

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.11.2018

CORAM :
THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.26363 of 2018 and
W.M.P.No.30640 of 2018

Mohammed Rafi

.. Petitioner

Vs.

1.The Authorized Officer,
Cholamandalam Investment and
Finance Company Limited,
1st Floor, Dare House,
No.2, NSC Bose Road,
Chennai - 600 001.

2.The Registrar,
Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records of the 2nd respondent and to quash the order dated 10.09.2018 made in R.A.(SA).No.46 of 2018 by the 2nd respondent.

For Petitioner : Mr.V.Giri Shankar

For Respondents : Mr.S.Namasivayam
R2 - Tribunal

O R D E R
(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of certiorari to call for the records of the 2nd respondent and to quash the order dated 10.09.2018 made in R.A.(SA).No.46 of 2018 by the 2nd respondent.

2.The 1st respondent has challenged the order dated 23.01.2018 made in S.A.No.104 of 2017 on the file of the Debt Recovery Tribunal - I, Chennai before the Debt Recovery Appellate Tribunal, Chennai in R.A.(SA).No.46 of 2018. The Debts Recovery Tribunal - I, Chennai, by order dated 23.01.2018 allowed S.A.No.104 of 2017 and directed the 1st respondent to restore the possession to the petitioner within two days of

passing of the order and also imposed a cost of Rs.1,00,000/-.

3. In the appeal preferred by the 1st respondent - Financial Institution, the Debt Recovery Appellate Tribunal, by order dated 10.09.2018, set aside the imposition of costs of Rs.1,00,000/- and confirmed the order of the Debts Recovery Tribunal - I with regard to the restoration of possession to the petitioner. Further, the Appellate Tribunal directed the 1st respondent - Financial Institution to hand over possession on or before 12.09.2018. Further, the Appellate Tribunal directed the petitioner (borrower) to again hand over the possession of the premises after removing his belongings on 08.10.2018 to the 1st respondent - Financial Institution. Challenging this order, the petitioner has filed the Writ Petition.

4. The learned counsel appearing for the 1st respondent - Financial Institution submitted that in compliance of the order passed by the Debt Recovery Appellate Tribunal, the 1st respondent had handed over possession of the premises to the petitioner. Further, the learned counsel submitted that the petitioner has not handed over the possession on 08.10.2018 to the 1st respondent as directed by the Debt Recovery Appellate Tribunal by its order dated 10.09.2018.

5. On a perusal of the affidavit filed in support of the petition, it is clear that the petitioner has not uttered a single word with regard to the possession handed over to him on 12.09.2018 by the 1st respondent. The non-mentioning of handing over of the possession by the 1st respondent to the petitioner on 12.09.2018 in the affidavit filed in support of the petition, is clear suppression of material fact by the petitioner. When this was pointed out to the learned counsel for the petitioner, the learned counsel submitted that the petitioner is willing to vacate the premises in six weeks time and that he would file an affidavit of undertaking before this Court in a week's time.

6. It is also brought to the notice of this Court that even as of today, the petitioner is continuing to hold possession of the property.

7. Since the petitioner has suppressed the fact of taking possession of the property on 12.09.2018, we are of the considered view that the Writ Petition has to be dismissed with costs. Accordingly, the same is dismissed with costs of Rs.3,000/- (Rupees three thousand only). The petitioner shall pay the costs of Rs.3,000/- to the 1st respondent within one week from the date of receipt of a copy of this order. Further, we grant six weeks time to the petitioner to vacate and hand over vacant possession of the property to the 1st respondent. The petitioner is directed to file an affidavit of undertaking before the Registry of this Court on or before 05.12.2018 and

the same shall form part of the record. If the petitioner fails to file the affidavit of undertaking on or before 05.12.2018, it would be open to the 1st respondent to take possession of the property from the petitioner forthwith in accordance with law. Consequently, the connected miscellaneous petition is closed.

* Enclosed the Xerox copy of the affidavit.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

va

To

- 1.The Authorized Officer,
Cholamandalam Investment and
Finance Company Limited,
1st Floor, Dare House,
No.2, NSC Bose Road,
Chennai - 600 001.
- 2.The Registrar,
Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008.

+1cc to Mr.V.Girishankar, Advocate, S.R.No.81924

W.P. No.26363 of 2018 and
W.M.P.No.30640 of 2018

rrs 29/11/2018

सत्यमेव जयते

WEB COPY