

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.7043 of 2015
and
M.P. No.1 of 2015

G.Anbumani ... Petitioner

Vs.

The Assets Reconstructions Company
(India) Ltd, (ARCIL)
having its Registered office at
The Ruby, 10th Floor
29, Senapati Babat Marg
Dadar (West)
Mumbai - 400 028
(suo motu order substitution as per
order dated 09.11.2017) ... Respondent
(R2 Given up)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records of the impugned order of Commission Warrant dated 03.01.2013 issued by the Court of Chief Judicial Magistrate at Tiruvallur, vide C.M.P. No.1473/2012, appointing the 2nd respondent as advocate commissioner to take possession of the petitioner's residential property situated at Plot No.38, 3rd Street, Ellaiamman Nagar, Mukthapudupet, Avadi, Chennai-55 in Old Patta No.211, Punjai Survey No.21/1, No.10, Mukthapudupet Village, Avadi Municipality, Ambattur Taluk, Thiruvallur District admeasuring 2400 sq.ft. of land with built up area of 955 sq.ft. in ground floor and 695 sq.ft. in 1st floor and quash the same.

For Petitioner : Mr.G.Shanmugam
for M/s.Ahmad Associates
For Respondent : No Appearance

ORDER
(Made by S.MANIKUMAR, J.)

On 09.11.2017, we passed the following order:

"On 05.10.2017, Mr.S.Namasivayam, learned
counsel for CitiBank submitted that loan has been

assigned in favour of Assets Reconstructions Company (India) Limited, in short 'ARCIL' a company incorporated under the Companies Act, 1956 and also registered as Securitisation and Asset Reconstruction Company in terms of Section 3 of SARFAESI Act, 2002, having registered office at The Ruby, 10th Floor, 29, Senapati Bapat Marg, Dadar (West), Mumbai - 400 028.

2. Learned counsel for the petitioner sought time to take steps for necessary amendment. Matter stood adjourned on three occasions. On 01.11.2017, representation has been made that substitution petition stated to have been filed is yet to be numbered. We directed the Registry to post the matter to 08.11.2017 and thus, it is listed today.

3. Mr. Shanmugam, learned counsel for the petitioner furnished a copy of the Assignment agreement dated 07.06.2017, entered into between Citibank and ARCIL, filed for substitution. There is no representation for ARCIL.

4. Though, there is no representation for ARCIL, however, taking note of the assignment made by Citibank, Chennai and the copy of the assignment memorandum dated 07.06.2017, we are of the view that ARCIL is a necessary and proper party for effective adjudication of the dispute involved and therefore, in exercise of the powers under Article 226 of the Constitution of India, we suo moto order substitution as hereunder.

"Citibank, Rep. by its Authorized Officer, No.766, Anna Salai, Chennai-2, is substituted by Assets Reconstructions Company (India) Limited, (ARCIL), having registered office at The Ruby, 10th Floor, 29, Senapati Bapat Marg, Dadar (West), Mumbai - 400 028, as 1st respondent"

5. Registry is directed to carry out necessary amendment and post the writ petition 'for orders' on 10.11.2017, at the top of the list."

2. Challenge in this writ petition is to an order made in C.M.P. No.1473 of 2012 dated 03.01.2013 on the file of the learned Chief Judicial Magistrate, Thiruvallur, appointing an Advocate Commissioner, to take possession of the properties mortgaged with the bank and to hand over the same to its Authorised Officer.

3. Resolving the controversy and answering the reference, as to whether, the learned Chief Metropolitan Magistrate, under Section 14 of the SARFAESI Act, 2002, would

include the Chief Judicial Magistrate in Non-Metropolitan Areas, also after considering catena of decisions and provisions, a Hon'ble Full Bench of this Court in K.Arockiyaraj v. Chief Judicial Magistrate, Srivilliputhur, Virudhunagar District reported in 2013 (5) CTC 225 : 2013 (6) MLJ 641 : AIR 2013 Madras 206, held that Section 14 does not contemplate the secured creditors to approach the learned Chief Judicial Magistrate for assistance to secure their assets and the secured creditors can approach only the learned Chief Metropolitan Magistrate in metropolitan areas and in non-metropolitan areas, the secured creditors has to approach the District Magistrate and not the Chief Judicial Magistrate. The relevant portion of the judgment is extracted here under:

"35. From the perusal of the above judgments as well as the statutory provisions contained in Section 14 of the SARFAESI Act, 2002, in its independent existence, we are of the firm view that Section 14 does not contemplate the secured creditors to approach the Chief Judicial Magistrates for assistance to secure their assets and the secured creditors can approach the Chief Metropolitan Magistrate in Metropolitan areas and in non-metropolitan areas, the secured creditors has to approach the District Magistrate, and not the Chief Judicial Magistrate."

