

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM:

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

W.P.No.2611 of 2016

C.Subramani

... Petitioner

versus

The Authorised Officer,
State Bank of India,
Erode Main Branch,
D-48, State Bank Road,
Erode 638 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records, relating to the impugned order made by the learned Chief Judicial Magistrate, Erode in C.M.P.No.922 of 2012, dated 21.03.2012, quash the same and consequently, to forbear the respondent from restraining or in any way dispossessing the petitioner, from his dwelling house in Survey No.355/6, Door No.118, Kumanan Nagar, Kumalankuttai, Erode.

For Petitioner : Mr.E.Mohamed Abbas

For Respondent : Mr.Navaneetha Krishnan,
for Mr.M.L.Ganesh

ORDER

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

Seeking assistance for taking possession, the State Bank of India, Erode Main Branch, Erode, respondent herein, has filed C.M.P.No.922 of 2012, under Section 14 of the SARFAESI Act, before the learned Chief Judicial Magistrate, Erode. Vide order, dated 21.03.2012, the learned Chief Judicial Magistrate, Erode, has appointed P.T.Jennifer, to take possession of the properties, described in the schedule to this application. Station House Officer of Erode North Police Station has been directed to provide such assistance to the learned Advocate Commissioner to execute the warrant. Remuneration of Rs.12,000/-

was fixed. Being aggrieved by the order made in C.M.P.No.922 of 2012, dated 21.03.2012, the borrower has filed the instant writ petition to quash the abovesaid order and consequently, to forbear the respondent from restraining or in any way dispossessing him, from his dwelling house in Survey No.355/6, Door No.118, Kumanan Nagar, Kumalankuttai, Erode.

2. Supporting the prayer sought for and placing reliance on a Full Bench decision 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, Mr.E.Mohamed Abbas, learned counsel for the petitioner submitted that the learned Chief Judicial Magistrate has no jurisdiction to entertain a petition, under Section 14 of the SARFAESI Act, 2002 and it is only the Chief Metropolitan Magistrate of the District or the District Magistrate-cum-District Collector, as the case may be, is empowered to entertain an application, under Section 14 of the SARFAESI Act, 2002, seeking assistance for taking possession of any secured asset.

3. Mr.Navaneetha Krishnan, learned counsel appearing for the respondent-Bank submitted that the entire loan amount has been paid and account settled.

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

4. 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.

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.Thiruvargan v. The Branch Manager, ICICI Bank, Trichy], a Division Bench of Madurai 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., while 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.922 of 2012, dated 21.03.2012, is liable to be set aside and accordingly, set aside.

7. In the result, the Writ Petition is allowed. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

skm

To

1.The Chief Judicial Magistrate,
Erode.

2.The Authorised Officer,
State Bank of India,
Erode Main Branch,
D-48, State Bank Road,
Erode 638 001.

+1cc to Mr.Azizalla Khan, Advocate in sr.no.79153

W.P.No.2611 of 2016

NR 09/11/2017

सत्यमेव जयते

WEB COPY