

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.26267 of 2017
and WMP No.27938 of 2017

Nazeema

... Petitioner

vs.

1. Indian Overseas Bank,
Rep. by its Branch Manager,
Kothagiri Branch,
4/235-A, Bethel Plaza, 1st Floor,
Nilgiris - 643 217.

2. P.Senthil Kumar

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the 1st respondent Bank to restore the petitioner in possession of the petitioner premises at No.1/305 B2, Dr.Kanikairaj Nagar, Chinna Pillatti, Aravankadu P.O., Nilgiris District 643 202.

For Petitioners : Mr.I.John Arockiadas

ORDER

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

Petitioner, claiming himself to be a tenant under 2nd respondent, dispossessed by Indian Overseas Bank, Kothagiri Branch,

Nilgris, the 1st respondent, seeks for an issuance of writ of mandamus directing the bank to restore possession.

2. We have heard Mr.I.John Arockiadas, learned counsel for the petitioner and perused the materials available on record.

3. Question as to whether a petitioner is a tenant under the 2nd respondent and tenancy, whether before and after the mortgage of the property by the 2nd respondent with the Bank, have to be adjudicated and decided by the tribunal, if any application is filed under Section 17(4-A) of the SARFAESI Act, which reads as hereunder.

"(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."

4. Inasmuch as an alternative and effective remedy is provided in the statute, and for the reasons stated supra, mandamus cannot be issued. Giving liberty to the petitioner to approach the tribunal in the manner known to law, writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Index: Yes/No.
Internet: Yes
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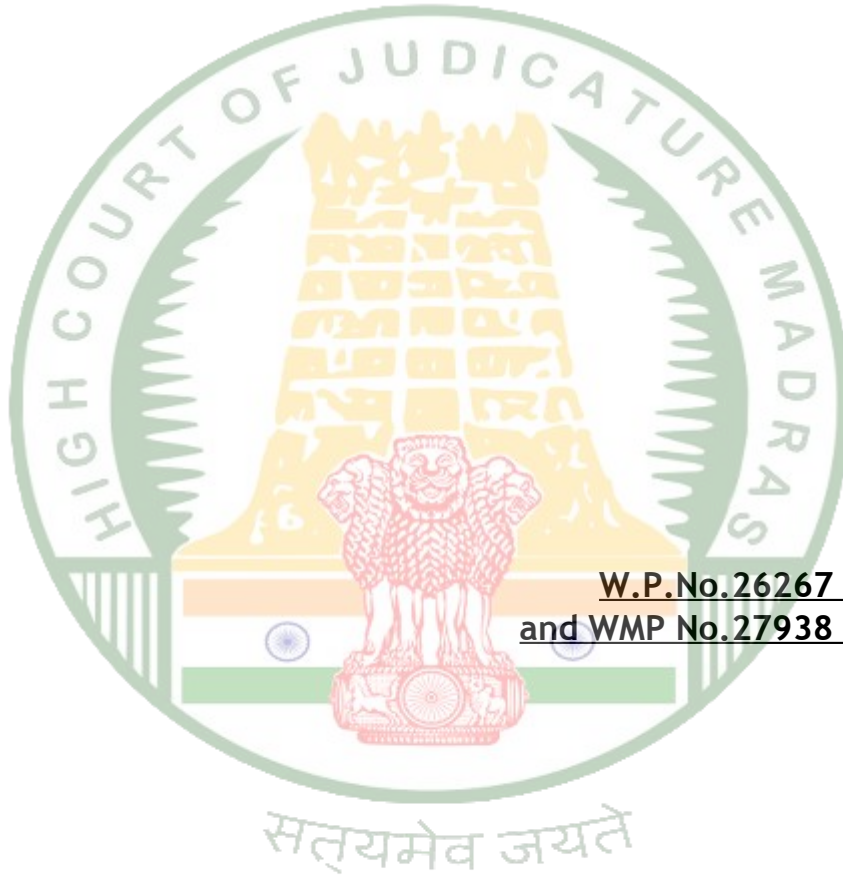
(S.M.K., J.) (R.S.K., J.)
09.10.2017

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S.MANIKUMAR, J.
AND
R.SURESH KUMAR, J.

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