

C.M.P.No.19353 of 2018 in
C.R.P.No.3258 of 2017

S.MANIKUMAR, J.
AND
SUBRAMONIAM PRASAD, J.

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

Dr.Thara Ramamurthy, in C.M.P.No.19353 of 2018 has prayed for a direction to the Recovery Officer, Debts Recovery Tribunal - II, Chennai, not to execute order of eviction for a period of 90 days. In her affidavit, she has stated that she has suffered an order in C.R.P.No.3258 of 2017, dated 04.09.2018. Auction purchasers/respondents 2 and 3 are putting pressure on the Recovery Officer of the Debts Recovery Tribunal-II, to execute the orders.

2. The petitioner is a senior citizen, aged about 76 years and suffering from illness. All along, she has been residing in the property, which is the subject matter of lis. At this age, she may not be able to find an alternative accommodation, immediately. Therefore, she has filed the instant petition, to direct the Recovery Officer, Debts Recovery Tribunal-II, not to execute the order of eviction for a period of 90 days.

3. Auction purchasers/respondents 2 and 3, in their counter affidavit, while disputing the contention of the petitioner and objecting to the prayer sought for in C.M.P.No.19353 of 2018, at paragraph Nos.2 to 4, have stated as hereunder:-

"2. It is false to allege that myself and the 2nd respondent are putting pressure on the petitioner on the Recovery Officer - DRT II to execute the orders and hand over vacant possession of the petition property, which is the subject matter of dispute. On the other hand the Civil Revision Petitions were dismissed by this Hon'ble Court on 04.09.2018 and the petitioner was having ample time to find an alternative place. In fact during the course of arguments on various dates, when my counsel represented before this Hon'ble Court that vacant possession needs to be given. It was argued by the petitioner's Counsel that he requires 3 to 6 months time to vacate the property. As on date more than 6 months time have elapsed, and only when I am taking steps in a manner known to law to get vacant possession of the property, the petitioner has come out with such an application. It is only a tactics to delay the process.

3. It is submitted that the Recovery Officer vide DRC No.112/2010, dated 25th October 2018 has already issued an order and one Mr.R.K.M.Suresh, Advocate has been appointed as an Advocate Commissioner to take possession of the property and to complete the entire work process not later than 03.12.2018 and to file a report. The petitioner herein had

suppressed the above mentioned details in his application and thus on this ground alone, the application deserves to be dismissed.

4. It is not out of place to submit here that the 4th respondent who is not occupying the petition property has already approached the Hon'ble Supreme Court by way of SLP (C) No.028743-/2018 and the same is likely to be listed for admission. So, it is clear that the whole idea of the petitioner is only to delay the eviction process and the 4th respondent colluding with the petitioner has been indulging in activities just to delay the inevitable. Myself and the 2nd respondent has been facing Court proceedings in respect of property for more than 14 years and even at this point of time, the petitioner is using her age to shield from the eviction process. There are no merits in the present application and the same deserves to be dismissed in limini. The respondents 2 and 3 are bonafide purchasers for valuable consideration and deserves protection of his valuable legal right."

4. During the course of hearing of the petition, Dr.Thara Ramamurthy, has filed another affidavit, wherein, she has stated that she has decided to settle with her son in New Zealand and necessary process has already commenced for obtaining visa and such other documents. If she is dislodged from the existing premises, it may not be possible to pursue her travel plans. She undertakes to handover vacant possession of

the premises to the auction purchasers within three months from the date of filing of this petition.

5. On the above averments, Mr.M.Balachandar, learned counsel for the petitioner made averments.

6. Mr.Jayesh Dolia, representing the Auction Purchasers submitted that though M/s.S.R.Exports, represented by its Proprietor, has filed S.L.P.(C)No.28743/2018, against the order made in C.P.No.3258 of 2017, dated 04.09.2018 and it is yet to be listed for admission, claiming that M/s.S.R.Exports is in possession of the property, a suit in O.S.No.5113 of 2013, has been filed on the file of the City Civil Court, Madras and in I.A.No.12162 of 2018, interim order has been obtained against the petitioner and auction purchasers/respondents 2 and 3 therein. He further submitted that for nearly 14 years, the respondents are fighting in Court for taking possession and instant petition is filed only to protract the proceedings. For the reasons stated in the counter affidavit and submissions made, he prayed to dismiss the petition.

