

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

W.P.No.24364 of 2017
and W.M.P.No.25779 of 2017

ASREC (India) Limited
Rep. By its Vice President,
S.Jayaprakash,
Room No.3, III Floor, Wellington Estate,
53, Ethiraj Salai, Egmore,
Chennai 600 008. ... Petitioner

Vs

- 1.The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Chennai 600 007.
- 2.The Assistant Commissioner of Police,
Saidapet, Chennai.
- 3.The Inspector of Police,
J1, Police Station,
Saidapet, Chennai.
- 4.M/s.V.N.S.Leather Exports Pvt. Ltd.,
Rep by its Managing Director M.S.Chandrasekaran,
No.6/25, C.M.Gramini Street,
Periamet, Chennai 600 003.
- 5.M.S.Chandrasekaran
- 6.S.C.Sanjeev Kumar
- 7.S.C.Vijayakumar ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to take action on the petitioner's complaints dated 08.03.2017 and 19.06.2017 to ensure rule of law by removing the illegal intrusion of anti social elements in the property at Door No.13/4, CIT Nagar, Saidapet, Chennai, which was taken possession by due process of law pursuant to the order dated 20.12.2016 passed in CrI.M.P.No.8644 of 2016 on the file of the Hon'ble Chief Metropolitan Magistrate, Chennai on the petitioner's application under Section 14 of SARFESI Act and render necessary protection to the petitioner to take re-delivery of the property and have the benefit of the order passed by the Hon'ble CMM, Chennai.

For Petitioner : Mr.Om Prakash, Senior Counsel
Assisted by Mr.Ilaya Rajkumar

For Respondents : Ms.M.Prabhavathi, (R1 to R3)
Additional Public Prosecutor

O R D E R

On 24.10.2018, this Court passed the following order:
"On 30.08.2018, this Court has passed the following order :

"This writ petition has been preferred seeking a writ of mandamus directing the respondents 1 to 3 to take action on the petitioner's complaints dated 08.03.2017 and 19.06.2017 to ensure rule of law by removing the illegal intrusion of anti-social elements in the property at Door No.13/4, CIT Nagar, Saidapet, Chennai, which was taken possession by due process of law, pursuant to the order dated 20.12.2016 passed in Crl.M.P. No.8644 of 2016 on the file of the Chief Metropolitan Magistrate Court, Chennai, on the petitioner's application under Section 14 of the SARFAESI Act and render necessary protection to the petitioner to take re-delivery of the property and have the benefit of the order passed by the Chief Metropolitan Magistrate, Chennai.

2. The subject property measuring 1.80 grounds is a land and building bearing Door No.13/4, CIT Nagar, Saidapet, Chennai, which according to Mr. A.S. Balaji, learned counsel for respondents 5 and 6, is presently situate at Door No.19, South Road, West C.I.T. Nagar, Chennai 35. The property originally belonged to one M.S. Chandrasekaran (R5), who had mortgaged it with Bank of India, T. Nagar Branch, Chennai, for a loan of Rs.3.50 crores. On account of default in repayment of loan, proceedings under the SARFAESI Act was initiated by the bank and the bank assigned the debt to the petitioner herein. The petitioner took possession of the property by initiating proceedings under Section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate, Chennai, on 07.03.2017, in the presence of the Police officials. Thereafter, some third parties encroached into the property and took forcible possession of it. The complaints given by the petitioner to the police did not evoke any response. One Arun Ramajayam filed W.P.No.6120 of 2017 against the petitioner and respondents 4 to 7 with the

prayer to issue Writ of Certiorari to quash the order dated 20.12.2016 passed by the Chief Metropolitan Magistrate in CrI.M.P.No.8644/2016 under Section 14 of the SARFAESI Act. The said petition was dismissed by this Court on 27.04.2017, holding that Arun Ramajayam cannot maintain the writ petition. Even thereafter, the possession was not restored to the petitioner. Hence, the petitioner gave police complaints on 08.03.2017 and 19.06.2017 and has thereafter, filed the present writ petition with the above prayer.

3. Heard Mr. Om Prakash, learned Senior Counsel, representing M/s. Ramalingam and Associates, learned counsel on record for the petitioner and Ms. M. Prabhavathi, learned Addl. Public Prosecutor appearing for respondents 1 to 3 and Mr. A.S. Balaji, learned counsel for the sixth respondent.

