

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM:

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

W.P.No.12412 of 2017

and

WMP No.13617 of 2017

Mr.J.Jagan

... Petitioner

vs.

1. The Manager,
Catholic Syrian Bank Ltd.,
Peravallur Branch,
No.6, Paper Mills Road, SRP Colony,
Peravallur,
Chennai - 600 082.

2. Mrs.Vennila George Fernandez ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, direct the 1st respondent to consider the representation sent by the petitioner dated 29.04.2017 with direction to comply order and direction of Honourable Supreme Court passed in (2014) 6 SCC 1 (Harshad Govardhan Sodangar Vs. International Asset Reconstruction Pvt. Ltd.

For Petitioner : No Appearance
for Mr.M.Anandaraj

For Respondents : Mr.K.Rajasekaran (for R1)

ORDER

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

No representation for the writ petitioner.

2. Claiming himself to be a tenant of the borrower, under a unregistered lease deed dated 31.10.2014, petitioner is stated to have sent a representation dated 29.04.2017 to the Manager, Catholic Syrian bank Limited, Peravallur Branch, Chennai, 1st respondent, not to vacate the petitioner, in exercise of the powers under the SARFAESI Act, 2002.

3. Respondent bank has filed a counter affidavit stating that O.A.No.217 of 2013, has been filed before the Debts Recovery Tribunal-II, Chennai, for recovery of Rs.2,15,72,210.97p from Mrs.Vennila George Fernandes, and another, and that the tribunal has granted the reliefs sought for, pursuant to which, Debt Recovery Certificate No. 355 of 2015, dated 15.03.2017, has been issued by the Debts Recovery Tribunal-II, Chennai. Certificate dated 15.03.2017 is

extracted hereunder.

ORDER

WHEREAS you Mrs.Vennila George Fernandes, Certificate Debtor No.1 / Defendant No.1 have failed to pay a sum Rs.2,15,72,210.97p (Rupees Two Crores Fifteen lacs seventy two thousand two hundred ten and paise ninety seven only), and further interest and costs as per law payable by you, to the Certificate Holder / Applicant Bank in terms of Debt Recovery Certificate No.355/2015 dated 05.03.2015 issued in O.A.No.217 of 2013 by the Hon'ble Presiding Officer of this Tribunal and Notice of Demand dated 10.03.2015 subsequently issued by the Recovery Officer of the Tribunal for recovery of the aforesaid amount;

AND WHEREAS the below mentioned properties in Item No.1 and 2 were attached and are being brought for sale on 03.03.2017 through this Forum by the Certificate Holder for realisation of the dues of Rs.2,39,64,151/- owed by you to it as on 28.02.2017;

AND WHEREAS the Certificate Holder/Applicant Bank has brought to the notice of this Forum that inspection of this property by the bidders scheduled on 08.03.2017 did not materialise and hence the said inspection is rescheduled on 17.03.17 between 11.00 AM and 3.00 PM.

Now, therefore, you the Certificate Debtor No.1 and Occupants of the below mentioned properties are directed to permit the officials of the Certificate Holder and bidders to inspect the properties on 17.03.2017 (Friday) between 11.00 AM and 3.00 PM.

DESCRIPTION OF THE PROPERTIES

Item No.1:

Flat No.S-2 in the Second Floor, with a super built up area of 925 sq.ft (as per Document it is 1030 sq.ft) at Valluvar Street, Krishnamurthy Nagar, Kodungaiyur, Chennai - 600 118 together with 362 sq.ft undivided share of land in 25/100th in 4400 undivided share in vacant land property i.e., 3300 sq.ft comprised in S.No.288/3, as per Patta S.No.288/3A1A2, T.S.No.21, Block No.55 being Plot No.6 of Kodungaiyur Village, Fort Tondiarpet Taluk, Chennai District, situated within the Sub Registration District of Sembiam and Registration District of Chennai North, bounded on the North by T.S.No.288/2, East by : Plot No.7: South by: Valluvar Street (30" Wide Road) and West by Plot No.5.

