

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM

THE HON'BLE Mr.JUSTICE **HULUVADI G.RAMESH**

And

THE HON'BLE MR JUSTICE **RMT.TEEKAA RAMAN**

W.P.Nos.10001 & 7761 of 2017

and

WMP Nos.11007 & 11008 of 2017

and

WMP No.8489 of 2017

WMP No.10790 of 2017

Apollo Hospitals Enterprises Ltd.,
rep.by its Authorised Signatory,
S.M.Mohan Kumar,
Ali Towers, III Floor,
No.55, Greams Road, Thousand Lights,
Chennai-600 006

.. Petitioner in
W.P.No.10001 of 2017

C.Velavan

... Petitioner in
W.P.No.7761 of 2017

Vs.

1.Bank Of India,
rep.by its Authorised Officer,
Thousand Lights Branch,
Chennai-600 086

2.Stephen Edward Jayakumar John
in

... Respondents
both the Writ Petitions

Prayer in W.P.No.10001 of 2017: Writ petition filed under
Article 226 of the Constitution of India, praying for the issuance of a
writ of certiorari calling for the records of the learned Chief

Metropolitan Magistrate, Allikulam, Chennai-3, relating to passing of the order dated 2.6.2016 and 10.06.2016 in Crl.M.P.No.6481 of 2016 and quash the same.

Prayer in W.P.No.7761 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari calling for the records pertaining to Crl.M.P.No.6481 of 2016, on the file of the learned Chief Metropolitan Magistrate, Egmore and quash the order vide dated 02.06.2016, made in Crl.M.P.No.6481 of 2016, on the file of the Chief Metropolitan Magistrate, Egmore.

For Petitioners	:Mr.R.J.Radhika
For Respondents	:Mr.F.B.Benjamin George for R1

COMMON ORDER

(Order of the Court was made by **HULUVADI G.RAMESH,J**)

The petitioners are tenants under the second respondent. The petitioner in W.P.No.11001 of 2017 is running a Pharmacy and the petitioner in W.P.No.7761 of 2017 is residing in the said premise, as a tenant, for the last 15 years. It is seen that the second respondent, namely, the owner of the property, has created mortgage of the subject property with the first respondent. Since the second

respondent/borrower has defaulted in making the repayment to the first respondent bank, the bank initiated action under the SARFAESI Act and approached the Chief Metropolitan Magistrate, Allikulam, and obtained an order for recovery of possession. On the strength of the said order, the bank demanded the petitioners, who are the tenants and residing in the respective portions of the premises, to vacate the same and handover vacant possession. It is the grievance of the petitioners that the first respondent, in collusion with the second respondent bank, is indulging in such activities so as to evict them from the premises, without following the due process of law. Hence, the petitioners are before this Court with these writ petitions.

2. Heard the learned counsel for the parties and also perused the records carefully.

3. When the writ petition in W.P.No.7761 of 2017 came up for hearing, this Court, vide order dated 3.4.2017, granted interim stay of the order impugned in the writ petition. Seeking to vacate the said order, now the respondent bank has moved W.M.P.No.10790 of 2017.

4. It appears that the second respondent/owner of the

premises has created mortgage in respect of the said premises and since he defaulted in repaying the loan amount, the bank has initiated action under the SARFAESI Act, which cannot be found fault with. At the same time, it is stated that the petitioner in W.P.No.10001 of 2017 is running a pharmacy in a portion of the premises and they expressed some difficulty in finding an alternative premises immediately and as such requested for sufficient time to vacate the premises and hand over vacant possession.

5. Considering the facts and circumstances of the case and also considering the difficulty expressed by the petitioner in W.P.No.10001 of 2017, it is directed that subject to filing of an undertaking by the petitioner that they will vacate and handover vacant possession of the respective portion, on or before 30.06.2017, the respondent bank shall consider the case of the petitioner, subject to payment of arrears of rent. If possession has already been taken by the respondent bank, the same shall be nullified till the vacant possession is handed over by the petitioner. Considering the apprehension expressed by the petitioner in W.P.No.7761 of 2017 that he will be vacated by the respondent bank, without following the due process of law and since in view of the stay granted by this Court, the respondent bank is unable to take possession of the portion under

occupation by the petitioner/Velavan, it is made clear that the respondent bank shall issue notice to the petitioner, who is in occupation of the respective portion of the subject premises and get him vacated following the due process of law.

6. The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

(H.G.R.J.) (T.K.R.J.)
25.04.2017

msk

To

The Authorised Officer,
Bank Of India,
Thousand Lights Branch,
Chennai-600 086

HULUVADI G.RAMESH,J.

and
RMT.TEEKAA RAMAN,J.

msk

W.P.Nos.10001 & 7761 of 2017

25.04.2017

W.P.Nos.10001 and 7761 of 2017

HULUVADI G.RAMESH, J.
AND
RMT.TEEKAA RAMAN, J.

These matters are posted today under the caption "For being mentioned".

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing the respondents.

3. It appears that the subject matter of the property though attached under SARFAESI Act by the Bank, it reveals that there was a tenancy in respect of the said property. The judgement of the Apex Court and also the proposition of law on this point reveals that there shall be an independent proceedings in the matter of tenancy is concerned.

4. On perusal of the original document of lease-cum-rental agreement made it clear that it is unregistered one. It is needles to say that under the SARFAESI Act, the nature of transaction being the subject matter in issue the same cannot be gone into. If the period of tenancy is more than one year, it has to be registered. However, in the case on

hand, it is seen that the lease deed is for a period within one year. In this backdrop, the petitioners sought the leniency of this Court on the ground that since the lease period is in existence during the pendency of the proceedings, it is between the landlord and tenant and it cannot be said to be only between the landlord and the Bank.

5. Under such circumstances, the learned counsel for the petitioners seeks extension of time to vacate the premises till the end of August 2017. Appreciating the genuine and *bona fide* approach of the petitioners/tenants seeking time to vacate the premises, we are of the view that the respondent Bank has to wait till 30th August 2017 on which date the petitioners shall vacate the premises and hand over the possession directly to the landlord on or before 1st of September 2017 and on such hand over, the respondent Bank shall take possession from the landlord/borrower.

6. With these observations, both these writ petitions stand disposed

of accordingly.

The Registry is directed to issue fresh order copy to the petitioners after incorporating this order.

(H.G.R.,J.) (T.K.R.,J.)

07.06.2017

Jrl

HULUVADI G.RAMESH, J.
AND
RMT.TEEKAA RAMAN, J.

W.P.Nos.10001 & 7761/2017

07.06.2017

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