4. On 06.03.2018, this Court issued the following directions to the Assistant Commissioner of Police, Saidapet Range, Chennai:
"The second respondent is directed to ascertain as to who is in occupation of the property in Door No.13/4, CIT Nagar, Saidapet, Chennai and file "Status Report".

Post the matter on 23.03.2018"

5. Pursuant to the order dated 06.03.2018, Mr.S.Anantharaman, Assistant Commissioner of Police, Saidapet Range, Chennai, has gone to the property and has filed a status report dated 22.03.2018, wherein, it has been stated as follows:

"I, submit that as per the order of this Hon'ble Court I visited the property in Door No.13/4 (New No.19), South Street, West CIT Nagar, Saidapet, Chennai on 15.3.2018 at about 12.30 p.m. In order to ascertain as to who is in occupation of the property. The property is a residential building with two floors. The building was found locked and one by name Captain Jenish, male aged 19, S/o Prabhu, 8/36A, Iraniyal Konam, Neyyur Post, Kanyakumari District 629 802 was there outside the house, when enquired he told that he has been appointed as security for the house just two days back by the house owner Mr. Chandrasekaran through one Prabhakar and when asked about the residents of the house he told that the house is locked since he came.

I submit that on 16.03.2018, Mr. Chandrasekaran, owner of the property in the address Door No.13/4 (New No.19), South Street, West CIT Nagar, Saidapet, Chennai appeared and stated that the property is in his possession but he stays outside. He further stated that he and his son Mr. Sanjeevkumar often visit the property to look after its maintenance.

I submit that from the enquiry it appears that no one is residing in the property at Door No.13/4 (New No.19), South Street West CIT Nagar, Saidapet, Chennai, owned by Mr. Chandrasekaran. The property owner Mr. Chandrasekaran and his son Mr. Sanjeevkumar often visit the property and maintain it."

6. Thus, from the status report filed by the Assistant Commissioner of Police, Saidapet Range, Chennai, it is apparent that the property is vacant, however, it is under the lock and key of the fifth respondent.

7. On 11.08.2018, this Court passed the following order:

"When the matter was taken up for hearing, Mr. A. Ramesh, learned Senior Counsel appearing for the 6th respondent, submitted that the 6th respondent is negotiating with the petitioner for amicably settling the issue, and if some time is given, the matter can be amicably settled and if not, the 6th respondent is willing to hand over the keys of the property to the petitioner.

In view of the aforesaid submission, this Court directs Mr. A.S. Balaji, learned counsel representing 6th respondent, to sit with Mr. Om Prakash, learned Senior Counsel for the petitioner, along with the parties for bringing about an amicable settlement.

Call on 27.08.2018 at 02.15 p.m."

8. Pursuant to the order dated 11.08.2018, Mr. Om Prakash, learned Senior Counsel appearing for the petitioner and Mr. A.S. Balaji, learned counsel for the sixth respondent had discussions with the parties and Mr. A.S. Balaji, learned counsel submitted that if six weeks time is granted, the keys will be handed over to the petitioner.

9. S.C. Sanjeev Kumar, the sixth respondent herein, who is the son of M.S. Chandrasekaran, the fifth respondent herein, is present before this Court today and has filed an affidavit dated 30.08.2018, wherein, at paragraph nos. 1 and 5, it has been stated as follows:

" 1. I am acquainted with the facts and circumstances of the case and as such, I am the 6th respondent in the above writ petition and I am swearing this affidavit on my behalf and on behalf of 5th respondent also.

5. I state that I undertake to hand over vacant possession of the property, viz., No.19, South Road, West C.I.T Nagar, Chennai-600 038, within 6 weeks from today to the petitioner therein, without prejudice to our legal rights. The handing over of the property shall not in any way hamper the settlement talks between the bank and ourselves."

10. In view of the above undertaking, six weeks time is given to respondents 5 and 6 from today, which ends on 11.10.2018, to hand over the keys to the petitioner, failing which, the respondents 2 and 3 are directed to take possession of the property and hand over the same to the petitioner.

