

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/7/2017

C O R A M

THE HONOURABLE MR.JUSTICE S. MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

WRIT PETITION NO.14145 OF 2017

Abdul Kareem Malani

.. Petitioner

Vs

1. The Chief Manager/
Authorised Officer
Canara Bank
Kilpauk Branch
No.824 Poonamallee High Road
Kilpauk
Chennai 600 010.

2. O.S.Ameen Ur Rehman

.... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus to direct the first respondent to desist from taking any coercive action or interfering with the peaceful possession and enjoyment of the tenanted property more fully described in the schedule of the writ petition during the subsistence of the lease period.

For Petitioner Mr.M.Abdul Razack

For Respondents ... Mr.S.Kesavan for R.1

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O R D E R

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

E-auction notice, dated 22/2/2017, is challenged by the tenant, with a prayer, to direct the first respondent, to desist from taking any coercive action or interfering with the peaceful possession and enjoyment of the tenanted property during the subsistence of the lease period.

2. Record of proceeding shows that notice has been ordered on 7/6/2017.

3. Mr.Kesavan, learned counsel appearing for the first respondent/Bank submitted that on 13/7/2017, vakalat has been filed, on behalf of the Chief Manager/Authorised Officer, Canara Bank, Chennai.

4. On this day, when the writ petition came up for further hearing, Mr.M.Abdul Razack, learned counsel for the tenant submitted that though auction was conducted, there was no bidder. Submission is placed on record.

5. Section 17 (4-A) of the SARFAESI Act, 2002 reads thus:-

(i). any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purpose of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy -

(a). has expired or stood determined; or

(b). is contrary to Section 65 -A of the Transfer of Property Act, 1882 (4 of 1882); or

(c). is contrary to terms of mortgage; or

(d). is created after the issuance of notice of default and demand by the Bank under sub-section (2) of Section 13 of the Act; and

(ii). The Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause(b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act."

6. In the light of the amended provision, which came into effect from 1/9/2016 and considering the fact that there was no bidder in the auction, Mr.M.Abdul Razack, learned counsel for the tenant submitted that liberty may be given to challenge, fresh auction notice, if any issued by the first respondent

Bank, before the Tribunal and that fresh auction notice be directed to be served on the tenant/writ petitioner.

7. Mr.S.Kesavan, learned counsel for the Bank submitted that fresh auction notice, if any, would be served on the tenant.

8. In the light of Section 17 (4-A) of the SARFAESI Act, 2002, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition No.15347 of 2017 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Chief Manager/
Authorised Officer
Canara Bank
Kilpauk Branch
No.824 Poonamallee High Road
Kilpauk
Chennai 600 010.

+1cc to Mr.M.Abdul Razack, Advocate, S.R.No.49803
+1cc to Mr.S.Kesavan, Advocate, S.R.No.49782

सत्यमेव जयते

W.P.No.14145 of 2017

KJ(CO)
CS/09/08/17

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