

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE HULUVADI G RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.No.6120 of 2017
and
W.M.P.Nos.6597 & 6598 of 2017

Arun Ramajayam Petitioner

vs.

1.ASREC (India) Limited,
Rep. By its Chief Manager/Authorised Officer,
Mr.S.Jayaprakash .

2.M/s.VNS Leather Exports Pvt. Ltd.,
Rep. By its Managing Director,
Mr.M.S.Chandrasekaran.

3.Mr.M.S.Chandrasekaran

4.Mr.S.C.Sanjeev Kumar

5.Mr.S.C.Vijaya Kumar

6.The Chief Metropolitan Magistrate,
Allikulam, Chennai - 3.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 6th respondent in Crl.M.P.No.8644 of 2016 dated 20.12.2016 and also for a direction forbearing the 1st respondent their men, agent from interfering with peaceful possession of the petitioner from any manner evicting the petitioner from the property situated in Door No.13/4 CIT Nagar, O.S.No.4/2A1 Part and measuring to an extent of 1086 sq.ft and quash the same as illegal, arbitrary and abuse of process of law.

For Petitioner : Mr.A.R.L.Sundaresan,
Senior Counsel for
Mr.V.Karthikeyan

For Respondents: Mrs.Ananda Gomathi for R1

O R D E R

[Order of the Court was made by HULUVADI G RAMESH, J.]

This Writ Petition has been filed seeking issuance of a Writ of Certiorari to call for and quash the records of the 6th respondent in Crl.M.P.No.8644 of 2016 dated 20.12.2016 and to forbear the 1st respondent from interfering with peaceful possession of the petitioner and from any manner evicting the petitioner from the property situated in Door No. 13/4, CIT Nagar, O.S.No.4/2A1 Part and P.S.No.17/1A Block 17, Government Farm Village, Saidapet and measuring to an extent 1086 sq.ft.

2. The petitioner is a lessee in respect of the property in dispute and came into possession of the above said land and building under the lease deed executed by the third respondent in favour of the petitioner on 10.08.2008. The petitioner's father paid a sum of Rs.10 lakhs to the third respondent as a financial help. Thereafter, the petitioner was permitted to occupy the said premises on monthly rental basis, for which, a rental agreement was executed on 10.08.2008, in which, the receipt of Rs.10 lakhs by the third respondent was acknowledged by the other respondents herein and he is in possession and enjoyment of the same. The petitioner is not aware of the transactions between the first respondent and respondents 2 to 5. Only on 25.01.2017, when a group of persons attempted to trespass into the property, which is in occupation of the petitioner, the petitioner came to know that the first respondent attempted to take possession of the property for the debts due to the first respondent. The petitioner was informed that the Bank of India assigned the debt in favour of the first respondent in 2013 for the recovery of the loan.

3. After verification, the petitioner found that the first respondent filed a petition under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, before the sixth respondent, to take possession of the secured asset, so as to enforce their right. The 6th respondent, by an order dated 20.12.2016, allowed the petition and appointed an Advocate Commissioner to take possession of the property and hand over

the same to the first respondent. Immediately, the petitioner approached the 6th respondent by filing an appropriate application to implead himself and to stay the recovery proceedings. The said application was taken on file and was posted for enquiry. In the meantime, the first respondent attempted to take possession from the petitioner on 08.03.2017 by adopting unlawful methods. Hence, the petitioner came forward to file this writ petition.

4. The learned counsel appearing for the petitioner submitted that the petitioner was not impleaded as a party to the petition before the sixth respondent. According to him, it is a settled position that when the secured creditor viz., the first respondent approached the 6th respondent, it is their duty to disclose about the persons, who are in occupation of the premises. On a reading of the petition filed by the first respondent before the sixth respondent, it is clear that it does not disclose anything about the persons in occupation. Further, it is submitted that before passing an impugned order, the 6th respondent ought to have enquired about the factual details of property, to whom, the physical possession is vested. Therefore, the order passed by the 6th respondent is liable to be quashed.

5. Heard the submissions of Mrs. Ananda Gomathi, learned counsel appearing for the first respondent.

6. The dispute raised by the petitioner appears to be a civil dispute and as has been already held by this Court as well as the Supreme Court, whenever there is a civil dispute, the parties shall approach the competent Civil Court to prove the possession or otherwise in respect of the property in dispute. Before the Civil Court, the parties can let in oral evidence and file documents in proof of their claim. This Court cannot go into those details while exercising jurisdiction under Article 226 of The Constitution of India.

7. Useful reference can be made to the latest Supreme Court judgment in the case of Vishal N. Kalsaria Vs. Bank of India [reported in 2016 (3) SCC 762], wherein the relevant portion reads as follows :

"Provisions of SARFAESI Act cannot be used to override the provisions of Rent Control Act. Whereas SARFAESI Act has been enacted by Parliament with a laudable object to provide a smooth and efficient recovery procedure to enable banks to recover non-performing assets, various Rent Control Acts have been enacted by different State Legislatures (including the one involved

herein) with a laudable object to control and regulate the rate of rent so as to avoid unnecessary hardships to tenants and to provide protection to tenants against their arbitrary and unreasonable evictions from tenanted property. Once tenancy is created, tenant can be evicted only after following the due process of law as prescribed by Rent Control Act. He cannot be arbitrarily evicted by using provisions of SARFAESI Act as that would amount to stultifying the statutory rights of protection given to tenant. A non obstante clause i.e. S. 35 of SARFAESI Act cannot be used to bulldoze the statutory rights vested on tenants under Rent Control Act. Expression "any other law for the time being in force" as appearing in S. 35 of SARFAESI Act cannot be extended to each and every law enacted by Central and State Legislatures. It can only extend to laws operating in same field."

8. Considering the above, this Court directs that the petitioner shall approach the competent Civil Court for better remedy, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsm
To

The Chief Metropolitan Magistrate,
Allikulam, Chennai - 3.

+1cc to Mr.Ananda Gomathy, Advocate Sr.26029

W.P.No.6120 of 2017

srg 08/06/2017