

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.7767 of 2018
and
W.M.P.Nos.9666 and 9667 of 2018

M.Selvarani

.. Petitioner

Vs.

1.The Chief Metropolitan Magistrate,
Egmore, Chennai-600 008.

2.The Presiding Officer,
Debts Recovery Tribunal-II,
Chennai-600 002.

3.The Authorised Officer,
The Hongkong & Shanghai
Banking Corp. Ltd.,
No.30, Rajaji Salai,
Chennai-600001.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records culminated in the order dated 15.12.2014 made in Crl.M.P.No.7272 of 2014, passed by the 1st respondent, and quash the same.

For Petitioner : Mr.R.Prabhakaran

ORDER

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

Material on record discloses that at the instance of the bank/third respondent herein, in Crl.M.P.No.7272 of 2014, the Chief Metropolitan Magistrate, Egmore, has passed the following order:-

"4. On perusal of the material records and documents, it is seen that the respondent availed home

loan from the petitioner by mortgaging the schedule mentioned property. But, the respondent failed to repay the dues and hence the loan account has been classified as non performing asset. The petitioner issued notice u/s.13(2) of the Act the same was served. But, the respondents failed to repay the dues. Hence this petition.

5. The petitioner has followed the procedures laid down u/s. 14 of the Act and as a financial Institution, the petitioner is entitled to get the assistance of this Court and also to get police protection in order to take possession of the schedule mentioned property and to bring the same for sale. However, the right of the petitioner can be exercised only through a Court Officer or the Advocate Commissioner appointed by the Court to avoid further complications.

6. After considering the entire materials, this Court is of the opinion that u/s.14(1) of the Act, the petitioner is entitled to take possession of the schedule mentioned assets. The petitioner has also complied with the provisions of Sec.13(2) of the Act. But the respondents have not come forward to settle the dues. It is stated by the petitioner that in view of the order of the Hon'ble High Court, they have not initiated steps u/s.13(4) of the Act.

7. In the result, this petition is allowed.

Mr.B.Viswanathan, Advocate, High Court, Bar is appointed as Advocate Commissioner to take possession of the property mentioned in Schedule after taking inventory if necessary with the assistance of the Station House Officer, E3 Teynampet P.S., Chennai, and handover the same to the petitioner.

8. A sum of Rs.20,000/- is ordered as remuneration to the Advocate Commissioner, in which, Rs.5,000/- has to be paid directly to the Advocate Commissioner by the petitioner initially, and the balance of Rs.15,000/- has to be paid after execution of the warrant. The Advocate Commissioner shall execute the warrant without causing any physical harm to the inmates. He/She shall execute the warrant as early as possible and submit report to this Court.

9. On filing affidavit by the petitioner that no appeal or stay is pending in any other Court in respect of the schedule mentioned property, warrant will be issued.

SCHEDULE-A

Item No.1

All that piece and parcel of vacant house site, bearing Plot No.43, Door No.Nil, Kasturi Estate, First Street, Teynampet, Chennai-18, measuring an extent of 5460 Sq.ft. comprised in R.S.No.1577/18, Block No.32 of Mylapore Revenue Division, Mylapore Triplicane Taluk, Chennai District, bounded on (Flat No.B2, II Floor, 2500 Sq.ft.)

North by :: Approach Road and Plot Nos.41 and 41-A;
South by :: Kasturi Estate First Street;
East by :: Plot No.42;
West by :: Plot No.44, belonging to Mrs.Seetha Venkateswaran, Mr.S.N.Moorthy and Mrs.S.S.Mani and

situated within the Registration Sub District of Joint Sub Registrar, Chennai-Madras and Registration District of Chennai Central.

Item No.2

All that piece and parcel of vacant house site, bearing Plot No.44, Door No.11, Kasturi Estate, First Street, Teynampet, Chennai-18, measuring an extent of 5820 Sq.ft. or thereabouts, comprised in R.S.No.1577/11 & 1577/95, Block No.32 of Mylapore Revenue Division, Mylapore-Triplicane Taluk, Chennai District, bounded on the

North by :: Part of Plot in R.S.No.1577/11 belonging to Sri.S.S.Mani and partly by 12' wide approached Road;
South by :: 40' wide Kasturi Estate First Street;
East by :: Plot No.43, belonging to Mr.K.S.Viswanathan and 2 others;
West by :: Part of Plot in R.S.No.1577/11 belonging to Sri.S.S.Mani and partly by 40' wide Road and

situated with in the Registration Sub District of Joint Sub Registrar, Chennai-Madras and Registration District of Chennai Central.