5. Following the Hon'ble Full Bench decision in K.Arockiyaraj's case (cited supra), in a similar case in W.P. (MD)No.14771 of 2014 [E.Thiruvaraman v. The Branch Manager, ICICI Bank, Trichy], a Division Bench of this Court, to which, one of us was a party (Justice S.MANIKUMAR), vide order, dated 08.09.2014, set aside the order of the Chief Judicial Magistrate, Trichy, appointing an Advocate Commissioner, to provide assistance to the Asset Reconstruction Company (India) Ltd., for taking physical possession of the property, on the ground of lack of jurisdiction.

6. In the light of the Hon'ble Full Bench decision of this Court in K.Arockiyaraj's case (cited supra), the impugned order in C.M.P.No.1473 of 2012, dated 03.01.2013, is liable to be set aside and accordingly, set aside.

7. In view of the above, the writ petition is allowed. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

asr

To

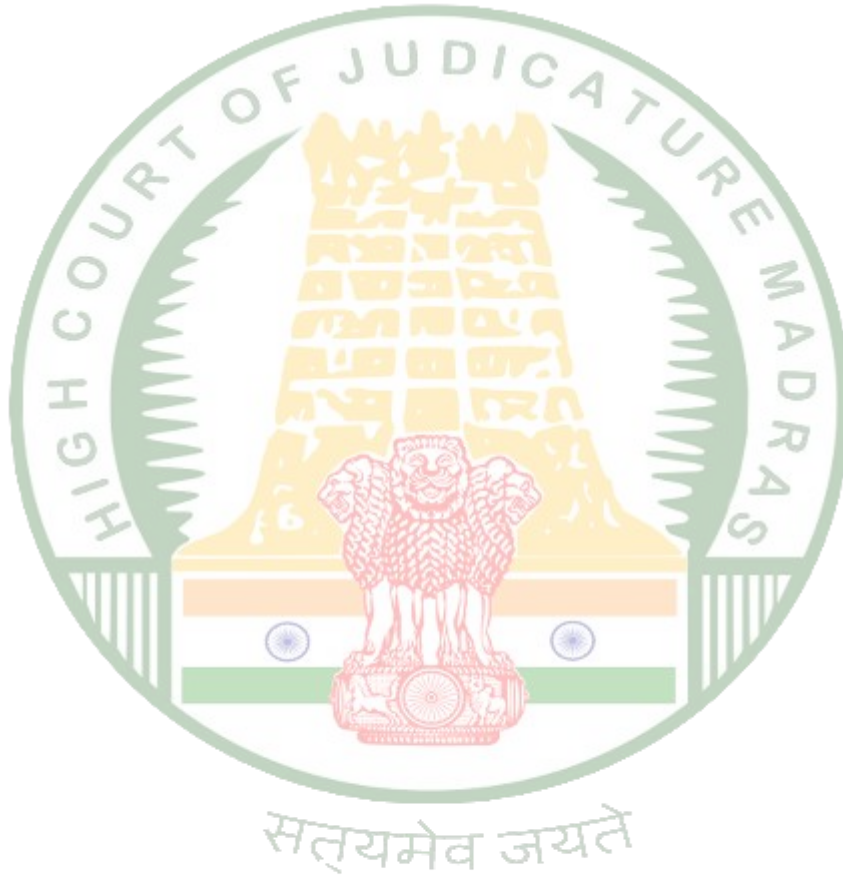
The Chief Judicial Magistrate,
Tiruvallur.

+1cc to M/s.Ahmed Associates, SR.No.80302

+1cc to Mr.S.Namasivayam, Advocate SR.No.80339

W.P.No.7043 of 2015

sm:6.12.2017



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