Heard the learned counsel for the parties and perused the materials

7. Claiming to be a lessee, C.R.P.(NPD)No.3047 of 2017, has been filed by M/s.S.R.S.Exports/lessee against the order, dated 25.07.2017, made in M.A.No.188 of 2017, on the file of the Debts Recovery Appellate Tribunal, Chennai, confirming the order dated 01.12.2006, made in M.A.No.171 of 2004 in T.A.No.145 of 1997, on the file of the Debt Recovery Tribunal No.1, Chennai, to set aside the same.

8. C.R.P.No.3258 of 2017, has been filed by the guarantor, Dr.Thara Ramamurthy, to set aside the order of the Debts Recovery Tribunal No.1, Chennai, dated 01.12.2006, made in M.A.No.170 of 2004 in T.A.No.145 of 1997, as confirmed by a common order dated 25.07.2017, made in M.A.No.240 of 2007 on the file of the Debts Recovery Appellate Tribunal, Chennai.

9. After hearing the learned counsel for the lessee M/s.S.R.S.Exports, Dr.Thara Ramamurthy, the guarantor/the petitioner herein, auction purchasers and Bank, vide common order, dated 26.8.2018, both the civil revision petitions were dismissed. Operative portion of the order reads thus,

"20. The tenant cannot be heard in this proceeding.

The tenant cannot challenge the sale of the property. He

has to locus to do so. He can only contest his eviction by filing an application under section 17(4-A) of the SARFAESI Act. Sale has taken place way back in the year 2004 and the purchaser has not been given the possession of the property even after 13 years due to the number of proceedings initiated by the tenant and the guarantor. As stated earlier, all the requirements under part III in the Second Schedule to the Income Tax Act laying down the procedure for Recovery of Tax under Income Tax Act, have been followed."

10. Pursuant to the dismissal of the above Civil Revision Petitions, the Recovery Officer, Debts Recovery Tribunal-2, Chennai, has passed an order, dated 25.10.2018, appointing an Advocate Commissioner to evict the occupants and hand over vacant possession to the auction purchaser. Order dated 25.10.2018, reads thus,

WARRANT

WHEREAS the undermentioned property was sold in a public auction held on 18.05.2004 for the recovery of dues from M.C. Sharin Pharmaceutical Ltd and 2 others in execution of Order of Hon'ble Presiding Officer, Debts Recovery Tribunal No.1, Chennai in DRC.No.346/2000 dated 06.11.2000 (New DRC.No.112/2010-DRT-2, Chennai) in T.A.no.145/1997 to the auction purchaser Mr.K.Karthikeyan S/o.K.Karuppan and Mr.K.Karuppan S/o.K.Kandan No.47, Ezhumalai Street, Ayanavaram, Chennai 23.

DESCRIPTION OF THE PROPERTY

All that piece an parcel of land with a building thereon at Old No.4, New No.7 in Artisan Shanmugam Street, Shanmughapuram, Ayanavaram, Chennai-23 in the Lay out Application No.203/1960 measuring from East to West on the Southern side 45 feet, on the Northern Side 45 feet and North to South on the Eastern Side 59 ft and the Western Side 60 ft. measuring by admeasuring 1 Ground 146 Sq.ft. comprised in R.S.no.18/2 and 20/1 (Part), New T.S.No.56/1 and 56/2 in Block No.4 of Chinnasembarabakkam Railway Drain (R.S.No.20/2) on the East Vacant Plot No.3 belonging to Shri V.Govindarajan and West by Plot No.5 belonging to Dr.K.Ramamoorthy situate within the Registration District of Chennai North nad Sub-Registration District of Sembium.

