IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.09.2017**

CORAM:

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

W.P.No.5577 of 2017
and
WMP Nos.5934 to 5936 of 2017

D.Radhakrishnan ... Petitioner

vs.

1. Shriram Housing Finance Limited,
Rep. by its Managing Director,
having Branch Office at
No.221, First Floor,
Royapettah High Road, Mylapore,
Chennai - 600 004.

2. Authorised Officer,
Shriram Housing Finance Limited,
having Registered Office, at
No.123, Angappa Naicken Street,
Chennai - 600 001. ...
Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents to handover the possession and to remove the seal put up in the premises by the respondents on 25.02.2017.

For Petitioners : Mr.M.Kamalanathan
For Respondents : Mr.P.Chandrasekar (for R1 & R2)

ORDER

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

With the consent of the parties, writ petition is heard and disposed of.

2. Petitioner has sought for a writ of mandamus, directing the respondents to handover the possession and to remove the seal put up in the premises by the respondents on 25.02.2017.

3. Material on record discloses that due to the default, two loan account Nos.SBTHNI0000256 and SLPHCHNI0000266 have been classified, as non performing assets and that Authorised Officer, Shriram Housing Finance Limited, the 2nd respondent has issued a notice under Section 13(2) to the SARFAESI Act, 2002, calling upon the borrower to pay a sum of Rs.22,13,856/- in respect of the loan account No.SLPHCHNI0000266 as on 23.05.2016, within interest and Rs.27,81,371/- in respect of loan Account No.SBTHCHNI0000256 as on 23.05.2016, with further interest, at the contractual rate and as stipulated by the SHFL/NHB/RBI from time to time on the aforesaid amount together with incidental expenses, cost charges etc. Bank in

the notice issued under Section 13(2) of the SARFAESI Act, has also stated that in terms of sub section 13 to Section 13 of the SARFAESI Act, property mortgaged shall not be sold, leased or otherwise transferred.

4. Bank has also issued symbolic possession notice under Rule 8(1) of the Security Interest (Enforcement Rules) 2002 and thereafter, issued a possession notice dated 03.09.2016, under Sub Section 4 to Section 13 of the SARFAESI Act.

5. Material on record discloses, that at the instance of the bank, the Chief Metropolitan Magistrate, Chennai in Crl.M.P.No.8395 of 2016 dated 22.11.2016, has also appointed an Advocate Commissioner, to take possession of the mortgaged property. Possession has been taken and sealed. Thereafter, there was exchange of notice between the petitioner and the Bank. On the above factual background, instant writ petition has been filed for the relief stated supra.

6. Record of proceedings shows that after hearing the learned counsel for the parties, vide orders dated 06.03.2017 and 04.04.2017, respectively, a Hon'ble Division Bench, of this Court has directed a

sum of Rs.5,00,000/- and Rs.10,00,000/-, respectively, to be paid. Subsequently, on 20.06.2017, matter has been directed to be listed for compliance. Subsequently, on 04.07.2017, matter has been directed to be placed before the Mediation and Conciliation Centre, High Court Madras. As there was no settlement, vide mediation report dated 27.07.2017, writ petition is placed before this Court.

7. On this day, when the matter came up for further hearing, Mr.M.Kamalanathan, learned counsel for the petitioner submitted that in so far as account No.SLPHCHNI0000266 a sum of Rs.12,24,892/- is due and in respect of the other account viz., Account No.SBTHCHNI0000256, a sum of Rs.19,07,388/- is due. Learned counsel for the petitioner admits that there is a balance in both the accounts.

8. Though, by inviting the attention of this Court to sub section 7 of Section 13 of the SARFAESI Act, 2002, Mr.M.Kamalanathan learned counsel for the petitioner contended that it is not open to the respondents to add interest after issuance of notice under Section 13(2) of the Act, and multiply the loan amount and therefore, sought for a mandamus as prayed for, this Court is not inclined to accept his

contention for the reason that sub section 7 of Section 13 of the SARFAESI Act, 2002, does not include interest on the loan amount, but the said section only speaks about the costs / charges and expenses incurred by the secured creditor.

9. Mr.P.Chandrasekar, learned counsel for the respondents submitted that considerable expenses were incurred for publication, taking possession, etc., and it is not the case where the borrower surrendered possession on his own.

10. However, Mr.M.Kamalanathan, learned counsel for the petitioner submitted that the entire arrears of loan amount with accrued interest, and costs, charges, expenses incidental thereto, as per the terms of the contract, would be paid within three months from today.

11. On instructions Mr.P.Chandrasekar, learned counsel for the respondents submitted that a sum of Rs.5 Lakhs would be waived towards the loan amount, subject to the petitioner remitting the balance amount within three months, as One Time Settlement.

12. Though, prayer sought for in this writ petition, for a mandamus directing the respondents to hand over possession and to remove the seal put up in the premises by the respondents on 25.02.2017, which no longer survives in view of the seal being removed, by virtue of the interim order as stated supra, in order to give quietus to the lis, on consensus, the following order is passed.

13. Mr.D.Radhakrishnan, petitioner and borrower of loan account Nos.SBTHNI0000256 and SLPHCHNI0000266 is hereby directed to pay the entire arrears of loan amount in both the accounts with interest at contractual rates, as agreed to by the parties with all costs, charges and expenses incidental thereto, minus Rs.5,00,000/-, waived by M/s.Shriram Housing Finance-respondents herein, within three months from today, failing which, petitioner shall surrender vacant possession of the mortgaged property in D.No.41, Old No.39, Sowrastra Nagar, 9th Street, Choolaimedu, Chennai-94, to M/s.Shriram Housing Finance-respondents herein. It is also made clear that if the petitioner fails to pay the loan within the stipulated time, as directed, and surrender vacant possession, police will render necessary assistance to M/s.Shriram Housing Finance-respondents herein, to take possession, as done in the past.

14. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

(S.M.K., J.) (V.B.S., J.)

04.09.2017

Index: Yes/No.

Internet: Yes

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