

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3/4/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.25758 of 2012

N. Madhavan

...

Petitioner

Vs

1. The District Collector
Namakkal.

2. The Revenue Divisional Officer
Namakkal.

3. R. Karthik Raja

4. The Chief Manager and the
Authorised Officer
Indian Bank
Ranga Sannathi Street
Namakkal.

5. M/s. Bagavathi Transports
rep. by its Proprietor
Mr.P.K.Selvaraj
Namakkal Taluk.

सत्यमेव जयते...

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus, calling upon the proceedings in Na.Ka.No.4901/2012 A2 dated 17/8/2012 of the second respondent herein and quash the same and forbearing the respondents 1 and 2 herein from proceeding with the recovery of possession of the property bearing Door No.4/A/23 New No.5/14 NGGO's colony comprised in S.No.47/5 A and Plot No.23, Chinna Mudalipatti Village, Namakkal Taluk.

For petitioner ... Mr.G.Jeremiah

For respondent ... Mr.M.Sricharam Rangarajan
Additional Government Pleader
for R.R.1 and 2.

Mr.MS.Palanisamy for R.3.

Mr.Harish Choudry for R.4.

- - - - -

O R D E R

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

Challenging the notice, dated 17/8/2012, issued by the Revenue Divisional Officer, Namakkal, directing the petitioner to vacate from the subject property, instant writ petition has been filed by the guarantor, to quash the proceedings in Na.Ka.No.4901/2012 A2, dated 17/8/2012, of the second respondent, and consequently, he has prayed to forbear the respondents 1 and 2 from proceeding with the recovery of possession of the property, bearing Door No.4/A/23 New No.5/14 NGGO's colony, comprised in S.No.47/5 A and Plot No.23, Chinna Mudalipatti Village, Namakkal Taluk.

2. Petitioner has filed (i). M.P.No.1 of 2013, to permit the petitioner, to amend the prayer as hereunder:-

"Writ of certiorarified mandamus to call for the records of the first respondent in his proceedings in ROC No.49185/2010/M-4, dated 27/4/2011 and the consequential proceedings of the second respondent in Na.Ka.No.4901 of 2012.

(ii). M.P.No.2 of 2013 has been filed to dispense with the production of the impugned order of the first respondent in his proceedings in R.O.C.No.49185/2010/M-4, dated 27/4/2011, for the present.

(iii). M.P.No.3 of 2013 has been filed to permit the petitioner to file an additional affidavit, raising additional grounds in the writ petition.

3. Bank has filed counter affidavit to the writ petition. Additional affidavit has been filed by the borrower.

4. Seeking assistance, for taking physical possession of the property, mortgaged with the Bank, by filing an application,

under Section 14 of the SARFAESI Act, 2002, before the District Collector-cum-District Magistrate, Namakkal, is one of the measures under Section 13 (4) of the SARFAESI Act.

5. For brevity, Section 13 (4) of the SARFAESI Act is reproduced hereunder:-

"In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely -

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b). take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

(c) appoint any person (Hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d). require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt."

6. As per Section 17 (1) of the SARFAESI Act, 2002,

"Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter (may make an

application along with such fee, as may be prescribed) to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower]."

7. Being aggrieved by the order of the District Collector-cum-District Magistrate, Namakkal District, guarantor/writ petitioner could have filed an application, under Section 17 (1) of the SARFAESI Act, 2002, but chosen to challenge the notice, dated 17/8/2012, issued by the Revenue Divisional officer, Namakkal.

8. Writ petition has been filed in the year 2012.

9. According to Mr.G.Jeremiah, learned counsel for the petitioner, order, dated 27/4/2011 of the District Collector-cum-District Magistrate, was not served on the writ petitioner, but the petitioner came to know about the same, upon service, by way of typed set of papers, and hence chosen to seek for a mandamus, as stated supra.

10. Inasmuch as an alternate and efficacious remedy is available to the guarantor, to challenge the order, dated 27/4/2011, passed by the District Collector-cum-District Magistrate, Namakkal District, we are not inclined to delve into the merits of the case, except granting liberty to the writ petitioner/guarantor to challenge the same in the manner known to law.

11. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

WEB COPY

Sub Assistant Registrar

mvs.

To

1. The District Collector
Namakkal.
2. The Revenue Divisional Officer
Namakkal.
3. The Chief Manager and the Authorised Officer
Indian Bank
Ranga Sannathi Street
Namakkal.

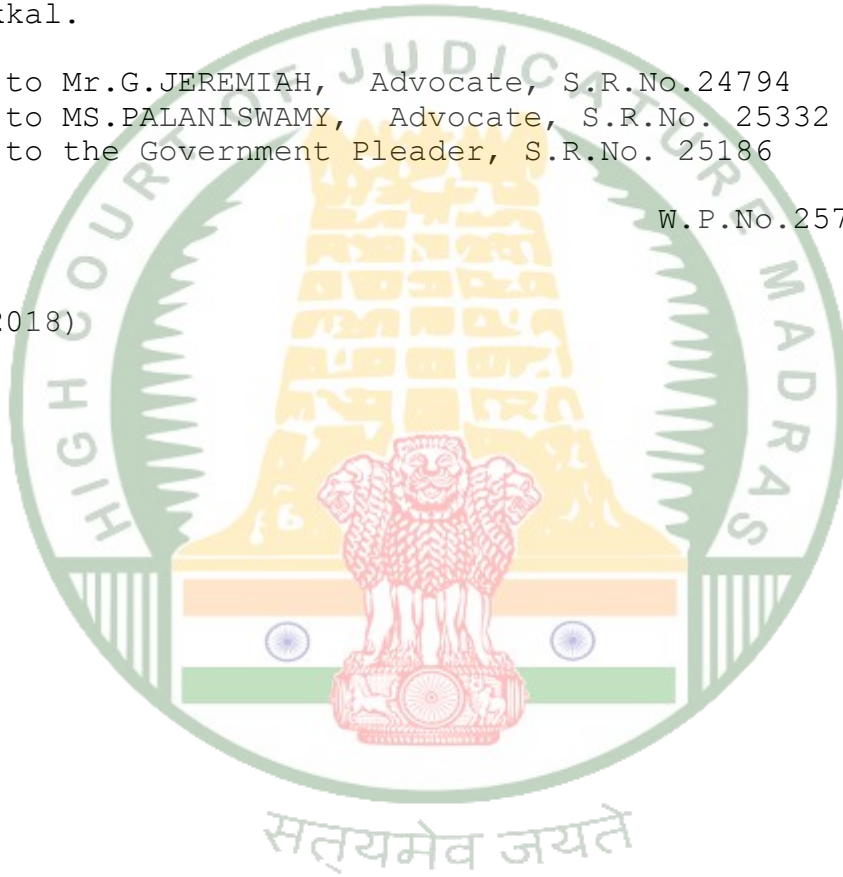
+1cc to Mr.G.JEREMIAH, Advocate, S.R.No.24794

+1cc to MS.PALANISWAMY, Advocate, S.R.No. 25332

+1cc to the Government Pleader, S.R.No. 25186

W.P.No.25758 of 2012

KS (CO)
TR(18/04/2018)



WEB COPY