AND WHEREAS the auction purchaser of the property vide his affidavit and petition dated 15.07.2018 (Sr.No.10710 dated 18.07.2018) prayed for delivery of vacant possession of the property.

Therefore after taking into consideration the entire facts and circumstances of the case, I pass the following orders of the eviction proceedings against the above defendants who are occupying the property or any body acting on their behalf.

ORDER

(Under Sub-Section 18 (b) & (e) of Section 19 of the Recovery of Debts Due to Banks & Financial Institutions Act,

1993 read with Rule 39 & 40 of IT (Certificate Proceedings)
Rules, 1962)

Mr.R.K.M.Suresh, Advocate, No.36, Montieth Mansion,
Montieth Road, Egmore, chennai 600 008 is hereby
appointed as Advocate Commissioner in the performance of
the under mentioned work:-

(i) that he shall evict the occupants, the
defendants or any body acting on their behalf from the
properties specified above and hand over the vacant
possession of the same to the auction purchaser.

(ii) that for this purpose, he is entitled to seek
Police assistance, if necessary under Rule 19 of the II
Schedule to IT Act; and he is authorized to break open the
locks, if any.

(iii) that the Advocate Commissioner to
complete the above work by not later than 03.12.2018
(Monday) and file a report.

(iv) That he shall discharge all the functions of
the Recovery Officer for the above purpose;

The auction purchaser is directed to pay initial
remuneration of Rs.10,000/- (Rupees Ten thousand only) to
the above Advocate Commissioner to execute the Order.

Given under my hand and seal of the Tribunal, on this
26th October, 2018.

(V.SUBRAMANIAN)
RECOVERY OFFICER

26.10.2018, to the defendants/certificate holders to vacate the property, on or before 09.11.2018. Notice, dated 26.10.2018, reads thus,

"Sir,

Sub: Notice from the advocate commissioner in DRC.No.112 of 2010 In (Old DRC.No.346 of 2006-DRT-1, Chennai) between Karur Vysya Bank Ltd, T.Nagar Branch, Chennai - Applicant Bank/Certificate Creditor and M/s.M.C.Sharin Pharmaceutical Ltd., and 2 others - Defendants/Certificate Debtors - reg.

In the above said matter the Recovery Officer DRT-II appointed me as an Advocate Commissioner on 25th Oct 2018. The Recovery Officer DRT-II has directed me to evict the occupants, the defendants or anybody acting on their behalf from the properties specified above and hand over the vacant possession of the same to the auction purchaser with the help of police assistance, if necessary and also authorised to break open the premises if found locked. In view of the above order you are advised to vacate the schedule mention property on or before 09-11-2018 failing which the eviction proceedings will be initiated with the help of Police assistance. The copy of the warrant is enclosed for your reference. Kindly acknowledge the receipt of the same.

Thanking you,Regards

RKM.Suresh

Advocate Commissioner

12. First of all, when M/s.S.R.S.Exports, represented by its

Proprietor, has claimed that they are in possession of the property, viz.,

(i) All that piece and parcel of the land and building bearing Old Door No.4, New Door No.7, Artizan Shanmugam Street, Ayanavaram, Chennai 600 023:

East to West on the northern side 45 feet;

East to West on the southern side 45 feet;

North to South on the Eastern side 59 feet;

North to South on the Western side 60 feet;

(ii) In all about 1 ground and 146 Sq.Ft., comprised in Part of R.S.18/2 and 20/1 now known as T.S.No.56/1 and 56/2 in Block 4 of china Perambakkam Village, bounded on the:

North by Plot 6;

South by Railway Drain R.S.20/2;

East by Railway drain;

West by vacant plot No.5,

and filed a suit in O.S.No.5113 of 2013, and obtained an injunction, against Dr.Thara Ramamoorthy, and two others, the auction purchasers, claim of Mrs.Thara Ramamoorthy, petitioner in C.M.P.No.19353 of 2018 in C.R.P.No.3258 of 2017, that she has been all along in possession, cannot be accepted for the reason that she is a defendant/respondent in I.A.No.12162 of 2018 in O.S.No.5113 of 2013. She has to file her counter affidavit in the said I.A. and prove that she is in possession. Possession has to be proved, on the basis of evidence. Accepting the averments

made in support of C.M.P.No.19353 of 2018, would amount to accepting her claim that she is in possession and it would run contrary to the interim order passed in I.A.No.12162 of 2018, dated 09.10.2018.

