

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17/4/2018
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition Nos.9179 to 9188 of 2018

M/s. Shriram Housing Finance Ltd
rep. By its Authorised Officer
Mrs.Asha Lukose
Chennai 600 004.

... Petitioner in
W.P.Nos.9179, 9180, 9183,
9184, 9185, 9187, 9188 of 2018

M/s.Edelweiss Housing Finance
Ltd., Rep. by its Authorised Officer,
Mr.Mahendra Varma
Chennai-17

...Petitioner in WP.9181/2018

M/s. Edelweiss Housing Finance Limited
rep. By its Authorised Officer
Mr.M.Masood Thameem
Chennai.

... Petitioner in
W.P.Nos.9182, 9186 of 2018

Vs

The District Collector/
District Magistrate
Kancheepuram Collectorate
Kancheepuram District.

... Respondent in
W.P.Nos.9179, 9180 of 2018

First respondent in W.P.No.
9182, 9187 of 2018

The District Collector/
District Magistrate
Thiruvallur District
Thiruvallur.

... Respondent in
W.P.No.9181 of 2018

Nooriya

... Second respondent in
W.P.No.9182 of 2018

Mohamed Ibrahim Babu

... Third respondent in
W.P.No.9182 of 2018

The District Collector/
District Magistrate
Nilgiris Collectorate
Nilgiris District.

... Respondent in W.P.No.
9183 of 2018

The District Collector/
District Magistrate
Vellore Collectorate
Vellore District.

... Respondent in W.P.Nos.
9184, 9185 of 2018

The District Collector/
District Magistrate
Puducherry District
Puducherry.

... First respondent in
W.P.No.9186 of 2018

U. Pargathunnisa

... Second respondent in
W.P.No.9186 of 2018

Ubaidurrahman

... Third respondent in
W.P.No.9186 of 2018

The District Collector/
District Magistrate
Coimbatore Collectorate
Coimbatore District.

... Respondent in W.P.No.
9188 of 2018

Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of mandamus to direct the District Collector/District Magistrate, to pass orders on the petitions filed on 10/8/2017, 1/12/2017, 24/5/2017, 16/2/2017, 24/8/2017, 7/9/2017, 7/9/2017, 23/8/2017, 10/8/2017, 24/8/2017, under Section 14 (1) of the SARFAESI Act.

For petitioners... Mr.M.Ajmal Azzath

For respondent ... Mr.Sricharan Rengarajan
Additional Government Pleader
for the Respondents in WP.No.9179,
9180, 9181, 9183, 9184, 9185, 9188
and for the 1st Respondent in
WP.No.9182, 9186,9187

C O M M O N O R D E R

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

M/s.Shriram Housing Finance Limited, Chennai and Edel
<https://hcservices.ecourts.gov.in/hcservices/>
Weiss Housing Finance Ltd., Chennai, have sought for a writ of

mandamus, directing the District Collector-cum-District Magistrate, to pass orders, on the petitions filed under Section 14 (1) of the SARFAESI Act, 2002.

2. For brevity, details of the applications filed before the District Collector-cum-District Magistrates are tabulated hereunder:-

S.NO	W.P.No.	DISTRICT	REMARKS
1.	9179/2018	Kancheepuram	No postal acknowledgment
2.	9180/2018	Kancheepuram	No postal acknowledgment
3.	9181/2018	Thiruvallur	No postal acknowledgment
4.	9182/2018	Kancheepuram	No postal acknowledgment
5.	9183/2018	Nilgiris	No postal acknowledgment
6.	9184/2018	Vellore	No postal acknowledgment
7.	9185/2018	Vellore	No postal acknowledgment
8.	9186/2018	Puducherry	No postal acknowledgment
9.	9187/2018	Kancheepuram	No postal acknowledgment
10.	9188/2018	Coimbatore	No postal acknowledgment

3. When the above said writ petitions came up for hearing, on 16/4/2018, Mr.Sricharan Rangarajan, learned Additional Government Pleader, Government of Tamil Nadu, took notice and sought time, to get instructions, from the concerned District Collector-cum-District Magistrate.

4. Reverting, he submitted that inasmuch as the petitioners have not furnished the proof of acknowledgment of the respective petitions filed under Section 14 of the SARFAESI Act, 2002, office of the District Collector-cum-District Magistrate, is finding it difficult in tracing the papers. He further submitted that if the details of the receipt of the above said applications are furnished, appropriate steps would be taken for passing orders on the applications.

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

6. As rightly pointed out by Mr.Sricharan Rengarajan, learned Additional Government Pleader, representing the District Collector-cum-District Magistrate of Kancheepuram, Thiruvallur, Nilgiris, Vellore, Puducherry and Coimbatore Districts, mere averments do not stand the test of proof.

7. In all the writ petitions, there is no material to support the contention that applications have been submitted on various dates, as tabulated supra and acknowledged.

8. At this juncture, it is worthwhile to reproduce a judgment of the Hon'ble Supreme Court, in Bharat Singh and Others Vs. State of Haryana and Others, reported in 1988 (4) SCC 534, wherein the Hon'ble Supreme Court, at paragraph No.13, explained the difference between the pleadings and proof, under Article 226 of the Constitution of India and civil proceeding and the same reads thus:-

".... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evident which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

9. Directions have also been issued by the Principal Secretary to Government, vide letter No.19498/Res.II/2014-1, dated 9/7/2014, that there should be speedy disposal of the application filed under Section 14 of the SARFAESI Act. The said letter is extracted hereunder:-

"I am to invite your kind attention to the reference cited (copy enclosed) wherein the GM, SLBC, Chennai, has requested to advise the District Collectors (District Magistrates) for speedy disposal of applications filed by banks to assist in taking possession of securities of the defaulters charged to

the banks under Section 14 of SARFAESI Act, 2002.

2. In this connection, I am to request you to take necessary action for speedy disposal of the applications filed by the banks in taking possession of securities of the defaulters charged to the banks under Section 14 of SARFAESI Act, 2002, without affecting the image of the administration."

10. Though by placing reliance on the above said decision, instant writ petitions can be dismissed, for not filing proof, having regard to the steps claimed to have been taken by the Bank, in the year 2017, we are not inclined to do so, except to direct the petitioners to furnish proof of acknowledgment to the respondents. District Collector-cum-District Magistrates are also directed to ascertain the receipt of applications in their respective offices. On the petitioner furnishing the details of the proof of acknowledgment, District Collectors-cum-District Magistrates are directed to pass orders, within a period of six weeks thereafter, by following the procedure, as contemplated, under Section 14 of the SARFAESI Act, 2002. In the event of the petitioners not furnishing the proof of acknowledgment, copies of such applications, stated to have been submitted in 2017, be furnished to the concerned District Collector-cum-District Magistrate, who, on receipt of the copies of the applications, pass orders, within a period of six weeks.

11. With the above observation and direction, these writ petitions are disposed of accordingly. No costs.

mvs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector/District Magistrate
Kancheepuram Collectorate
Kancheepuram District.
2. The District Collector/District Magistrate
Thiruvallur District
Thiruvallur.

3. The District Collector/District Magistrate
Nilgiris Collectorate
Nilgiris District.
4. The District Collector/District Magistrate
Vellore Collectorate
Vellore District.
5. The District Collector/District Magistrate
Puducherry District
Puducherry.
6. The District Collector/District Magistrate
Coimbatore Collectorate
Coimbatore District.

+1cc to Government Pleader SR.No.28862

NRL(CO)
sm:10.05.2018

Writ Petition Nos.9179 to 9188 of 2018



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