

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2016

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.No.7056 of 2016
and
W.M.P.No.6267 of 2016

K.Raja

... Petitioner

Vs.

1. The Chief Metropolitan Magistrate Court,
Egmore, Chennai.
2. The Chief Manager and Authorised Officer,
Karnataka Bank Ltd.,
Asset Recovery Management Branch,
Kasturba Road, Bangalore-560 001.
3. The General Manager,
The Karnataka Bank Ltd.,
Head Office at Mangalore Circle,
P.B.No.599, Kankanady, Mangalore-575 002.
4. The Branch Manager,
The Karnataka Bank Ltd.,
Branch Office : K.K.Nagar Branch,
Door No.10, P.T.Rajan Salai,
K.K.Nagar, Chennai-600 078.
5. The Director General of Police,
Office of the Director General of Police,
Mylapore, Chennai.
6. The Commissioner of Police,
Office of the Commissioner of Police,
Egmore, Chennai.
7. Inspector of Police,
Koyambedu Police Station,
Koyambedu, Chennai.

8. Annad Saraf

... Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus, seeking to call for the records in respect of the impugned order issued by the first respondent vide his proceedings in Crl.M.P.No.3300 of 2012 dated 03.08.2012 invoking Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for evicting the petitioner who is a tenant under law and quash the same and consequently direct the respondents to restore the possession of the petitioner in respect of the property situated in Flat No.F1 - First Floor, No.40, 3rd street, Avvai Thiru Nagar, Koyambedu, Chennai-107.

For Petitioner : Mr.E.Vijay Anand

ORDER

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

The instant writ petition is preferred seeking to quash the impugned order dated 3rd August, 2012 passed by the Chief Metropolitan Magistrate, Egmore in Crl.M.P.No.3300 of 2012 and to direct the respondents to restore the possession of the petitioner in the property situated in Flat No.F1, First Floor, No.40, 3rd Street, Avvai Thiru Nagar, Koyambedu, Chennai.

2. The indisputable facts as evinced from the pleadings and documents appended thereto are that the 8th respondent obtained term loan to the tune of Rs.8,90,000/- on 24th June, 2005. In default, the loan amount was classified as Non Performance Asset on 21st January, 2007. On the heels of it, a statutory notice under Section 13(2) of the SARFAESI Act, calling upon the 8th respondent to pay the balance amount of Rs.12,58,083.11 was issued on 25th June, 2007. Not finding any response or payment, the symbolic possession of the property was taken on 5th December, 2007, which was assailed before the Debts Recovery Tribunal-II, Chennai in S.A.Sr.No.6392 of 2009, successfully. Accordingly, the Debts Recovery Tribunal set aside the possession notice dated 5th December, 2007. Thereafter, a fresh possession notice under Section 13(4) of the SARFAESI Act in respect of the loan amount was issued on 29th October, 2010 for taking symbolic possession of the secured asset. After issuance of the notice under Section 13(4) of the SARFAESI Act, as averred by the petitioner, thereafter the petitioner entered into the premises on 11th July, 2012 under a registered lease deed. The secured creditor made an application under Section 14 of the SARFAESI before the Chief Metropolitan Magistrate Court, Egmore, Chennai to take possession and management of the secured

assets, which was ordered on 3rd August, 2012. By this petition, the petitioner seeks an opportunity of hearing and also protection under the ratio laid down by the Supreme Court in Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others¹ and Vishal N. Kalsaria Vs. Bank of India and others².

3. We have considered the submissions and facts of the case.

4. Under Section 13(13) of the SARFAESI Act, no borrower, after receipt of notice under sub-section (2) of Section 13, is entitled to transfer the secured asset by way of sale, lease or otherwise. Thus, the said provision is clear and unambiguous. In the case on hand, notice under Section 13(2) of the SARFAESI Act was issued on 25th June, 2007. Thus, any transfer by way of sale, lease or otherwise thereafter is invalid and non-est in the eye of law. The aforesaid decisions of the Supreme Court, as referred to by the learned counsel for the petitioner, deal with the situation, wherein the property was under lease or tenancy either prior to the mortgage or prior to Section 13(2) notice. In that event, it was observed that the lease or tenancy created lawfully under the provisions of tenancy or rent law cannot be terminated under the provisions of SARFAESI Act.

5. The facts involved in this case are crystal clear, wherein according to the petitioner himself, he was inducted into the property in question on 11th July, 2012 after the demand notice under Section 13(2) of the SARFAESI Act was issued on 25th June, 2007. The impugned order under Section 14 of the SARFAESI Act was passed on 3rd August, 2012. In that event, the petitioner is not entitled to any hearing before any authority as the purported tenancy was created to hoodwink the judicial process and also the mechanism prescribed under the law.

6. Resultantly, there is no merit in this case. The writ petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vvk

1 (2014) 6 SCC 1.

2 AIR 2016 SC 530

To

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CA(14/03/2016)

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