13. Secondly, when the Recovery Officer, Debts Recovery Tribunal, Chennai, has passed an order, dated 25.10.2018, the same cannot be made inoperative, granting time to the petitioner to vacate, by accepting the undertaking. When possession of the petitioner itself is the subject matter in O.S.No.5113 of 2018, on the file of the City Civil Court, Madras, and contending inter alia that there is a registered lease, dated 05.11.1993, for a period of 30 years, the lessee has filed C.R.P.(NPD) No.3258 of 2017, which this Court has dismissed, vide common order, stated supra, now, the guarantor/owner of the property. Undertaking of the petitioner, claiming that she is in possession, cannot be accepted, for whatever reasons. Prayer sought for cannot be granted.

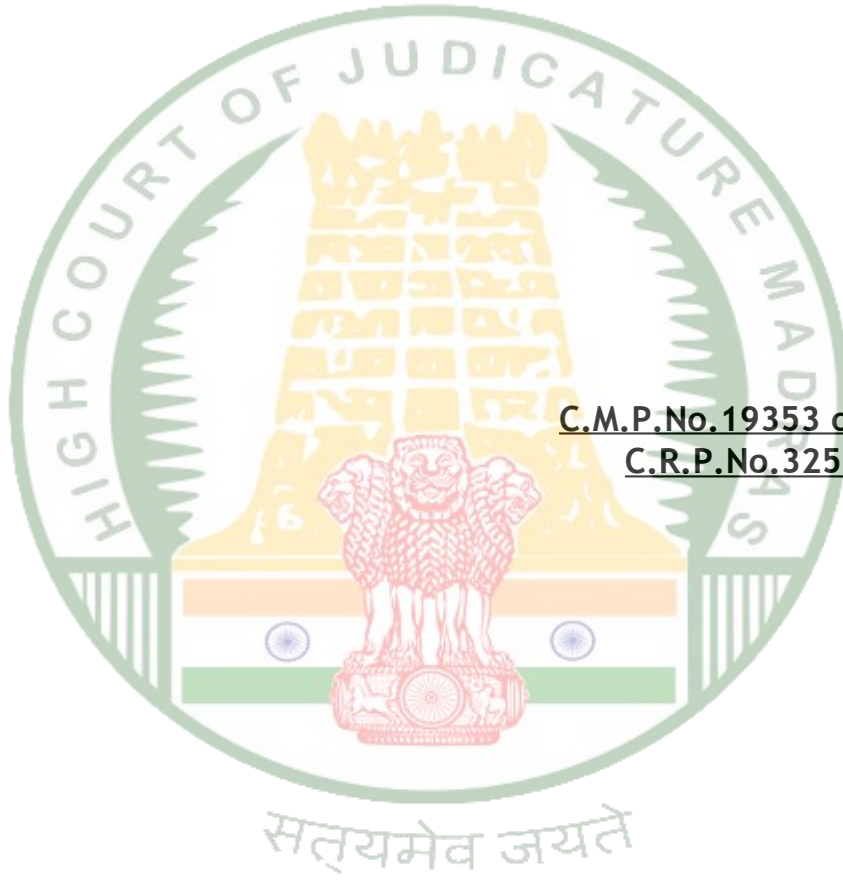
14. For the reasons, stated supra, C.M.P.No.19353 of 2018, is dismissed. No costs.

(S.M.K., J.)(S.P., J.)
13.11.2018

dm

S.MANIKUMAR, J.
AND

SUBRAMONIAM PRASAD, J.
dm



C.M.P.No.19353 of 2018 in
C.R.P.No.3258 of 2017

WEB COPY

13.11.2018