Item No.2:

Flat No.F-1 in the First Floor, with a super built up area of 915 sq.ft at Valluvar Street, Krishnamurthy Nagar, Kodungaiyur, Chennai - 600 118 together with 352 sq.ft undivided share of land in 25/100th in 4400 undivided share in vacant land property i.e., 3300 sq.ft comprised in S.No.288/3 as per Patta S.No.288/3A1A2, T.S.No.21, Block No.55 being Plot No.6 of Kodungaiyur Village, Fort Tondiarpet Taluk, Chennai District situated within the Sub Registration District of Sembiam and Registration District of Chennai North, bounded on the North by T.S.No.288/2, East by : Plot No.7: South by: Valluvar Street (30" Wide Road) and West by Plot No.5.

If this order is not complied with by you the Certificate Debtor 1 and the Occupants of said premises, possession of the said properties would be taken over by this Tribunal, in terms of Section 25 (aa) of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993.

Given under my hand and seal of this Tribunal at Chennai

this the 15th day of March 2017.

4. Bank has further contended that as against, recovery certificate, issued by the recovery officer, there is a statutory remedy under Section 30 of the Recovery of Debts Due to Bank and Financial Institutions, which reads as hereunder.

"30. Section 30. Appeal against the order of Recovery Officer - (1) Notwithstanding anything contained in Section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt of an appeal under sub-section (10), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive)".

According to the bank, when proceedings were not initiated under the provisions of the SARFAESI Act, 2002, representation dated 29.04.2017, not to vacate in exercise of SARFAESI Act, does not require, to be considered

5. Prayer sought for in the writ petition is for issuance of a mandamus directing the Manager, Catholic Syrian Bank Limited, Chennai, to consider the representation sent by the petitioner dated 29.04.2017, with a direction to comply with the order and directions of the Honourable Supreme Court passed in (2014) 6 SCC 1 (Harshad Govardhan Sodangar Vs. International Asset Reconstruction Pvt. Ltd

6. No proceedings under SARFAESI Act, 2002, has been initiated. Therefore, prayer sought for in the writ petition is misconceived and hence, writ petition is dismissed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

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

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12.09.2017

Index: Yes/No.

Internet: Yes

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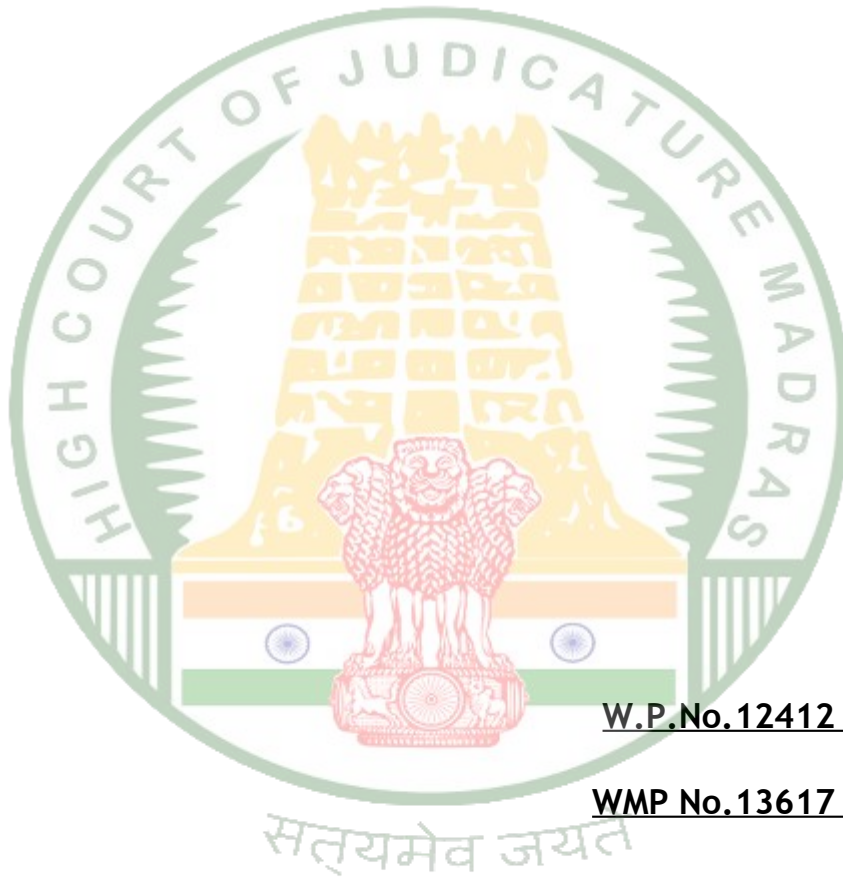
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