2015], while considering the issue of maintainability of the writ petition against the order passed under Section 14 of the SARFAESI Act at the instance of the borrower, after referring and relying on relevant decisions of the Supreme Court, held as under :

"14.The ratio deducible from the case of Harshad Govardhan Sondagar (supra) is that no remedy of appeal under Section 17 of the SARFAESI Act is available to the lessee / tenant, who is in lawful possession, to the Debts Recovery Tribunal against the decision of the CMM or the District Magistrate for the reason that the Tribunal is not competent and has no power to restore the possession of the said property to any other person, including lessees, except borrower. However, an appeal at the instance of the borrower or guarantor against the order passed under Section 14 of the SARFAESI Act by the CMM or District Magistrate is maintainable under Section 17 of the SARFAESI Act x x x x x."

1 (2010) 8 SCC 110

2 (2011) 2 SCC 782

3 (2014) 6 SCC 1.

7 Accordingly, we are not inclined to entertain the writ petitions in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India at this stage. However, liberty is reserved to the petitioners to take recourse to the appropriate statutory forum, if so advised, under the provisions of law.

8 The writ petitions stand, accordingly, dismissed with afore-stated liberty. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1.The Chairman and Managing Director,
Central Bank of India,
Chander Mukhi, Nariman Point,
Mumbai-400 021.

2.The Manager,
Central Bank of India,
Mid-Corporate Branch,
No.48/49, Montieth Road,
Egmore, Chennai-600 008.

3.The Inspector of Police,
T.Nagar Police Station,
Chennai-600 017.

4. The Chief Metropolitan Magistrate
Egmore, Chennai-8
(now fuctioning at Allikulam Complex,
Partk Town, Chennai)

2 ccs to M/s. Vijayanand Associates, Sr. 5246, 5247

W.P. Nos.2617 and 2618 of 2016

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