11. S.C. Sanjeev Kumar, the sixth respondent herein, is present before this Court. He has been apprised of this order passed by this Court today and the consequences of failing to comply with the undertaking given by him.

Post for reporting compliance on 12.10.2018 at 2.15 p.m."

2. Today, the matter has been posted under the caption "For Reporting Compliance".

3. Learned counsel for the petitioner submitted that the respondents have not complied with the undertaking, given by the 6th respondent, which has been incorporated in the order dated 30.08.2018.

4. Mr.A.S.Balaji, learned counsel for the 6th respondent fairly submitted that, despite his advice to comply with the undertaking, the respondents have failed to do so and have opted for change of vakalat. However, the respondents have not filed any change of vakalat. In Para No.11 of the order dated 30.08.2018, this Court

has specifically noted that the 6th respondent was present before the Court at that time and the consequences of failing to comply with the undertaking given by him was made aware.

5. In view of the above, this Court directs the respondents 2 and 3 to provide sufficient police protection to the petitioner for taking physical possession of the property. If any obstruction is caused by anyone, including advocates, the police shall deal with it firmly and register a case, if warranted.

Post the matter on 02.11.2018 under the caption "For Reporting Compliance".

2.Today, the matter has been posted under the caption "For Reporting Compliance".

3.The learned counsel for the petitioner submitted that possession of the property has been taken by the petitioner.

Recording the same, this petition is closed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Chennai 600 007.

2.The Assistant Commissioner of Police,
Saidapet, Chennai.

3.The Inspector of Police,
J1, Police Station,
Saidapet, Chennai.

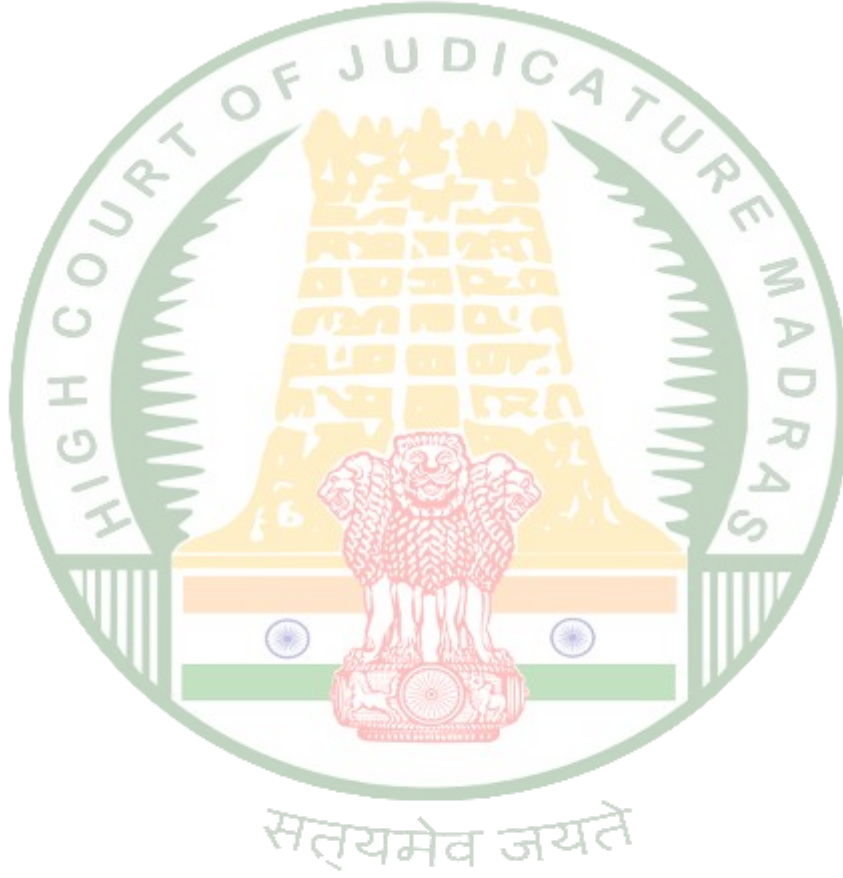
4.The Chief Metropolitan Magistrate,
Chennai.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Ramalingam & Associates, SR.No.75963

RK(CO)
sm:23.11.2018

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