IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.7300 of 2014
and M.P.No.1 of 2014

Mr.A.Palanikumar ... Petitioner

vs.

1. The Authorized Officer,
   Punjab National Bank,
   Avadi Main Branch,
   No.402, C.T.H.Road,
   Avadi, Chennai - 600 054.

2. Mr.R.Sabaresan ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondent bank pertaining to the possession notice u/s.13 (4) of SARFAESI Act dt. 24.01.2014 issued by the 1st Respondent Bank to the 2nd respondent and affixed in the house premises, the petitioner presently residing, and restraining the 1st respondent from evicting or dispossessing the petitioner without due process of appropriate law.

For Petitioner : Mr.Sankarasubbu for Mr.S.Parthasarathy
For Respondents : Mr.Varun Srinivasan (for R1)

ORDER
(Order of the Court was delivered by S.MANIKUMAR, J)

Contending inter alia that the petitioner, has entered into a lease agreement, dated 08.01.2013 with the landlord/borrower, by which, lease amount has been fixed as Rs.4.45 Lakhs and further contending that the writ petitioner is in possession of the subject property, mortgaged with Punjab National Bank, Chennai, petitioner has sought for a writ of mandamus, directing the bank, pertaining to the possession notice u/s.13(4) of SARFAESI Act dt. 24.01.2014 issued by the 1st Respondent Bank to the 2nd respondent and affixed in the house premises, the petitioner presently residing, and restraining the 1st respondent from evicting or dispossessing me without due process of appropriate law.

2. Supporting affidavit shows that bank has affixed possession notice under Section 13(4) of the SARFAESI Act, 2002, on the mortgaged property on 24.01.2014. Supporting the prayer sought for, the petitioner has relied on the decision of a Hon'ble Division Bench of this Court in Indian Bank Vs. Nippon Enterprises South, reported in 2011 (2) CTC 474 and another decision in K.R.Chandrasekaran Vs. Union of India, reported in 2012(3) CTC 239, he has contended that a statutory tenant is entitled for protection, under the provisions of Tamilnadu Building Lease and Rent Control Act.

3. Record of proceedings shows that on 11.03.2014 in M.P.No.1 of 2014 in W.P.No.7300 of 2014, a Hon'ble Division Bench of this Court has passed the following order.

> "There shall be an order of stay on condition that the first respondent bank can take symbolic possession of the subject property, but no eviction proceedings to be initiated against the petitioner who claims to be lessee or the subject premises.
>
> The learned counsel for the petitioner is permitted to serve notice on the learned counsel appearing for the first respondent Bank. He is also directed to furnish the lease agreement to furnish the lease agreement entered into between the petitioner and the land owner.
>
> Call the matter on 19.03.2014."

4. On this day, when the matter came up for further hearing, inviting the attention of this Court to Section 13(13) of the SARFAESI Act, 2002, Mr.Varun Srinivasan, learned counsel for the respondent bank submitted that no borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

5. Inviting the attention of this Court to the notice, dated 18.10.2012, issued under sub section (2) of Section 13 of the SARFAESI Act, 2002, and the alleged lease agreement dated 08.01.2013, Mr.Varun Srinivasan, learned counsel for respondent bank submitted that there is a statutory bar for entering into any sale, lease or otherwise, without the prior consent of the secured creditor and that therefore, the alleged lease dated 08.01.2013, would not confer any right on the petitioner, to seek for a relief of mandamus.

6. Attention of this Court was also drawn to paragraph No.15 of the judgment of the Hon'ble Supreme Court in Harshad

Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others reported in 2014(5) CTC 546. Paragraph No.15 of the judgment referred to by the learned counsel for the bank/ respondent, reads thus:

> "15. When we read the different provisions of Section 13 of the SARFAESI Act extracted above, we find that sub-section (4) of Section 13 provides that in case the borrower fails to discharge his liability in full within sixty days from the date of notice provided in sub-section (2) of Section 13 of the SARFAESI Act, the secured creditor may take recourse to one or more of the measures mentioned therein to recover his secured debt. One of the measures mentioned in clause (a) in sub-section (4) of Section 13 of the SARFAESI Act is to take possession of the secured assets of the borrower including the right to transfer by way of lease. Where, however, the lawful possession of the secured asset is not with the borrower, but with the lessee under a valid lease, the secured creditor cannot take over possession of the secured asset until the lawful possession of the lessee gets determined. There is, however, no mention in sub- section (4) of Section 13 of the SARFAESI Act that a lease made by the borrower in favour of a lessee will stand determined on the secured creditor deciding to take any of the measures mentioned in Section 13 of the said Act. Sub- section (13) of Section 13 of the SARFAESI Act, however, provides that after receipt of notice referred to in sub- section (2) of Section 13 of the SARFAESI Act, no borrower shall lease any of his secured assets referred to in the notice, without the prior written consent of the secured creditor. This provision in sub- section (13) of Section 13 of the SARFAESI Act and the provisions of the Transfer of Property Act enabling the borrower or the mortgagor to make a lease are inconsistent with each other. Hence, sub- section (13) of Section 13 of the SARFAESI Act will override the provisions of Section 65A of the Transfer of Property Act by virtue of Section 35 of the SARFAESI Act, and a lease of a secured asset made by the borrower after he receives the notice under sub- section (2) of Section 13 from the secured creditor intending to enforce that secured asset will not be a valid lease."

7. Though Mr.Sankarasubbu, learned counsel for the petitioner drew the attention of this Court to Paragraph No.21 of said judgment and contended that possession has to be taken only in accordance with due process of law, as contemplated under Section 14 of the SARFAESI Act, 2002 and in which event, the tenant is entitled to be heard, at this juncture, this Court is not inclined to record any finding on the above. Sub section 13 of Section 13 of the SARFAESI Act, 2002, clearly creates a

statutory bar in respect of the secured asset and that after the notice referred to under section 13(2), the borrower has no right to transfer by way of sale, lease or otherwise, any of his secured asset without prior written consent of the secured creditor.

8. As per the decision of the Hon'ble Supreme Court in Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others reported in 2014(5) CTC 546, sub section 13 of Section 13 to the SARFAESI Act, 2002, will over ride provisions of Section 65A of the Transfer of Property Act by virtue of Section 35 of SARFAESI Act, and a lease of the secured asset made by the borrower, after receipt of the notice under Section 13(2) from the secured creditor, intending to enforce the secured asset, will not be a valid lease.

9. In the light of the provisions of Section 13(13) of the SARFAESI Act, 2002 and the judgment of the Hon'ble Supreme Court in Harshad Govardhan Sondagar's case, the petitioner cannot maintain, the instant writ petition, for a mandamus. Hence, writ petition is dismissed. No costs. Interim order granted on 11.03.2014 in M.P.No.1 of 2014 is vacated.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To
The Authorized Officer,
Punjab National Bank,
Avadi Main Branch,
No.402, C.T.H.Road,
Avadi, Chennai - 600 054.

+1 CC to Mr.S.Parthasarathy, Advocate sr 64815
+1 CC to NVS Associates, Advocate sr 64290.

KS(CO)
sp(25/09/2017)