

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3480 of 2006

A.Balan

... Petitioner

1. Branch Manager
Lord Krishna Bank
307, Sri Gokulam Tower
100 Feet Road 7th Street
Gandhipuram
Coimbatore - 641 012.

Vs

2. M.Doraiswamy

... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, seeking for an issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent, pertaining to the Possession Notice dated 27.01.2006 issued by the 1st respondent published in Dinamalar, Coimbatore dated 28.01.2006, and quash the same and consequentially directing the 1st respondent to redeliver possession of the three shops located in Door Nos.78/82, 78/85 and 78/86, Semi Basement, Cheran Towers, Govt. Arts College, Coimbatore.

For Petitioner : Mr.Srinath Sridevan

For Respondent : Mr.S.Silambanan, Senior Counsel for
R1 M/s.S.Silambanan Associates

R2 : Died

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O R D E R

The notice issued by the respondent bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) is under challenge in this writ petition. The petitioner is admittedly a tenant under the premises and the second respondent

is owner of the premises. The owner of the premises borrowed a loan from the first respondent bank and has not repaid the loan dues. As the second respondent was a chronic defaulter of the payment of loan dues, action was initiated against the second respondent/owner of the property by the first respondent by invoking the provisions of the SARFAESI Act.

2. A notice was issued for taking possession, and the said notice is under challenge by the writ petitioner in his capacity as a tenant. First of all, the writ petitioner cannot be construed as an aggrieved person at all. The writ petitioner is not a borrower of any loan from the first respondent. He is only a tenant. Therefore he cannot question the power of the bank for invoking the provisions of SARFAESI Act, more specifically, against the second respondent who was the borrower.

3. This apart, no writ petition can be entertained against the notice in a routine manner. In the present case, the second respondent has borrowed loan from the first respondent and the writ petitioner is only a tenant. The second respondent cannot litigate the matter through his tenant in order to save the property. The very idea of the writ petition is clear that this present writ petition was filed at the instance of the second respondent. The factual inference is to be made in respect of these circumstances.

4. In view of the fact that the writ petitioner being a tenant might not have any interest regarding the property or its title. The right of the tenant is certainly limited and therefore, the present writ petition filed challenging the notice issued by the first respondent bank, for the recovery of loan dues by attaching the property cannot be entertained at all.

5. Accordingly, the Writ Petition stands dismissed. No Costs.

सत्यमेव जयते

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Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gbi/pkn

To

1. Branch Manager
Lord Krishna Bank
307, Sri Gokulam Tower
100 Feet Road 7th Street
Gandhipuram, Coimbatore - 641 012.

+1 cc to Mr.Srinath Sridevan, Advocate Sr.No.81533

CSL/21.12.2018

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