



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2016

CORAM:

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THE HONOURABLE MR. JUSTICE S. MANIKUMAR
and
THE HONOURABLE MR. JUSTICE S. S. SUNDAR

W.P. (MD) Nos. 8208 and 8209 of 2016
and
WMP (MD) No. 6671 and 6672 of 2016

A. Prabhu .. Petitioner in W.P. (MD) No. 8208 of 2016

A. Kalaiarasan .. Petitioner in W.P. (MD) No. 8209 of 2016

Vs.

1. The Authorised Officer,
Reliance Asset Reconstruction
Company Limited,
6th Floor Plot No. 82,
Nagin Mahal Church Gate,
Mumbai.

2. The Branch Manager,
City Union Bank Ltd.,
406, Tenkasi Road,
Rajapalayam,
Virudhunagar District.

3. Mr. A. M. M. Radha Sankar
.. Respondents in both the writ petitions

COMMON PRAYER: Writ petitions are filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the first respondent to approach District Magistrate, Virudhunagar District, to decide about a validity of lease entered between the petitioner and 3rd respondent herein in respect of the properties situated in Door No. 64B, Nethaji Road and vacant place to an extent of 1438 square feet in T.S. No. 451, T.S. Ward No. 4, Srivilliputhur Town and Taluk, Virudhunagar District and Door No. 73H/8 and 73H/8A, Old Survey No. 344/14, New Municipal Ward No. 14, T.S. Ward No. 4, T.S. No. 164/5, Ramakrishnapuram Bye Pass Road, Srivilliputhur Town and Taluk, Virudhunagar District, within a stipulated period, respectively.



For petitioners in
both W.Ps. : Mr.G.Marimuthu

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COMMON JUDGMENT

(Judgment of this Court was delivered by S.MANIKUMAR, J.)

Material on record discloses that notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, (SARFAESI) 2002, has been issued to the borrower stating that the borrower is liable to pay Rs.6,83,83,380/- (Rupees Six Crores Eighty Three Lakhs Eighty Three Thousand Three Hundred Eighty Only), as on 25.02.2016, with future interest thereon at 17% p.a. till the date of realisation within a period of 70 days from the date of receipt of the said notice. Attention of the borrower has also been invited that in case, he fails to make the payment of the aforesaid amount with interest thereon, within a period of 60 days from the date of notice, the authorised officer, Reliance Asset Reconstruction Company Limited, Mumbai, respondent No.1, would be constrained to exercise all or any of the rights under the provisions of sub-section (4) of Section 13 of SARFAESI Act for enforcement of security interest in immovable as well as movable assets as described in Annexure-I, to the notice under Section 13(2).

2.According to the petitioner/tenant, period of 60 days fixed in notice issued under Section 13(2) of the SARFAESI Act, expired on 25.04.2016. As per Section 13(3A) upon receipt of the notice under sub-section (2), if the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower.

PROVIDED that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

3.As per Section 13(4) of the SARFAESI Act, 2002, in case, the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, in the manner provided therefor in Sub Section (4) of Section 13 of the SARFAESI Act.



4. From the averments made in the supporting affidavit, there is nothing to indicate as to whether the borrower has made any representation or objection as contemplated under Sub Section (3A) of Section 13 of SARFAESI Act. On the premise that the authorised officer, Reliance Asset Reconstruction Company Limited, Mumbai, respondent No.1, would resort to coercive action of taking possession, writ of Mandamus has sought for by the petitioners directing the Authorised Officer, Reliance Asset Reconstruction Company Limited, Mumbai, to approach the District Magistrate, Virudhunagar District, to decide about a validity of lease entered between the petitioner and 3rd respondent herein in respect of the properties situated in Door No.64B, Nethaji Road and vacant place to an extent of 1438 square feet in T.S.No.451, T.S.Ward No.4, Srivilliputhur Town and Taluk, Virudhunagar District and Door No.73H/8 and 73H/8A, Old Survey No.344/14, New Municipal Ward No.14, T.S.Ward No.4, T.S.No.164/5, Ramakrishnapuram Bye Pass Road, Srivilliputhur Town and Taluk, Virudhunagar District, within a stipulated period, respectively.

5. At this juncture, unless until the first respondent takes recourse, relief sought for in this writ petition cannot be granted. The writ petitions are premature and accordingly, the same are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(RTI)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Authorised Officer,
Reliance Asset Reconstruction Company Limited,
6th Floor Plot No.82, Nagin Mahal Church Gate, Mumbai.

2. The Branch Manager,
City Union Bank Ltd., 406, Tenkasi Road,
Rajapalayam, Virudhunagar District.

+1cc to M/s.G.Marimuthu, Advocate, Sr.No.24061

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JM/JGB-SS/11.05.2016/3P-4C