IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/2/2017

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

Writ Petition Nos.24191 to 24195 of 2015

B. Latha ... Petitioner in W.P.No.24191 of 2015

A. Nagarajan ... Petitioner in W.P.No.24192 of 2015

E. Rammurthy ... Petitioner in W.P.No.24193 of 2015

L. Govindarajan ... Petitioner in W.P.No.24194 of 2015

M. Senthilkumar ... Petitioner in W.P.No.24195 of 2015

Vs

1. The Reserve Bank of India
Rajaji Salai
Chennai 1.

2. The Authorised Officer
Sundaram BNP Paribas Home Finance Ltd
Sundaram Towers
No.46 Whites Road
Royapettah
Chennai 14.

3. The District Collector
Thiruvannamalai District
Thiruvannamalai.

4. The Revenue Divisional Officer
Cheyyar
Thiruvannamalai District.

5. Dhanalakshmi ... Respondents in all the writ petitions

Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to forbear the respondents 2 to 4 from proceeding further against the petitioner by invoking under the provisions of SARFAESI Act for vacating the petitioner from their respective shop situated at M.C.Complex, Vadiyaraja Street, Near Anna Statue, Arni, Thiruvannamalai District, in Shop Nos.64, 57 & 67, 58, 66 and 68 respectively.

For petitioners ... Mr.C.Prakasam

For respondents ... Mr.K.J.Parthasarathy
for R.2.

Mr.TM.Pappaiah,
Special Government Pleader
for R.R.3 and 4.

C O M M O N O R D E R

(Order of the Court was made by M.Govindaraj,J)

Writ petitioners are the tenants under the fifth respondent. Fifth respondent and her family members had borrowed a huge amount from the second respondent/Sundaram BNP Paribas Home Finance Ltd, Chennai. The second respondent has initiated SARFAESI proceedings against the fifth respondent and her family members. Pursuant to the SARFAESI proceeding, the fourth respondent was requested to take possession, under Section 14 of the SARFAESI Act, of the premises. The action under Section 14 of the Act was resisted by the petitioners herein, on the ground that they are statutory tenants and they are protected by the Rent Control Act and the SARFAESI Act has no application. They have also contended that the second respondent is not a financial Institution, notified under the Reserve Bank of India Regulations. The judgment reported in 2011 (2) CTC - 474, lease under Section 31 E, in which no security has been created would not be covered under the SARFAESI Act. Accordingly, in view of the subsisting lease between the writ petitioners and the borrowers, the provisions of SARFAESI Act is not applicable to the cases on hand.

2. Questioning the action taken by the second respondent, writ petitioners have preferred a writ of mandamus, for a direction forbearing the respondents 2 to 4, from proceeding further against the petitioners, by invoking the provisions of the SARFAESI Act, for vacating the petitioners from their

respective shops, situated in the subjective property.

3. The second respondent has filed a counter, stating that the writ petitions filed by the tenants is an abuse of process of law. According to him, the documents filed by the petitioners does not create a right of statutory tenancy as declared to be required by the decision of the Hon'ble Supreme Court in HARSHAD GOVARDHAN SONDAGAR Vs. INTERNATIONAL ASSETS RECONSTRUCTION COMPANY LIMITED AND OTHERS {2014 (6) SCC - 1}.

4. The borrower/fifth respondent, while challenging the sale notice, in S.A.No.142 of 2015, did not disclose anything about the alleged tenancy, which is now falsely pleaded by the petitioners herein. Borrower had failed to comply with the conditional order passed by the Debts Recovery Tribunal, in S.A.No.142 of 2015 and consequently, withdrew the appeal, on 11/8/2015. If at all the alleged tenancy is true, then the borrowers would have made a specific averment about the same in the appeal filed before the Debts Recovery Tribunal. The said fact would establish that they are not statutory tenants and have been set up by the borrower with an ulterior motive to protract and frustrate with the recovery proceeding.

5. Owing to the willful default in payment of EMI by the fifth respondent, the second respondent has initiated proceeding under the SARFAESI Act, by issuing a demand notice, under Section 13 (2), on 1/1/2014, followed by a possession notice, under Section 13 (4) of the Act, dated 8/4/2014. The same was challenged by the borrowers, in S.A.No.207 of 2014, before the Debts Recovery Tribunal, on the ground that there are some discrepancy in the notices.

6. Adverting to the same, the second respondent had withdrawn the notices and issued a fresh notice, on 1/5/2014, under Section 13 (2) of the SARFAESI Act. The borrowers did not file any objection and symbolic possession of the secured asset was taken, on 17/7/2014, complying all the statutory requirements of Rule 8 of the Security Enforcement Rules. Thereafter, the second respondent had issued a sale notice, on 17/2/2015, which was challenged by the borrowers and a conditional order of stay was granted by the Debts Recovery Tribunal. Since the conditional order was not complied with, the appeal was dismissed as withdrawn, on 11/8/2015.

