

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.3582 of 2016

and

W.M.P.No.2950 of 2016

M/s.Zigma Infratech,
rep by its Proprietor Mr.Mohamed Imdhad,
First Floor, Door No.153,
Developed Plots,
Electrical & Electronic Industrial Estate,
Perungudi, Chennai-600 096. ... Petitioner

Vs.

- 1.M/s.G.E.T. Power Ltd.,
rep by its Director, Mr.Ajay Kumar Bishnoi,
Techpro Towers,
11-A, 17, 5th Cross Road,
Sipcot, IT Park,
Siruseri, Chennai-600 103.
- 2.State Bank of India,
Stressed Assets Management Branch,
represented by its Chief Manager,
32, Monteith Road, Egmore,
Chennai-600 008. ... Respondents

The writ petition is preferred under Article 226 of the Constitution of India, praying for the issue of a writ of mandamus to direct the second respondent to desal and restore possession of the premises at First Floor, Door No.153, Developed Plots, Electrical & Electronic Industrial Estate, Perungudi, Chennai-600 096 to the petitioner.

For Petitioners : Mr.V.Sankaranarayanan

For Respondents : Mr.M.L.Ganesh for R-2

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ORDER

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

Seeking direction to the second respondent Bank to de-seal and restore possession of the premises at First Floor, Door No.153, Developed Plots, Electrical & Electronic Industrial Estate, Perungudi, Chennai-600 096 to the petitioner, the instant writ petition is preferred.

2 The petitioner is stated to be a tenant of the aforesated property, which, indisputably, was mortgaged with the second respondent Bank for obtaining loan. The second respondent, noticing default made by the borrower, who is the first respondent herein, had issued a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") on 3rd September, 2015. Thereafter, a possession notice under Section 14 of the SARFAESI Act was issued on 9/10th December, 2015. The borrower, to whom both notices were addressed, has not chosen to question the legality and validity of the said notices. The instant petition is filed by the alleged tenant on the basis of the lease agreement dated 20th August, 2015 entered between the petitioner as well as the first respondent.

3 Heard the learned counsel appearing for the petitioner and the learned counsel for the second respondent Bank.

4 Indisputably, the property in question is a secured asset mortgaged by the first respondent to secure loan from the second respondent. The date of mortgage is not specified. However, on perusal of notice under Section 13(2) of the SARFAESI Act, it is evident that the debt has been classified as non performing asset on 27th April, 2014. The outstanding dues as per the notice was Rs.492,14,85,174.05.

5 The Supreme Court in Vishal N.Kalsaria Vs. Bank of India and others¹, has observed that for creating leasehold rights after the property has been mortgaged to the bank, the consent of the creditor needs to be taken. The petitioner has failed to produce any material to establish that the alleged tenancy was created on 20th August, 2015 after taking prior

1 AIR 2016 SC 530

consent of the creditor, i.e., the second respondent herein, particularly after the secured asset was classified as non performing asset. In such view of the matter, the petition at the instance of the alleged tenant / leaseholder is not maintainable at this stage.

6 Resultantly, finding no merit in the case, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vvk

To

The Chief Manager,
State Bank of India,
Stressed Assets Management Branch,
32, Monteith Road, Egmore,
Chennai-600 008.

+1 cc to Mr.V.Sankaranarayanan Advocate sr.15248

+1 cc to Mr.M.L.Ganesh Advocate sr.15497

W.P.No.3582 of 2016

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