IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.29104 of 2018
and W.M.P.No.34033 of 2018

Selva Bakyaraj,
Managing Director,
M/s.Sunrise Chennai Distributors Pvt. Ltd.,
"Wait Rose London Super Market",
No.114, 2nd Floor, Luz Church Road,
Mylapore, Chennai-600 004. .. Petitioner

Vs.

1.M/s.IDBI Bank Limited,
rep. by its Deputy General Manager/Authorized Officer,
NPA Management Group,
No.115, Anna Salai,
Saidapet, Chennai-600 015.

2.N.Venkateswaran,
Authorized Officer,
IDBI Bank Ltd.,
No.115, Anna Salai,
Saidapet, Chennai - 600 015.

3.Mr.S.Jayaprakash,
Advocate,
Advocate Commissioner,
No.4, Muthumariamman Street,
Kamatchi Colony, Tambaram Sanatorium,
Chennai - 600 047.

4.M/s.Sabari Supermarket Pvt. Ltd.,
No.29, Thirumalaipillai Road,
T.Nagar, Chennai-600 017.

5.K.R.V.Raman

6.Aruna Ramani

7.The Managing Director,
Sabari Inn Ltd.,
No.29, Thirumalaipillai Road,
T.Nagar, Chennai – 600 017.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records comprised in Crl.M.P.No.507/2018 on the file of the Chief Metropolitan Magistrate, Allikulam, Chennai-600 003 in issuing the warrant dated 15.05.2018 under Section 14 of the SARFAESI Act and extend the period of execution by virtue of the order made in C.M.P.No.3264/2018 dated 17.07.2018 and in C.M.P.No.4153/2018 dated 17.09.2018 authorizing the Advocate Commissioner/4th respondent to take possession of land and building named M/s.Sabari Convention Centre comprised in Door No.29, Chinnaiaya Street, T.Nagar, Chennai-600 017 and to quash the same in so far as in sealing of the tenanted business premises of the petitioner located in Basement and Ground floor of the said premises dated 27.9.2018 as being illegal and without authority of laws and consequently direct the respondents 1 to 3 to pay damages of Rs.50 lakhs under Public law remedy.

For Petitioner : Mr.V.Ayyadurai
Senior Counsel
for M/s.V.B.Perumal Raj

O R D E R

(Order of the Court was made by M.DURAISWAMY,J.)

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records comprised in Crl.M.P.No.507 of 2018 on the file of the Chief Metropolitan Magistrate, Allikulam, Chennai in issuing the warrant dated 15.05.2018 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act') and extend the period of execution by virtue of the order made in C.M.P.No.3264 of 2018, dated 17.7.2018 and in C.M.P.No.4153 of 2018, dated 17.9.2018 authorizing the Advocate Commissioner to take possession of the land and building viz., M/s.Sabari Convention Centre comprised in Door No.29, Chinnaiaya Street, T.Nagar, Chennai and to quash the same in so far as in sealing of the tenanted business premises of the petitioner located in basement and ground floor and consequently, direct the respondents 1 to 3 to pay damages of Rs.50 lakhs under public law remedy.

2. It is the case of the petitioner that they are the tenant in respect of the basement and the ground floor of premises bearing No.29, Chinnaiaya Street, T.Nagar, Chennai-17 as per the lease agreement dated 23.1.2014 between M/s.Sunrise Chennai Distributors (P) Limited and the landlord viz., K.R.V.Ramani. According to the petitioner, they are trading in the said premises as "Wait Rose London Super Market". Though the lease agreement dated 23.1.2014 was for a period of 10 years, it was not registered by the parties. Under Section 17 of the Indian Registration Act, registration of lease agreement for a period of more than 12 years is compulsorily be registered.

3. The respondents 4 to 7 obtained loan from the 1st respondent Bank and committed default in repaying the loan. Therefore, the 1st respondent Bank initiated proceedings under the SARFAESI Act and issued Section 13(2) notice on 27.11.2013. Subsequently, the 1st respondent Bank issued Section 13(4) notice dated 21.11.2014 to the respondents 4 to 7. Challenging Section 13(4) notice, the respondents 4 to 7 preferred an appeal in S.A.No.500 of 2015 before the Debts Recovery Tribunal-III, Chennai. By an order dated 14.8.2015, the Debts Recovery Tribunal-III, Chennai directed the petitioner herein to remit the monthly rent of Rs.2.50 lakhs directly to the 1st respondent Bank.

4. Mr.V.Ayyadurai, learned Senior Counsel appearing for the petitioner submitted that since passing of the said order in S.A.No.500 of 2015, the petitioner is remitting the monthly rents directly to the 1st respondent Bank. Inspite of having full knowledge about the proceedings initiated under the SARFAESI Act against the respondents 4 to 7, the petitioner remained a silent spectator without initiating any proceeding to protect their possession. Subsequently, the 1st respondent Bank filed an application under Section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate, Chennai and by an order dated 15.5.2018, the Chief Metropolitan Magistrate, Chennai appointed an Advocate Commissioner to take possession of the property after taking inventory of the articles found in the premises and to handover secured asset to the 1st respondent Bank. Challenging this order, the petitioner has preferred this writ petition.

