

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2017

Coram

The Honourable Mr.Justice HULUVADI G.RAMESH
and
The Honourable Mr.Justice RMT.TEEKAA RAMAN

W.P.NOs.8133 to 8137 OF 2017
WMP Nos.8910 to 8919 of 2017

Y.Bhavani .. Petitioner in
WP 8133 of 2017
M/s.Dhanam Auto,
rep. by its Sole Proprietor .. Petitioner in
Mrs.Jayanthi Sivakumar WP 8134 of 2017
K.Inder Chand .. Petitioner in
WP 8135 of 2017
M.Nagarajan .. Petitioner in
WP 8136 of 2017
N.Kamal Kishore .. Petitioner in
WP 8137 of 2017

versus

1. Corporation Bank Ltd.,
South End Road,
Mill Corner, Seshadripuram P.O.,
Malleswaram, Bangalore-560 020.
2. Mindlogicx Infratech Ltd.,
Techllano, No.10/1-B, Graphite India Road,
K R Puram Hobli, Hoodi village,
Near White Field,
Bangalore-560 048.

3. Sri Suresh Elangovan
4. Smt.E.L.Chitra
5. Sri M.Devasenapathy
6. Sri D.Kousik Senthil Prasad
7. Sri Ramachandran

Advocate Commissioner,
appointed by Chief Metropolitan Magistrate,
Allikulam, Chennai-600 003

.. Respondents in
all the Writ Petitions

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to Crl.M.P.No.6274 of 2015 dated 24.11.2015 on the file of the learned Chief Metropolitan Magistrate, Allikulam, Chennai-600 003, quash the same as illegal.

For petitioners : Mr.R.Narayanan

COMMON ORDER

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

According to the petitioners, they are the tenants in respect of the subject property belonging to the respondents 5 and 6. Respondents 2 to 4 have availed loan from the 1st respondent Bank, for which, the respondents 5 and 6 stood as motgagors and offered their property by depositing the title deeds. Subsequently, since the respondents 2 to 4 failed to repay the borrowed amount to the extent of Rs.11,19,39,811/-, the first respondent classified the account of the respondents 2 to 4 as non-performing asset on and from 29.5.2013. Thereafter, after following the formalities under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'the SARFAESI Act'), in order to take physical possession of the secured asset from the respondents, the first respondent bank moved a petition in Crl.M.P.No.6274 of 2015 under Section 14(i) and (ii) of the SARFAESI Act, seeking permission to take physical possession of the secured asset. By order dated 24.11.2015 impugned in these Writ Petitions, the learned Chief Metropolitan Magistrate, Allikulam, Chennai-3 allowed the petition, permitting the first respondent to take physical possession for bringing the same to public auction in order to realize the dues. Aggrieved by the same, the petitioners came forward with the present Writ Petitions.

2. At the outset, it is to be noted that mandamus cannot be issued to set at naught the proceedings issued under a statute. In fact, a provision under Section 17(1) of the Act, enables a person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken: PROVIDED that different fees may be prescribed for making the application by the borrower and the

person other than the borrower.

3. While so, by Act 44 of 2016, with effect from 01.09.2016, Parliament has inserted Section 4-A in Section 17 of the Act and it reads as follows:

"(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 purpose 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."

4. In the light of the recent amendment, by way of Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (44 of 2016), an effective and alternative remedy is provided to a person, who claims to be a tenant or has lease hold rights, on the secured asset and that if any application is filed, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties therein, in relation to such claim shall, for the purpose of enforcement of security interest, has jurisdiction to examine whether the lease or tenancy and other parameters, mentioned in Section 4 A of the Amended Act and to pass such orders, as deems fit, in accordance with the provisions of Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002.

5. Time and again, it has been held that when there is an efficacious and alternate remedy available under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act or Securitisation And Reconstructions of Financial Assets Act, 2002, as the case may be, a writ petition is not maintainable.

6. In the light of the above, we are not inclined to interfere with the impugned order. However, the petitioners are permitted to approach the Tribunal within a period of four weeks from the date of receipt of the copy of this order, to take recourse to the statutory remedy, provided under SARFAESI Act, 2002, and the amended Act 44/2016, by raising all the grounds available to them.

With the above direction, these Writ Petitions are disposed of. No Costs. Consequently, connected, Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Suk

To

1. Sri Ramachandran
Advocate Commissioner,
appointed by Chief Metropolitan Magistrate,
Allikulam, Chennai-600 003

+5ccs to Mr.R.Narayanan, Advocate for the petitioner,
S.R.Nos.20783 to 20787

W.P.Nos.8133 to 8137 OF 2017

KJ(CO)
CS/28/06/17

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