SCHEDULE 'B' Property

(Land agreed to be conveyed)

1/7th undivided share in the total land in extent 11280 Sq.feet or thereabouts more fully described in the Schedule 'A'.

SCHEDULE 'C' Property
(Location of proposed Apartment)

Apartment B-2 in the Second Floor having a super built up area of 2500 Sq.ft. which includes share in the common built-up area of the proposed residential apartments."

2. Challenging the same, petitioner has filed S.A.Sr.No.3368 of 2018, under Section 17 of the SARFAESI Act, 2002, before the DRT-II, Chennai, with a delay of 1159 days for which M.A.No.81 of 2018 has been filed for condonation.

3. On 23.03.2018, when the matter came up for hearing, before the Tribunal, learned counsel for the petitioner has submitted that, notice is not required in M.A.No.81 of 2018, but after perusing the Miscellaneous Petition, the Tribunal by observing that it is mandatory, ordered notice to the respondent therein, returnable by 18.04.2018.

4. Thereafter, the petitioner has filed the instant writ petition on 02.04.2018, to quash the order made in Crl.M.P.No.7272 of 2014, dated 15.12.2014. Though, Mr.R.Prabhakaran, learned counsel for the petitioner assailed the correctness of the order, dated 15.12.2014, made in Crl.M.P.No.7272 of 2014, and further contended that the Tribunal was not required to order notice, in the miscellaneous application, and in such circumstances, for other reasons stated in the supporting affidavit to the instant writ petition, prayed to entertain the writ petition. After going through the grounds of challenge in S.A. Sr.No.3368 of 2018 filed under Section 17 of the SARFAESI Act, 2002, before the DRT-II, Chennai, and supporting the affidavit to the writ petition No.7767 of 2018 before this Court. We are of the view that, except the forum, facts pleaded and grounds raised in both the proceedings are similar. Writ Petitioner having failed to get the delay condoned, at the first hearing date, has approached this Court under Article 226 of the Constitution of India, seeking to quash the very same order challenged in S.A.Sr.No.3368 of 2018. Petitioner has approached two forums for the same relief, which is in abuse of process of law. Reliance can be made to the following decisions in this regard,

(i) In Chetak Construction Ltd., v. Om Prakash reported in 1998(4) SCC 577, the Supreme Court at Paragraph 16, held that, "a litigant cannot be permitted choice of the forum and every attempt at forum shopping must be crushed with a heavy hand.

(ii) In Tamil Nadu Mercantile Bank Shareholders Welfare Association v. V.S.C.Sekar reported in 2009(2) SCC 784, at Paragraph 51, held that the superior Courts

of this Country must discourage forum shopping. A person seeking equity must do equity. A party cannot take recourse to a machination which amounts to abuse of process of Court.

5. Though, Mr.R.Prabhakaran, learned counsel for the petitioner contended that there was no need to order notice in the delay excuse petition and the Registry of the Tribunal ought to have numbered the appeal straight away, we are not inclined to make any observation, to the said submission made by the petitioner, as it is from the Tribunal to decide. After the arguments, learned counsel for the petitioner, sought permission to withdraw the writ petition before this Court. We are not inclined to approve the conduct of the petitioner in approaching two different forums challenging the same order. For such conduct of the petitioner, we dismiss the writ petition with a cost of Rs.25,000/- to be paid to the respondent/bank, within one month from the date of receipt of this order.

Sd/-

Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

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To

1.The Chief Metropolitan Magistrate,
Egmore, Chennai-600 008.

2.The Presiding Officer,
Debts Recovery Tribunal-II,
Chennai-600 002.

Copy TO

The Authorized Officer,
The Hongkong & Shanghai
Banking Corp. Ltd.,
No.30, Rajaji Salai,
Chennai-600001.

+2cc to Mr.Prabakaran, Advocate SR.No. 26084

W.P.No.7767 of 2018
and

W.M.P.Nos.9666 and 9667 of 2018

MG (CO)
GN(13/04/2018)