

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.23425 of 2016
and
WMP Nos.20081 & 20082 of 2016

M/s.Acolyte Soft Private Limited
Rep by its Manager Mr.Sankar
Sreshta Pankajam, IV Floor
No.10, 23/8
Raja Street Extension, Mandaveli
Chennai - 600 028

... Petitioner

versus

1.A.Venkatramani

2.Mrs.V.Usha

3.Authorised Officer
M/s.Reliance Housing Development
Finance Corporation Ltd.,
D-3, P3B, District Centre Saket
New Delhi - 110 017

... Respondents

Writ Petitions filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records, the order dated 24.06.2016 in Crl.M.P.No.6794 of 2016 on the file of the Chief Metropolitan Magistrate Court, Chennai and quash the same as illegal, incompetent, unconstitutional and further forbear the 3rd respondent from interfering with the possession of the petitioner at the addresses stated in the affidavit without due process of law.

For Petitioner : Mr.V.Arunagiri

For Respondents : Mr.S.Namasivayam for R3

O R D E R

(made by S.MANIKUMAR, J.)

Claiming to be a tenant in respect of the property Sreshta Pankajam, IV Floor, No.10, 23/8, Raja Street Extension, Mandaveli, Chennai - 600 028, under respondents 1 and 2, joint owners, who had mortgaged the same with M/s.Reliance Housing Development Finance Corporation Ltd, New Delhi and further contending inter alia that a statutory tenant cannot be evicted without due process of law, order dated 24.06.2016 passed by the learned Chief Metropolitan Magistrate, Allikulam, Chennai-3, in Crl. M.P.No.6794 of 2016 filed under Section 14 of the SARFAESI Act, 2002, is challenged before this court.

2. Writ petitioner, has sought for a writ of certiorarified mandamus, to quash the same and consequently for a direction to forbear M/s.Reliance Housing Development Finance Corporation Ltd., namely the 3rd respondent, from interfering with the possession of the petitioner, at Sreshta Pankajam, IV Floor, No.10, 23/8, Raja Street Extension, Mandaveli, Chennai - 600 028, without due process of law.

3. Record of proceedings of the instant writ petition shows that while ordering notice of motion on 05.07.2016 returnable in eight weeks, a Hon'ble Division Bench of this Court, has granted interim stay from evicting the petitioner from the premises in question for a period of eight weeks.

4. Material on record discloses that the respondents 1 and 2/land owners have filed a Sarfaesi Appeal No.52/2016 challenging the possession notice issued by the third respondent and that the same is pending on the file of the Debts Recovery Tribunal - II, Chennai. The dispute over non-payment of the loan amount is purely inter se between the landlords/borrowers and the bank, and the petitioner, namely, M/s.Acolyte Soft Private Limited, has no role to play.

Heard the learned counsel for the parties and perused the materials available on record.

6. First of all, mandamus cannot be issued to set at naught a proceeding, issued under a statute. Secondly, under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, 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.

7. By Act 44 of 2016, with effect from 01.09.2016, Parliament has inserted Section 4-A in Section 17 of the Act and it reads as follows:

(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. In the light of the recent amendment, by way of Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (44 of 2016), an effective and alternative remedy is provided to a person, who claims to be a tenant or has lease hold rights, on the secured asset and that if any application is filed, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties therein, in relation to such claim shall, for the purpose of enforcement of security interest, has jurisdiction to examine whether the lease or tenancy and other parameters, mentioned in Section 4 A of the Amended Act and to pass such orders, as deems fit, in accordance with the

provisions of Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002.

9. Exercise of writ jurisdiction is extraordinary, and only in the absence of alternate and efficacious remedy. If there is any attempt to forcibly evict the petitioner, he can always resort to the statutory remedy, as per the amended provision.

10. Though Mr.S.Namasivayam, learned counsel for the third respondent contended that the writ petitioner has no locus standi to challenge the order passed by the Chief Metropolitan Magistrate, Chennai, as he is not a tenant at all and that at the instance of the borrowers, the instant writ petition has been filed, to protract the proceedings and further contended that when the borrowers in the application filed before the Tribunal have submitted that they are residing in the subject property, contention of the writ petitioner before this court that they are in possession of the subject property, has to be rejected, we are not inclined to advert to the same, as this court has taken a view that the writ petitioner has an efficacious remedy, before the Tribunal. If any application is filed by the petitioner, before the Tribunal, it is open to M/s.Reliance Housing Development Finance Corporation Ltd., namely the 3rd respondent, to oppose the same.

11. In the light of the above observation, writ petition is dismissed. Interim stay granted on 05.07.2016, shall stand vacated. However, there shall be no order as to Cost. Consequently, the connected Writ Miscellaneous Petitions are closed.

sd/
Assistant Registrar (CS VI)

/true copy/

सत्यमेव जयते
Sub Assistant Registrar

asr
+lcc to Mr.S.Namasivayam, Advocate Sr.No.5008.

W.P.Nos.23425 of 2016
and

WMP Nos.20081 & 20082 of 2016

KS (CO)
GN (08/02/2017)