

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/6/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.12422 of 2018

V.N.Ayyadurai

...

Petitioner

Vs

1. Kotak Mahindra Bank Ltd
No.39 Montieth Road
Second Floor
Ceebros Centre
Chennai 600 008.

2. The District Collector and
District Magistrate
Erode.

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records relating to the order passed by the second respondent in Ref.No.6071/2017/D2 dated 25/3/2018 and to quash the same and directing the first respondent to deliver possession of the property forcibly taken from the petitioner pursuant to the orders passed by the second respondent.

For petitioner ... Mr.S.Sundaresan

For respondents ... Mr.M.Arunachalam

for R.1

Mr.Sricharan Rangarajan

Additional Government Pleader

for Mr.Manikandan

Government Advocate

for R.2.

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O R D E R

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

At the outset, we wish to state that District Collector-cum-District Magistrate, second respondent has been arrayed as a party, in his personal capacity, which

2. Instant writ petition has been filed for a writ of certiorarified mandamus, to quash the order of the District Collector-cum-District Magistrate, Erode, second respondent, dated 25/3/2018. Order dated 25/3/2018, reads as follows:-

"The Tahsildar, Erode, is authorised to take physical possession of the property and can seek help of the Police Officials, if necessary and hand over that to the Authorised Officer of the Bank with proper acknowledgment and to provide sufficient opportunities, to vacate the house in which they are living, if any. The date of taking and handing over the possession of the secured asset should be reported to this office at once.

The Deputy Superintendent of Police, Erode is hereby instructed to give sufficient Police protection if there is any need."

3. One of the grounds raised in the supporting affidavit is that the order of the District Collector-cum-District Magistrate, Erode, second respondent is beyond the period provided,therefor, under the provisos to Section 14 of the SARFAESI Act, 2002. Other grounds have also been raised.

4. Record of proceeding shows that while ordering notice to the respondents through Court and privately, a Hon'ble Division Bench of this Court, vide order, dated 16/5/2018, granted stay of the operation of the order impugned till 13/6/2018.

5. Kotak Mahindra Bank, Chennai, second respondent has filed counter affidavit, wherein, Bank has contended that physical possession of one of the items of the property viz., factory had been taken over and sealed, and thereafter, petitioner has broken the seal and occupied.

6. Petitioner has filed rejoinder refuting the same and further contended that the seal is intact.

7. Mr.M.Arunachalam, learned counsel for the Bank submitted that physical possession of the house property/secured asset has not been taken.

8. Be that as it may, on this day, when the matter came up for further hearing, Mr.S.Sundaresan, learned counsel for the petitioner seeks liberty to withdraw the writ petition, reserving his right to approach the Tribunal, to challenge the order impugned.

9. Without prejudice to the rights of the Bank, permission is granted. Accordingly, writ Petition is dismissed. Interim order granted, on 16/5/2018, is vacated. Time spent in this litigation be excluded, if any application is filed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mvs

To

1. The District Collector and District Magistrate Erode.

+1cc to Mr.M.Arunachalam, Advocate, S.R.No.37455
+2cc to Mr.S.Sundaresan, Advocate, S.R.No.37691,37737
+1cc to the Government Pleader, S.R.No.37953

W.P.No.12422 of 2018

BM 27.06.2018

सत्यमेव जयते

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