

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

CORAM:

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

W.P.Nos.26481 to 26483 of 2014
and M.P. Nos.1 to 1 of 2014

W.P.No.26481 of 2014
R.Murugan

... Petitioner

vs.

1. The Authorised Office,
Syndicate Bank,
Regional Office, Leelavathi Building,
69, Armenian Street, Chennai - 600 001.

2. Sri Venkateswara Exports,
Rep. by its Partner.

3. V.Palanivel

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, to call for the records relating to the impugned Possession Notice dated 08.08.2014 and the consequential sale notice dated 9.9.2014 issued by the 1st respondent bank and quash the same.

W.P.No.26482 of 2014
R.Ranjan

सत्यमेव जयते

... Petitioner

vs.

1. The Authorised Office,
Syndicate Bank,
Regional Office, Leelavathi Building,
69, Armenian Street, Chennai - 600 001.

2.P.Vijaya

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, to call for the records relating to the impugned Possession Notice dated

26.08.2014 and the consequential sale notice dated 9.9.2014 issued by the 1st respondent bank and quash the same.

W.P.No.26483 of 2014
N.Ramarajan

... Petitioner

vs.

1. The Authorised Office,
Syndicate Bank,
Regional Office, Leelavathi Building,
69, Armenian Street, Chennai - 600 001.

2. V.Palanivel
Proprietor of
Sri Periyandavar Textiles. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, to call for the records relating to the impugned Possession Notice dated 26.08.2014 and the consequential sale notice dated 9.9.2014 issued by the 1st respondent bank and quash the same.

For Petitioner : Mr.E.Ramachandran
in all W.Ps.
For Respondents : Mr.V.Suthakar (for R1)
in all W.Ps.

COMMON ORDER

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

No appearance for the petitioners.

2. Proceedings, impugned before this Court in W.P.Nos.26481 to 26483 of 2013, are the possession notices dated 08.08.2014 and 26.08.2017 issued, under Section 13(4) of the SARFAESI Act, 2002 and sale notice dated 09.09.2014, issued by the Authorised Officer, Syndicate Bank, Chennai, bringing the Security Assets for sale.

3. Petitioners have contended that they are statutory tenants, and therefore, they cannot be evicted except, under due process of law.

4. Petitioners have also alleged violation of Rule 8(5) & (7) of the Security Interest (Enforcement) Rules, 2002.

5. Petitioners have further contended that bank has failed to consider that rental agreement was prior to the creation of the mortgage of the property.

6. We have perused the material on record. Writ petitions have been filed, on the basis of the decision in Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others reported in 2014(5) CTC 546, wherein, the Hon'ble Supreme Court held that writ petitions, filed by the tenants, is maintainable.

7. Subsequently, by Act 44 of 2016, Section 4-A has been inserted in Section 17 of the SARFAESI Act, 2002, with effect from 01.09.2016, which 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."

8. Section 17-1 of the SARFAESI Act, reads thus:

"17. Right to appeal: (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

PROVIDED that different fees may be prescribed for making the application by the borrower and the person other than the borrower."

9. Instant writ petitions are listed under the caption, 'notice regarding admission'.

10. In the light of the subsequent amendment to Section 17 of Act, extracted supra, we are of the view that as on today, writ petitions are not maintainable. Writ petitions are dismissed, giving liberty to the petitioners to seek for appropriate remedy, in the manner known to law. No costs. Consequently, the connected Writ Miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS IV)

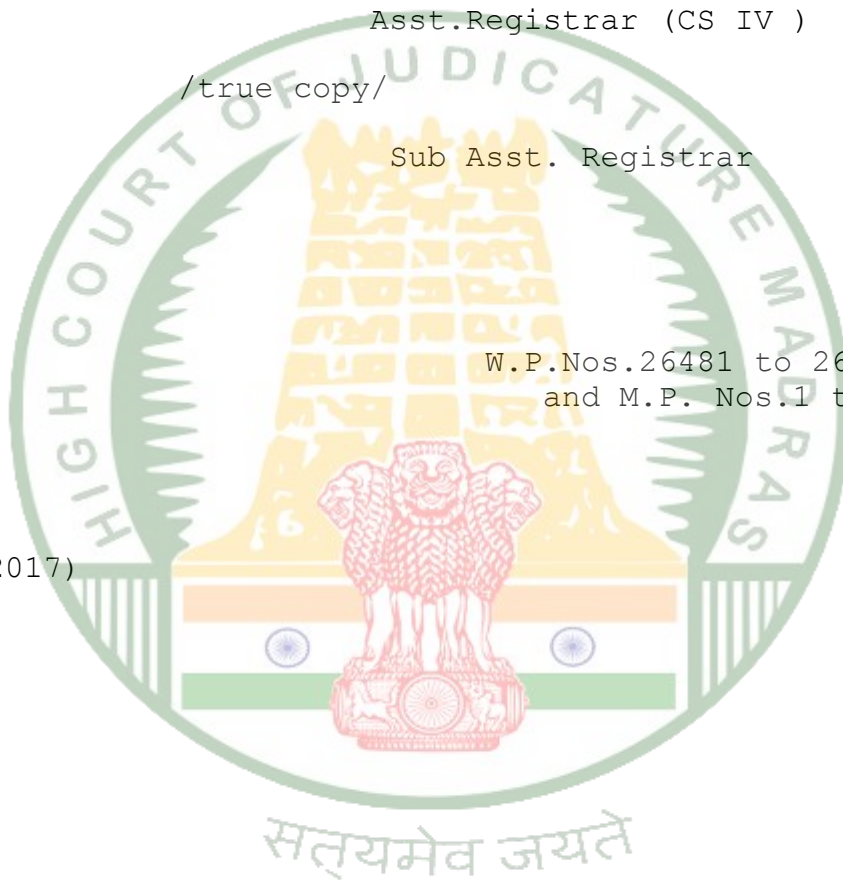
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Sub Asst. Registrar

ars

W.P.Nos.26481 to 26483 of 2014
and M.P. Nos.1 to 1 of 2014

AR (IV)
VR(10/10/2017)



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