7. The second respondent has filed an application, on 1/10/2014, under Section 14 of the SARFAESI Act with the third respondent and when the matter was pending for a considerable time, the second respondent had filed W.P.No.3882 of 2015, before this Court, for a direction to the third respondent, to

dispose of Application under Section 14 of the Act.

8. This Court, by its order, dated 16/2/2015 has directed the third respondent, to take up the matter and decide the same, in accordance with law, on its own merits, within a period of six weeks, from the date of receipt of a copy of the order. Pursuant to this, the third respondent had passed an order, on 27/5/2015, directing the fourth respondent, to take over possession of the secured asset and to hand over the same to the second respondent. When attempts are made to take actual possession, the borrowers had set up few persons, to prevent delivery of entire premises, thereby obstructing them from taking over possession.

9. The ground raised in the above writ petitions is that the second respondent is not a notified financial institution is not correct. On the other hand, it has been duly notified in the Government gazette and the same has been upheld by this Court in W.P.No.21049 of 2015, by its order, dated 14/3/2016 and review filed against the same was also dismissed, on 22/4/2016 in R.A.No.45 of 2016. Therefore, the writ petition has to be dismissed.

10. Heard both sides.

11. Primary contention of the writ petitioners is that the second respondent is not a financial institution, notified under Reserve Bank of India regulations and therefore, they cannot take any action under the SARFAESI proceedings. On the other hand, it is seen from the records that this Court, in a writ petition filed against the second respondent, the very same point was dealt with and in paragraph Nos. 5 and 6, it was held as under:-

> "5. Clause (m) of Section 2 (1) of the SARFAESI Act defines "Financial institution", including under sub-clause (ii), any institution as specified by the Central Government under sub-clause (ii) of clause (h) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.
>
> 6. The Central Government, vide notification dated 10th November 2003, exercising its power under sub-clause (iv) of clause (m) of sub-Section (1) of Section 2 of the SARFAESI Act, notified the Sundaram Home Finance Limited, Chennai, as the financial institution under the name of the

> Housing Company. Thereafter, the nomenclature of the said company was changed under the Certificate of Registration issued by the National Housing Bank, dated 10th January, 2008, which was duly notified, as aforestated by the Government of India, Ministry of Finance, (Department of Financial Services) and published in the Gazette of India on 24th March, 2008. It appears that necessary amendment could not be carried out, which was clarified subsequently by the Central Registry of Securitisation Asset Reconstruction and Security Interest of India, in response to the letter of the second respondent dated 12th February 2016 that the name of the institution has been amended long back."

12. Review filed in R.A.No.45 of 2016 was also dismissed by an order, dated 22/4/2016. From this order, it is clearly inferred that the second respondent institution is notified as financial institution and is entitled to maintain proceeding under SARFAESI Act.

13. The second point is that the writ petitioners are statutory tenants protected under the Rent Control Act and the SARFAESI proceedings cannot be initiated against him, as per Section 31 E of the Act.

14. The contention of the learned counsel for the second respondent that it is clearly seen from the records that the writ petitioners are not a statutory tenants. In fact, the order was passed by the third respondent/District Collector, under Section 14 of the SARFAESI Act. By way of filing writ of mandamus, the writ petitioner is seeking to nullify the order passed under Section 14 of the Act. Such a mandamus cannot be granted. Now the record of proceeding shows that the writ petition was filed in August 2015 and an order of status-quo was also granted in favour of the writ petitioners.

15. The remedy of the aggrieved party as against the notice issued under Section 13 (4) of the SARFAESI Act is to approach the appropriate Tribunal. The same position was succinctly stated by the Hon'ble Supreme Court in TRANSCORE Vs. UNION OF INDIA {2006 (5) CTC - 753}.

16. In the light of the above decision, this Court is of the considered view that without exhausting the alternative remedy, the relief sought for by the petitioners by invoking the discretionary remedy under Article 226 of the Constitution of

India, cannot be granted. Moreover, the arguments of the learned counsel appearing for the second respondent has more force and the prayer sought for by the writ petitioners cannot be sustained.

17. Accordingly, these writ petitions are dismissed. No costs. However, we do not want to record any observation. It is open to the writ petitioners, to work out their remedies, in the manner known to law and in accordance with law. Consequently, the connected Miscellaneous Petitions are closed.

sd/
Assistant Registrar(CS III)

/true copy/

Sub Assistant Registrar

mvs.

To

1. The Reserve Bank of India
Rajaji Salai
Chennai 1.

2. The District Collector
Thiruvannamalai District
Thiruvannamalai.

3. The Revenue Divisional Officer
Cheyyar
Thiruvannamalai District.

+1cc to Government Pleader SR.No.9430
+1cc to Mr.C.Prakasam, Advocate SR.No.9413
+1cc to Mr.KJ.Parthasarathy Advocate SR.No.9087
+4cc to Mr.KJ.Parthasarathy Advocate SR.No.9088 to 9091
(23/03/2017)

Writ Petition Nos.24191 to 24195 of 2015

LRS(CO)
GN(08/03/2017)