

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/9/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.7478 of 2017

&

Wmp.Nos.8171 & 8172 of 2017

Paul Angilose

... Petitioner

Vs

1. Corporation Bank Ltd
South End Road
Mill Corner
Seshadripuram P.O
Malleswaram
Bangalore 560 020.

2. Mindlogicx Infratech Ltd
Techilano
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

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorari to call for the records pertaining to CrI.M.P.No.6274 of 2015, dated 24/11/2015, on the file of the learned Chief Metropolitan Magistrate, Allikulam, Chennai 600 003 and quash the same as illegal, non-statutory and ultravires of Article 19 of the Constitution of India.

For Petitioner ... Mr.R.Narayanan

For respondent ... Mr.G.Senthil Kumar
for Mr.S.Sethuraman
for R.1.

R.R.2 to 4 & 7 - No appearance

R.R.5 and 6 - Tapal returned.

O R D E R

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

Challenge in this writ petition, is to an order, dated 24/11/2015, passed in Crl.M.P.No.6274 of 2015, by the Chief Metropolitan Magistrate, Chennai, granting assistance to M/s. Corporation Bank Limited, Bangalore, first respondent herein, by appointing an Advocate Commissioner, to take possession of the schedule mentioned property, after taking inventory, with the assistance of the Station House Officer, J - 4 Kotturpuram Police Station, Chennai, and to handover the possession to the Bank.

2. Record of proceeding shows that, as early as on 28/3/2017, notice through Court and privately has been ordered. Bank has entered appearance.

3. On this day, when the matter came up for further hearing, Mr.R.Narayanan, learned counsel for the petitioner submitted that tenants in possession of the property mortgaged, have challenged order, dated 24/11/2015, passed in Crl.M.P.No.6274 of 2015, by the learned Chief Metropolitan Magistrate, Allikulam, Chennai, in Writ Petition Nos.8133 to 8137 of 2017.

4. After considering Act 44 of 2016, by which, Section 4 - A has been introduced to Section 17 of the SARFAESI Act, 2002 and after hearing the parties, a Hon'ble Division Bench of this Court, vide common order, in W.P.No.8133 to 8137 of 2017, dated 6/4/2017, at paragraph Nos.4 to 6, has ordered as hereunder:-

"4. In the light of 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 44/20176, raising all the grounds available to them.

5. Learned counsel for the petitioner further submitted that the impugned proceedings therein, is the same order made in CrI.M.P.No.6274 of 2015, dated 24/11/2015 and assailed in the instant writ petition and that the above said common order, made in W.P.Nos.8133 to 8137 of 2017, dated 06.04.2017, is applicable to the case on hand.

6. Mr.G.Senthil Kumar for Mr.S.Sethuraman, learned counsel for Corporation Bank, first respondent herein, submitted that when there is an effective and alternative remedy, the instant writ petition is not maintainable.

7. Heard the learned counsel for both parties, and perused the materials available on record.

8. Perusal of paragraph No.1 of the common order, made in W.P.Nos.8133 to 8137 of 2017, dated 6/4/2017, makes it clear that the petitioners therein, claimed that they were tenants, in respect of property belonging to the respondents 5 and 6 therein, viz., Sri.M.Devasenapathy and Sri.D.Koushik Senthil Prasad, respondents in the instant writ petitions also. Writ petitioners therein, have challenged the order made in Crl.M.P.No.6274 of 2015, made under Section 14 (i) and (ii) of the SARFAESI Act, 2002, directing permission to take physical possession of the secured assets.

9. Vide order, dated 24/11/2015, made in Cr.M.P.No.6274 of 2015, the learned Chief Metropolitan Magistrate, Chennai has allowed the petition. In the instant writ petition also, the same proceedings of the learned Chief Judicial Magistrate, has been challenged.

10. Facts are identical. Therefore, as rightly contended by the learned counsel for the petitioner, common order made in W.P.Nos.8133 to 8137 of 2017, dated 6/4/2017, is squarely applicable to the case on hand.

11. Accordingly, writ petition is disposed of, in terms of the common order, extracted supra. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Chief Metropolitan Magistrate,
Allikulam, Chennai 600 003.

2. Corporation Bank Ltd
South End Road
Mill Corner
Seshadripuram P.O
Malleswaram
Bangalore 560 020.

+3cc to Mr.R.Narayanan, Advocate, S.R.No.68263

+1cc to Mr.S.Sethuraman, Advocate, S.R.No.68511

W.P.No.7478 of 2017

SAI (CO)

RMP (31/10/17)