

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 24.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.Nos.36152 & 36153 of 2016 &
W.M.P.Nos.31104 & 31105 of 2016

P.S.Ganesan ... Petitioner
[in W.P.No.36152 of 2016]

T.R.Duraisamy ... Petitioner
[in W.P.No.36153 of 2016]

-vs-

1. The Authorized Officer,
Canara Bank, SME Branch,
Perundurai, Erode District.
 2. The District Collector,
Erode District, Erode.
 3. Pragadeeswaran
 4. Suseela
 5. R.Ravichandran,
Managing Director,
M/s.Kun Tyres Pvt. Ltd.,
J21, 22, SIPCOT Industrial Growth Centre,
Perundurai - 638 052.
- ... Respondents
[in both W.Ps.]

Common Prayer: Writ Petitions have been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records relating to the impugned order in Ref.No.27469/2015/D2 dated 18.08.2016 passed by the second respondent, quash the same in so far as the petitioners are concerned.

For Petitioner : Mr.A.Prabhakaran

C O M M O N O R D E R
[Order of the Court was made by N.AUTHINATHAN, J.]

The petitioners have come up with the present Writ Petitions for a Writ of Certiorari, to call for the records of the order passed by the second respondent herein, in Ref.No.27469/2015/D2, dated 18.08.2016 and to quash the same.

2.The first respondent Bank is a secured creditor. It initiated action against the fifth respondent / borrower under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") and approached the second respondent / District Collector, Erode, to take possession of the secured assets. The second respondent passed an order dated 18.08.2016 authorising the Tahsildars, Perundurai, Bhavani and Erode to take physical possession of the secured assets.

3.The petitioners claim tenancy rights in one of the secured assets, namely, property bearing Survey No.656/2, Kavindapadi Village, Erode District, measuring 1863sq.ft. Apprehending eviction from the property in question, the petitioners have approached this Court by way of these Writ Petitions for quashing the impugned order dated 18.08.2016.

4.It is not disputed that the first respondent is a secured creditor and the fifth respondent is the borrower and the properties are secured assets. The impugned order came to be passed by the second respondent at the instance of the first respondent Bank.

5.The learned counsel appearing for the petitioners would submit that the petitioners, who are lawful tenants and they were not parties to the proceedings between the fifth respondent / borrower and the first respondent / secured creditor, they were not put on notice by the District Collector before passing the impugned order and therefore the impugned order deserves only to be set aside. He further submitted that the petitioners being lawful tenants they can be evicted only by following the procedure contemplated under law.

6.The learned counsel appearing for the petitioners relied on the decision of the Supreme Court in Vishal N.Kalsaria vs. Bank of India and others [(2016) 3 SCC 762], wherein it has been held that a tenant cannot be evicted by using SARFAESI Act. He has also relied on the decision of this Court in Telesat Media Matric Pvt. Ltd. vs. Chief Metropolitan Magistrate & Others [II (2016) BC 567 (DB) (Mad.)], wherein it has been held that "so long as the mortgage deed does not prohibit a mortgagor from making a lease of the mortgaged property and so long as the lease satisfies the requirements of Sub-section(2) of Section 65-A, a lease made by a borrower as a mortgagor will not only be

valid but is also binding on the secured creditor as a mortgagee." It has also been held that while exercising power under Section 14 of the SARFAESI Act, the Magistrate has to decide the validity of the claim of the occupants of the property.

7. The decisions relied on will be of no avail to the petitioners inasmuch as Section 17(4-A) of SARFAESI Act has been brought into existence by way of amendment vide "The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 subsequent to the said decisions. The provision of law has been amended by inserting Section 17 (4-A) in the SARFAESI Act specifically conferring jurisdiction on the Debt Recovery Tribunal for deciding the question of tenancy rights. Section 17(4-A) came into force with effect from 01.09.2016. Section 17(4-A) of SARFAESI Act reads thus:

"[(4-A) Where -

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,-

(a) has expired or stood determined; or

(b) is contrary to section 65-A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]"

8. Even a cursory reading of the Section 17(4-A) of SARFAESI Act would make it clear that if any person claims any tenancy or leasehold rights in respect of the secured asset, the Debt Recovery Tribunal will have the jurisdiction to examine the claim of tenancy or leasehold rights and pass appropriate orders.

9. In Kanaiyalal Lalchand Sachdev vs. State of Maharashtra [(2011) 2 SCC 782], the Supreme Court has held that an action under Section 14 of SARFAESI Act constitutes an action

after the stage of 13(4) and therefore the same would fall within the ambit of Section 17 (1) of SARFAESI Act. It has also been held that SARFAESI Act contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the Debt Recovery Tribunal. Its a case arising under Section 14 of SARFAESI Act. In that case the High Court dismissed the Writ petition on the ground that an alternative remedy was available to the petitioners therein under Section 17 of SARFAESI Act and the said view was upheld by the Supreme Court.

10. In terms of Section 17(4-A) of SARFAESI Act and in the light of the dictum laid down by the Supreme Court in Kanaiyalal Lalchand Sachdev vs. State of Maharashtra [(2011) 2 SCC 782], the petitioners have got efficacious remedy before the hierarchy of Tribunal viz. Debt Recovery Tribunal and Debt Recovery Appellate Tribunal. However, they have invoked the jurisdiction of this Court without exhausting the efficacious and alternative remedy provided under law. Whatever contentions raised in these Writ Petitions could be agitated before the Debt Recovery Tribunal. In these circumstances, we are not inclined to entertain these Writ Petitions. Needless to point out that the petitioners will have the opportunity to work out their remedies before the Debt Recovery Tribunal.

11. For the reasons stated supra, these Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

TO

1. The Authorized Officer, Canara Bank,
SME Branch, Perundurai, Erode District.
 2. The District Collector, Erode District, Erode.
- +2 cc to Mr.A.Prabakaran, Advocate, SR.No.60634 & 60635.

NMI (CO)
YJ(12/11/2016)

W.P.Nos.36152 & 36153 of 2016