

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Revision No.153 of 2011
and
M.P.No.1 of 2011

H.P.Jinnappa

...Petitioner/
Bonafide Purchaser

Vs

Indian Bank,
Anna Nagar Branch,
rep. by Chief Manager &
Authorised Officer,
K.Chandra Reddy,
P.B.No.3452, W-100, II Avenue,
Anna Nagar, Chennai - 40

... Respondent/Petitioner

Prayer:-

This Criminal revision is filed under Section 397(1) of Cr.P.C., to set aside the order passed by the learned Chief Judicial Magistrate, Chengalpet, in C.M.P.No.1358 of 2010 dated 19.10.2010.

For petitioner : Mr.V.Premkumar

For respondent : Mr. K.Chandu Suranjan

O R D E R

Challenging the order passed by the Chief Judicial magistrate, Chengalpet, under Section 14 of the SARFAESI Act, the present revision has been filed.

2. The petitioner claims to be a purchaser of the property in Plot Nos.72 and 73, Vemba Avenue, Sitalapakkam village, Chennai from one Dharmaprakash J.Kumar, under a valid sale deed dated 21.07.1999. Thereafter, he had constructed a

house and residing therein. Subsequently, he came to know that his vendor had mortgaged the property with the respondent bank and obtained a loan, but committed default. In the above circumstances, the respondent bank already filed a civil suit against the vendor and obtained a preliminary decree. Once again the respondent bank initiated proceedings under SARFAESI Act, which was also challenged and pending before the Debts Recovery Tribunal I, Chennai. That being the position, the respondent bank filed a petition under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate, Chengalpet, and the Chief Judicial Magistrate also allowed the application by an order dated 19.10.2010. Challenging the same, the present revision has been filed.

3. The learned counsel appearing for the petitioner would submit that the issue involved in the revision is squarely covered by the full bench judgment of this Court in a case reported in **"Mr.K.Arockiyaraj vs/ The Chief Judicial Magistrate, Srivilliputhur, Virudhunagar in W.P.Nos.11078 of 2011, 7155 of 2012 and 4525, 9833 of 2013,** in which, it has been held that only the District Magistrate and Chief Judicial Magistrates, as the case may be, has been vested with powers to pass orders under Section 14 of the SARFAESI Act and the relevant portion of the full bench of this Court in **W.P.Nos.11078 of 2011, 7155 of 2012 and 4525, 9833 of 2013,** is held as follows:

"From the perusal of the above judgments as well as the statutory provisions contained in Section 14 of the SARFAESI Act 2002, in its independent existence, we are of the firm view that Section 14 does not contemplate the secured creditors to approach the Chief Judicial Magistrates for assistance to secure their assets and secured creditors can approach the Chief Metropolitan Magistrate in Metropolitan areas and in non-metropolitan areas, the secured creditors has to approach the District Magistrate and not the Chief Judicial Magistrate".

4. In view of the above Full Bench Judgment, the Chief Judicial Magistrate has no power to entertain the application filed under Section 14 of the SARFAESI Act.

5. Hence, the Criminal Revision Case is allowed and the order passed by the learned Chief Judicial Magistrate, Chengalpet in C.M.P.No.1358 of 2010 dated 19.10.2010, is set aside, however, liberty is given to the respondent to approach concerned court, if so advised. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Chief Judicial Magistrate,
Chengalpet.
- 2.The Debts Recovery Tribunal Chennai
- 3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.V.Premkumar Advocate sr 513
+1 cc to Mr.Chandu Suranjan Advocate sr 553

Crl.R.C.No.153 of 2011

vgI(co)
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