

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 03.11.2016

CORAM:

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

W.P.No.38048 of 2016 &
W.M.P.No.32609 of 2016

J.Gomathy

... Petitioner

-vs-

1.The Authorised Officer,
Indian Overseas Bank,
No.72, Perundurai Road,
Post Box No.902,
Surampatti, Erode - 638 011.

2.The District Collector and
District Magistrate,
Collector Office, Erode.

3.M/s.J.K.Fuels,
Rep.by its Prop.V.Priyadarshini,
30, Bhavani Main Road,
B.P.Agraharam,
Erode - 638 005.

4.R.Jothimurugan

5.T.S.Vijayakumar

6.V.Priyadarshini

... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records of the second respondent District Collector and District Magistrare, Erode pertaining to the order Ref.6757/2016/D2 dated 08.09.2016 passed under Section 14 of the SARFAESI Act, 2002 and quash the same.

For Petitioner : Mr.S.Rajmakesh

O R D E R

[Order of the Court was made by N.AUTHINATHAN, J.]

The petitioner has come up with the present Writ Petition for a Writ of Certiorari, to call for the records of the order passed by the second respondent / District Collector and District Magistrate, Erode, in Ref.No.6757/2016/D2, dated 08.09.2016 and to quash the same.

2.The petitioner and the third respondent / Proprietor of M/s.J.K.Fuels, availed cash credit facility and term loan from the first respondent / Indian Overseas Bank, Surampatti, Erode. The petitioner mortgaged the properties in question for the said loan facilities. The borrowers committed default in repayment. Hence, as per Reserve Bank of India guidelines and directives, the loan accounts were classified as "non-performing asset" [NPA].

3.The Bank issued demand notice dated 20.10.2015 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") calling upon the borrowers to pay the dues working out to Rs.25,26,809/-. Subsequently, the Bank issued possession notice dated 28.12.2015 informing the borrowers and guarantors that the Bank has taken symbolic possession of the mortgaged properties.

4.The petitioner has filed SARFAESI Application in S.A.No.49 of 2016 before the Debts Recovery Tribunal, Coimbatore, challenging the validity of the possession notice dated 28.12.2015 and the sale notice dated 05.02.2016. The Debts Recovery Tribunal passed an interim order not to confirm the sale.

5.Pending disposal of the SARFAESI Application, the Bank approached the second respondent / District Collector and District Magistrate, Erode, seeking assistance in taking possession of the mortgaged properties / secured assets. The second respondent passed an order dated 08.09.2016 in terms of Section 14 of SARFAESI Act for taking over the possession of the mortgaged properties / secured assets. He authorised the Tahsildar, Erode, to take possession of the properties.

6.Aggrieved by the order dated 08.09.2016, the petitioner, namely, borrower has approached this Court by way of Writ Petition for quashing the order dated 08.09.2016.

7.The learned counsel appearing for the petitioner would submit that there are 12 tenants in the mortgaged properties and that the second respondent passed the impugned order, without considering the tenancy rights of the occupants of the mortgaged properties and that the tenants cannot be evicted without following the procedure contemplated under law for evicting lawful tenants. In this connection, he 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 once tenancy is created, tenant can be evicted after following the due process of law as prescribed under the provisions of the Rent Control Act. It has also held that the tenant cannot be arbitrarily evicted by using the provisions of SARFAESI Act.

8.The decision relied on will be of no avail to the petitioner 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 decision. 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. The alleged omission on the part of the Collector to consider the issue of tenancy rights will be of no legal consequence on account of conferment of jurisdiction on the Debts Recovery Tribunal by virtue of the provisions of the newly added Section 17-A of SARFAESI Act.

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.

10.The petitioner has approached this Court without exhausting the efficacious and alternative remedy provided under the SARFAESI Act. In the light of the dictum laid down by the Supreme Court in Kanaiyalal Lalchand Sachdev vs. State of Maharashtra [(2011) 2 SCC 782], whatever contentions raised in this Writ Petition could be agitated before the Debt Recovery Tribunal. Hence, we are not inclined to entertain the Writ Petition.

11.For the foregoing reasons, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

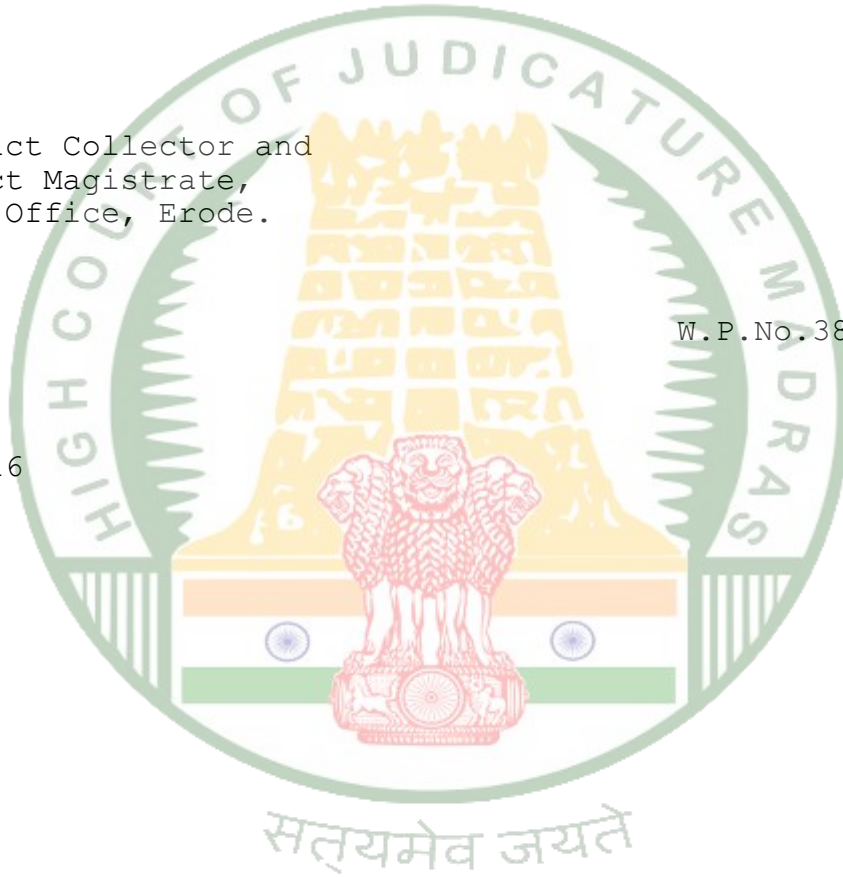
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To

The District Collector and
District Magistrate,
Collector Office, Erode.

W.P.No.38048 of 2016

NR(CO)
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