5. The learned Senior Counsel appearing for the petitioner submitted that in the application filed by the 1st respondent Bank under Section 14 of the SARFAESI Act in Crl.M.P.No.507 of 2018, the petitioner has not been made as a party. That apart, the 1st respondent Bank in their proof affidavit filed before the Chief Metropolitan Magistrate has stated that there was no

tenant in the secured asset. The contention raised by the learned Senior Counsel for the petitioner cannot be accepted for the reason that the petitioner had full knowledge about the initiation of the SARFAESI proceedings against the respondents 4 to 7. The petitioner was also remitting the monthly rents directly to the 1st respondent Bank as per the direction of the Debts Recovery Tribunal-III, Chennai in S.A.No.500 of 2015 since 14.8.2015. Inspite of knowing about the pending proceedings, the petitioner has not taken steps to get themselves impleaded and contest the matter. Even before the Chief Metropolitan Magistrate, the petitioner has not filed any application to get themselves impleaded as respondent in the petition. Therefore, it cannot be a surprise to the petitioner with regard to the order passed by the Chief Metropolitan Magistrate, Chennai dated 15.5.2018. The petitioner who is having knowledge about the SARFAESI proceedings for the past three years, for the reason best known to them, remained silent. This inaction on the part of the petitioner cannot be taken to their advantage.

6. The learned Senior Counsel for the petitioner submitted that possession of a statutory tenant should be protected and the petitioner being a tenant under the respondents 4 to 7, their possession should be protected. In support of his contention, the learned Senior Counsel relied upon the judgment reported in (2014) 6 SCC 1 (Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and others), wherein the Apex Court held that leases granted by borrowers can be classified into three classes i.e., (i) leases created prior to mortgage which created the secured asset; (ii) leases created after creation of the mortgage, vide Section 65-A of the Transfer of Property Act but prior to receipt of Section 13(2) of SARFAESI Act by the borrower and (iii) leases created after creation of the mortgage, vide Section 65-A of the Transfer of Property Act but after receipt of Section 13(2) of SARFAESI Act notice by the borrower.

7. Sofar as the leases falling in classes (i) and (ii), the Apex Court held that such leases would not stand automatically determined upon action being initiated under Section 13/Section 14 of the SARFAESI Act and lessees in possession under such leases cannot be evicted by secured creditor or the Chief Metropolitan Magistrate/District Magistrate, unless and until the lease is validly terminated as per any of the modes specified in Section 111 of the Transfer of Property Act, including by surrender of lease by lessee to the secured creditor or the Chief Metropolitan Magistrate/District Magistrate. The Apex Court further held that to retain possession under such a lease beyond a period of one year from

the date on which such lease commenced, vide mandate of Section 107 of the Transfer of Property Act, such lessee would have to produce proof of execution of a proper registered lease deed to secured creditor or the Chief Metropolitan Magistrate/District Magistrate. Sofar as the lease falling in class (iii), the Apex Court held that such leases are invalid, since Section 65-A of the Transfer of Property Act is inconsistent with Section 13(13) and Section 35 of the SARFAESI Act. Further, the Apex Court held that Section 13(13) of the SARFAESI Act would prevail over Section 65-A of the Transfer of Property Act to that extent. In these circumstances, the Apex Court held that lessees in possession under such leases can be immediately evicted by secured creditor or the Chief Metropolitan Magistrate/District Magistrate.

8. In the case on hand, Section 13(2) notice was issued to borrowers on 27.11.2013. Admittedly, the lease agreement was entered into between the petitioner and the landlords/respondents 4 to 7 on 23.1.2014 i.e., after the issuance of Section 13(2) notice. Therefore, the case on hand would fall under class (iii) mentioned supra. In the case on hand, the mortgage was much prior to the lease deed dated 23.1.2014 and even Section 13(2) notice was issued prior to the lease. Therefore, the petitioner who is in possession of the property based on the lease deed dated 23.1.2014 executed subsequent to Section 13(2) notice can be evicted from the secured asset. The ratio laid down by the Apex Court in the above referred judgment would squarely apply to the present case.

9. The learned Senior Counsel for the petitioner also relied upon the judgment reported in (2016) 3 SCC 762 (Vishal N.Kalsaria v. Bank of India and others), wherein also the Apex Court held that a person in possession of secured asset as a lessee/tenant of borrower, where lease/tenancy is created prior to mortgage, in such case, possession of the tenant or lessee is protected under the relevant Rent Control Act. In the case on hand, as already stated, the lease was subsequent to the mortgage as well as Section 13 (2) notice. In such circumstances, the ratio laid down by the Apex Court in the judgment reported in (2016) 3 SCC 762 (Vishal N.Kalsaria v. Bank of India and others), is not applicable to the petitioner.

10. For the reasons stated above, we do not find any merit in the writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, W.M.P.No.34033 of 2018 is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

+4cc to Mr.V.B.Perumal Raj, Advocate, S.R.No.75155

W.P.No.29104 of 2018

RR(CO)
GSP(28/11/2018)